



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
 )  
 REDACTED ) ISCR Case No. 15-00868  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: Ryan C. Nerney, Esq.

01/06/2017

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant, who had child support and alimony obligations totaling \$1,580 per month, began to struggle financially after he bought a house in December 2009. He made some questionable financial decisions that further compromised his finances. Federal and state tax debts resulted when he withdrew funds from a 401(k) account. As of July 2016, he had satisfied or settled a \$1,080 medical judgment, \$2,300 in child support arrearage, \$6,000 in past-due state taxes, and all but one of his delinquent credit cards. He has made consistent payments to the Internal Revenue Service since May 2014 to reduce his federal tax delinquency to \$17,000. His financial situation is sufficiently stable to where he can be relied on to continue to comply with his installment agreement with the IRS. Clearance is granted.

**Statement of the Case**

On August 6, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order 10865,

*Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On September 2, 2015, Applicant answered the SOR allegations and requested a decision on the written record without a hearing. Applicant subsequently retained legal counsel and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On January 15, 2016, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. After some coordination of schedules, I scheduled a hearing for July 13, 2016.

I convened the hearing as scheduled. Eight Government exhibits (GEs 1-8) and 27 Applicant exhibits (AEs A-AA) were admitted into evidence without objection. A chart prepared by Department Counsel to supplement his closing argument was marked as a hearing exhibit (HE 1) but not entered as an evidentiary exhibit. Applicant testified, as reflected in a transcript (Tr.) received on July 21, 2016.

I held the record open for one month after the hearing for Applicant to supplement the record. On August 10, 2016, he submitted seven exhibits. Department Counsel submitted no objection by the August 22, 2016 deadline for comment. Accordingly, the exhibits were entered without objection as AEs BB-HH, and the record closed on August 22, 2016.

### **Findings of Fact**

The SOR alleges under Guideline F that Applicant owed as of August 2015 a \$1,108 medical judgment from 2013 (SOR ¶ 1.a), four collection debts totaling \$5,933 (SOR ¶¶ 1.b, 1.d-1.f), two charged-off credit card debts of \$4,951 (SOR ¶ 1.c) and \$2,507 (SOR ¶ 1.g), and \$246 on a past-due utility account (SOR ¶ 1.h). Additionally, Applicant allegedly owed child support arrearage of \$2,300 (SOR ¶ 1.i) and \$27,000 in delinquent federal and state income taxes for tax year 2011 (SOR ¶ 1.j).

In his *pro se* Answer to the SOR allegations, Applicant admitted the consumer credit debts in SOR ¶¶ 1.b, 1.d, 1.e, and 1.g. He also admitted that he had been behind on the utility debt in SOR ¶ 1.h and federal and state taxes as alleged in SOR ¶ 1.j, but he indicated that he had satisfied the utility and state tax debts. Applicant denied the medical judgment in SOR ¶ 1.a and the collection debt in SOR ¶ 1.f because he had paid them in October 2014. He denied the \$4,951 debt in SOR ¶ 1.c, believing at the time that it was a duplicate listing of the debt in SOR ¶ 1.d. He also denied owing any past-due child support (SOR ¶ 1.i) because he satisfied the arrearage in August 2014. Applicant indicated that he had repayment arrangements in place for his outstanding balances.

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 50-year-old information technology security compliance professional, who has worked for the same defense contractor since July 2000. He earned his bachelor's and master's degrees online in 2005 and 2009, respectively, while working full time. (GEs 1, 7; AEs W-Y; Tr. 27.) He reports prior military service from July 1985 to March 1987, when he was medically discharged. (GEs 1, 7; AE Z; Tr. 28.) He held a top secret clearance while in the military. Applicant is requesting a security clearance at the request of the defense contractor he supports. (Tr. 26.)

Applicant was married from May 1991 to January 2005. He and his ex-wife have a son now age 21 and a daughter now age 18. (GE 1; Tr. 27-28.) On his divorce, Applicant was ordered to pay alimony of \$500 a month until January 2015 and child support at \$270 per week until his children turned 18. (GE 7; Tr. 46, 64.)

After his divorce, Applicant rented an apartment until February 2006, when he moved in with his parents. He did not pay any rent to his parents at that time. (Tr. 66.) Following surgery in 2009, Applicant was out of work for almost three months. He had long-term disability income at about 60% of his salary for about five weeks. (Tr. 67-68.) In December 2009, he purchased a home, obtaining a \$225,000 Department of Veterans Affairs (VA) mortgage. (GEs 1, 7.) His monthly mortgage payments were around \$1,900. (Tr. 73.) Applicant had difficulty managing his finances, and he did not anticipate all the costs involved in home ownership. (Tr. 74.)

Several of Applicant's credit card accounts became delinquent, including some accounts not alleged in the SOR. (GE 8.) In 2011, Applicant took an early withdrawal of \$40,000 from his retirement fund at work to replace a vehicle that had over 325,000 miles on the engine and to address his mortgage delinquency. He prepaid a lease of \$14,037 for a vehicle and used \$8,000 of the 401(k) withdrawal to catch up on his mortgage payments. (GE 4; Tr. 57, 70-72, 76-77.) Applicant does not now recall specifically which expenses he paid with the rest of the 401(k) withdrawal. (Tr. 78.) The tax consequences of the 401(k) withdrawal led to Applicant owing about \$20,000-\$21,000 in federal income taxes and \$6,000 in state income taxes for tax years 2011 and 2012 (SOR ¶ 1.j). (GEs 1, 7; AEs I-K; Tr. 47-48, 50, 101.)

Applicant was out of work for about six to eight weeks for medical issues in 2012, but he had enough paid medical leave to cover his absence. (Tr. 69-70.) In November 2012, Applicant moved back in with his father for financial reasons. (GE 1.) He rented out his house for the income to make debt payments. (AE J; Tr. 75.) He made no mortgage payments between April and June 2013. He testified that there were times when he did not have tenants in the house. (Tr. 84.) Applicant's mortgage loan was current as of November 2013, although he was routinely late 30 days in paying his mortgage between August 2014 and January 2015. (GEs 4, 8.)

In June 2013, Applicant purchased the car that he had been leasing since 2011. (Tr. 57.) He took on a loan of \$32,828, to be repaid at \$706 per month. Applicant was routinely past due 30 days in making his car payments between January 2014 and October 2014. (GE 8; Tr. 58.) He has not missed any payments since then. (Tr. 59.)

On May 5, 2014, Applicant certified to the accuracy of a Questionnaire for National Security Positions (SF 86) incorporated within an Electronic Questionnaire for Investigations Processing on which he reported that he owed \$27,000 in delinquent income taxes, \$2,300 in child support arrearage, about \$335 of a medical judgment, and credit-card delinquencies of \$2,700 (SOR ¶1.d) and \$2,506 (SOR ¶ 1.g). He indicated that he was attempting to negotiate repayment terms for his credit card debts. (GE 1.)

On June 2, 2014, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) partially about his delinquent debts. Applicant indicated that he began repaying his federal tax delinquency in September 2013, but that he was currently four or five months behind in his monthly installment payments to the IRS. He indicated that he had reduced the amount of his contribution to his retirement and health savings accounts so that he could repay his child support arrearage before September 2014. Applicant had established a health savings account to ensure that future medical expenses are covered. (AE J.) Applicant did not dispute that he owed a medical judgment from July 2013 or some credit card delinquencies. (GE 7.) Available credit reports and financial records show the following with respect to the delinquencies alleged in the SOR.

#### Consumer delinquencies (SOR ¶¶ 1.a-1.h)

In July 2013, a medical provider was awarded a \$1,108 judgment (SOR ¶ 1.a). (GEs 5, 8.) The debt is from surgery in 2009. (Tr. 30.) Applicant indicated on his SF 86 that he was paying \$35 per week and \$20 per week toward two debts owed a hospital. (GE 1.) The evidence shows that Applicant satisfied the medical judgment debt in October 2014. (AE A; Tr. 31.)

In August 2011, a \$2,429 credit card balance was charged off by the creditor in SOR ¶ 1.b. The debt was sold to a collection entity in September 2011. (GEs 2-4, 6.) In March 2015, the collection entity filed for a judgment against Applicant. (GE 6.) In late August 2015, the creditor agreed to accept \$1,575 in settlement of the balance, which had accrued to \$3,565. Under the settlement, Applicant was required to pay \$1,000 by the end of the month and \$575 by September 7, 2015. (AE B.) Applicant made a final payment on September 9, 2015 (GE 8), and in November 2015, the creditor withdrew its court action. (AE R.)

As of April 2014, Applicant's revolving charge with the creditor in SOR ¶ 1.c had been charged off and placed for collection for \$4,951 (SOR ¶ 1.c.) due to no activity since March 2011. He had bought appliances for his home on the account. (Tr. 34.) As of December 2014 and May 2015, the creditor was reporting no progress toward repaying the debt. (GEs 2, 3.) As of May 2016, a collection entity had acquired the debt for \$4,951.

Applicant paid a negotiated settlement amount of \$2,475 to resolve the debt on May 31, 2016. (AE O; Tr. 35.)

Applicant had a second credit card account with the retailer that was charged off in August 2011 for \$3,309 and sold in September 2011 to the collection entity in SOR ¶ 1.d. (GE 4; Tr. 35-36.) As of August 28, 2015, Applicant had arranged with the debt purchaser to repay a \$3,309 balance with an initial payment of \$25 followed by \$154 monthly payments from September 2015 to August 2016. (AE C.) Applicant's credit report shows that he was making the \$154 payment as of December 2015 toward a then balance of \$2,821. (GE 8.) As of June 2016, Applicant had settled the debt. (AE L; Tr. 36.)

In January 2013, the collection entity in SOR ¶ 1.e acquired a \$163 debt on a revolving charge account with a last payment in June 2011. (GEs 2, 4.) As of late August 2015, Applicant had arranged to make three consecutive monthly payments of \$54 from September 2015 to November 2015. (AE D.) Applicant satisfied the debt in October 2015. (GE 8; AE Q.)

As of May 2014, Applicant owed \$32 on a medical debt placed for collection in October 2012 (SOR ¶ 1.f). (GE 4.) Applicant paid the debt on October 29, 2014. (AE E.)

In June 2013, the collection entity in SOR ¶ 1.g acquired a delinquent credit card balance of \$2,507. (GEs 1, 4; Tr. 41-42.) Applicant indicated on his May 2014 SF 86 that he was attempting to negotiate a repayment agreement. In July 2014, a stipulated judgment was awarded the collection entity. (GE 8; AE F.) In August 2014, Applicant began repaying the \$2,507 debt at \$20 a week. (AEs G, P, BB; Tr. 43-44.) As of December 22, 2015, he owed \$1,808. (AE K.) In 2016, he began paying \$35 a week. In June 2016, when a new debt servicer took over, Applicant owed \$1,352. (AE K.) Applicant made five additional payments of \$35 each as of early August 2016. (AE BB.) He has the funds to pay the outstanding balance, but he was focused on getting other debts resolved. (Tr. 44.)

As of November 2013, Applicant owed \$246 on a natural gas utility account that was past due over 120 days (SOR ¶ 1.h). (GE 4; Tr. 44-45.) As of August 26, 2015, his account was \$205 past due. He made payments toward the delinquency, and brought his account current with a payment of \$96 on June 23, 2016. (AE HH.)

#### Child Support (SOR ¶ 1.i)

Applicant fell in arrears approximately \$2,300 in his child support because of medical costs incurred between 2009 and 2012 and because he had to replace his vehicle in 2011. (GEs 1, 7; AE J.) In October 2013, when his son turned 18, his child support obligation decreased from \$270 per month to \$231 a week. (Tr. 63-64.) In family court in February 2014, he provided an action plan to pay off his arrearage within six months. (GEs 1, 7.) Applicant made payments totaling \$896 before August 16, 2014, when he paid his remaining arrearage of \$1,600 to his ex-wife. (AE H; Tr. 49.) As of 2016, Applicant was making timely child support payments of \$213 a week. (AE M.) As of April 2016, he was no

longer obligated to pay child support because his daughter turned 18 years old. (AE CC; Tr. 48.)

#### Federal and state income taxes (SOR ¶ 1.i)

In September 2013, Applicant entered into an installment agreement with the IRS to repay his delinquent federal income taxes for 2011 and 2012. (GE 7; Tr. 51, 101.) During his OPM interview in June 2014, Applicant admitted that he was behind four or five months in his tax payments. (GE 7.) From May 2014 through January 2015, he made seven payments in varying amounts that totaled \$1,232 to the IRS. In February 2015, he made the first of seven \$169 payments over four months. From June 2015 through at least July 2016, Applicant made monthly payments of \$337 to the IRS toward his income tax delinquency. (AEs J, GG; Tr. 55-56.) Applicant admitted at his hearing that he might have missed one payment in 2015, but that he was now current. (Tr. 55, 90.) At his present repayment rate, it is going to take him six years to pay the \$17,000 balance of his federal tax delinquency. (Tr. 56, 91.) He indicated that he is now in a position to accelerate repayment. (Tr. 56.)

Applicant began making payments toward his state income tax delinquency of approximately \$6,000 starting in October 2014. (AE I.) The state intercepted and applied a state tax refund of \$692 in November 2014. (Tr. 98.) With a final payment of \$339 in March 2015, Applicant paid off his state tax delinquency. He was refunded an overpayment of \$12 for tax year 2012 in late March 2015. (AEs DD.) As of late July 2016, Applicant was current on his state tax obligations. He paid his state income taxes for tax years 2013 through 2015 when they were due. (AE EE.)

Applicant began working a second job in February 2015, earning \$22 an hour for 24 hours each weekend. (AEs J, T; Tr. 61, 81, 85.) In November 2015, on legal advice, Applicant contacted a debt management firm for assistance in preparing a budget and managing his debt. (Tr. 79.) In addition to his net monthly wages of \$4,000 from his defense contractor employment and \$1,800 from his part-time job, he had rental income of \$1,800, about \$130 less than his monthly mortgage payments. (Tr. 75.) From that income, he was paying his mortgage, \$200 in rent to his father, \$706 for his car payment, and \$276 to repay a loan. Applicant was also paying \$867 per month in private school tuition for his daughter and \$337 per month to the IRS for his delinquent federal taxes. After accounting for other expenses, such as food, car insurance, cell phone, and utility costs, Applicant reported net monthly discretionary income of \$1,024. (AE T.)

In April 2016, Applicant borrowed \$25,000 from his 401(k), \$5,000 of which went to pay off his daughter's high school tuition.<sup>1</sup> The rest went to settle some of his debts and to pay other bills. (Tr. 95-96, 105.) Although not legally obligated, Applicant expected to provide some financial support for his daughter starting college in the fall of 2016. (Tr. 112.)

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<sup>1</sup> Applicant testified that his daughter's high school tuition totaled \$20,000 for four years and that he paid half. (Tr. 109.)

In July 2016, Applicant completed a personal financial statement. He reported monthly discretionary income after paying monthly expenses of \$1,137 and debt payments totaling \$3,967 (\$1,930 mortgage payment, \$706 car payment, \$337 to the IRS, \$524 to his 401(k) loan, and \$470 in credit card payments). He reported \$14,500 in combined checking and savings, \$30,000 in 401(k) assets, and \$7,950 in a health savings account. (AE FF.)

Applicant has two open credit card accounts, both with the same creditor. (AE FF; Tr. 39-40.) As of December 2015, Equifax was reporting a \$2,012 balance on a Visa card Applicant obtained in January 2001 and a \$388 balance on a MasterCard obtained in January 2012. Both accounts were rated as current. (GE 8.) Applicant has not opened any new credit card accounts since January 2012 because he has been trying to clean up his credit. (GE 8; Tr. 37.) He estimated their balances at \$2,200 and \$140 as of his hearing in mid-July 2016, and he was making more than the monthly minimum payments. (Tr. 40.)

### **Work References**

Applicant is a certified information systems security professional (AE V) with a record of valuable contributions to his employer. He met his employer's expectations in quality of work, timeliness, and quantity of work for 2013. He surpassed his employer's expectations in his ability to work independently, his work habits and company ethics. Held in high regard by his team and its customer, Applicant was considered by his manager to be a high performer who sets a "great example." (AE U.)

Applicant continued to be a key member of the company's security team in 2014. He surpassed expectations in quantity of work output, customer impact, and team contributions. His rating manager gave him an overall rating of "Meets Expectations," but he also stated, "His dedication, determination and overall top-notch quality is [sic] always there, day in and day out." (AE U.)

Applicant had what was described by his rating manager as "another great year" in 2015. His leadership was considered critical, and he was in demand because of his experience as a compliance assurance manager. He did a "great job rising to the challenges set by one of [his employer's] tough customers." Applicant was given an overall rating of "Exceeds All Expectations" for 2015 and when rated in 2016 for his performance from April 1, 2015, through April 1, 2016. (AE U.)

A co-worker familiar with Applicant's performance for over 15 years described Applicant as a "consummate professional." A former co-worker, who worked with Applicant in the same department for four years, attested to Applicant taking his commitments seriously. Applicant was always the first to volunteer for difficult projects. (AE Z.)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing

that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant’s eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concerns about financial considerations are set forth in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise

questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The evidence establishes the delinquencies in the SOR. Applicant began to have problems managing his finances after he bought a home in December 2009. He was paying \$500 per month in alimony and child support of \$270 per week, and he did not adequately anticipate the costs of home ownership. With \$40,000 withdrawn from his 401(k) account in 2011, he prepaid a vehicle lease for \$14,037, paid \$8,000 to bring his mortgage loan current, and paid some bills. The early 401(k) withdrawal had tax consequences. He underpaid his federal and state income taxes by approximately \$27,000 for 2011 and 2012 (SOR ¶ 1.j). He made no payments on a hospital bill from 2009 (SOR ¶ 1.a), and several credit card debts totaling approximately \$13,359 were charged off and placed for collection in 2011 (SOR ¶¶ 1.b-1.e, 1.g). A small medical debt of \$32 (SOR ¶ 1.f) was placed for collection in October 2012. Applicant also fell behind \$2,300 on his child support payments (SOR ¶ 1.i). He was over 120 days past due on his natural gas bill as of November 2013 (SOR ¶ 1.h). Two disqualifying conditions, AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply.<sup>2</sup>

Mitigating condition AG ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," cannot reasonably apply. Most of the delinquencies were incurred in 2011 and so are not recent, but all of the debts in the SOR were unresolved as of the date he applied for security clearance eligibility in May 2014.

AG ¶ 20(b), "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances," is applicable in part in that Applicant's alimony and child support payments totaling approximately \$1,580 per month compromised his finances. On his SF 86, he indicated that his child support delinquency was caused by his multiple surgeries and medical complications, and by him having to replace his vehicle. However, the evidence shows that a large portion of his delinquent debt is attributable to his decisions to take on a monthly mortgage payment of \$1,930 and other debts such as property taxes and utilities associated with home ownership, to withdraw \$40,000 from his 401(k) despite its negative tax consequences, and to use a large share of those funds to prepay a vehicle lease. He compromised his ability to repay his charged-off credit card debts, including the \$4,951 for appliances for his house, by obtaining in June 2013 a \$32,828 vehicle loan with \$706 monthly payments for 76 months to purchase the vehicle he had leased. Applicant did not act responsibly toward his creditors in 2012 or 2013 in that he made little effort to

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<sup>2</sup> Although Applicant incurred a federal income tax delinquency of \$20,000-\$21,000 and a state income tax delinquency of approximately \$6,000 for tax years 2011 and 2012, there is no allegation or evidence that he failed to file timely income tax returns for those tax years. Accordingly, AG ¶ 19(g), "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same," is not implicated.

address his delinquencies. Although Applicant entered into an installment agreement with the IRS in September 2013, he was several months in arrears on his federal income tax payments as of his OPM interview in June 2014, despite the decrease in his child support obligation when his son turned 18 in October 2013.

Applicant has a stronger case in mitigation under AG ¶ 20(c), “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control,” and AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Between February 2014 and August 2014, he made payments to satisfy his child support arrearage. In October 2014, he paid off the medical judgment from July 2013 and the \$32 medical debt from 2012. Concerning his credit card delinquencies, he settled the \$3,565 balance of the debt in SOR ¶ 1.b for \$1,575 in September 2015. In late May 2016, he paid off a negotiated settlement of \$2,475 to resolve the \$4,951 charged-off debt in SOR ¶ 1.c. He paid \$154 per month from September 2015 to June 2016 to settle the debt in SOR ¶ 1.d. He made payments in September and October 2015 to satisfy the \$163 debt in SOR ¶ 1.e. Moreover, through payments and interception of his tax refunds Applicant fully satisfied his state income tax delinquency for tax years 2011 and 2012 in March 2015. As of June 2016, his natural gas account (SOR ¶ 1.h) was current after several months of payments toward his past-due balance. Albeit belated and in some cases with funds borrowed from his 401(k) in April 2016, Applicant’s satisfaction in full or negotiated settlements of the debts in SOR ¶¶ 1.a-1.f, ¶ 1.h, and his state income taxes in SOR ¶ 1.j, establish mitigating conditions AG ¶¶ 20(c) and 20(d).

Neither his credit card delinquency in SOR ¶ 1.g nor his federal income tax delinquency in SOR ¶ 1.j has been fully resolved. Under the terms of a stipulated judgment, he paid \$20 a week from August 2014 until a new collection entity acquired the debt in early 2016 and his weekly payments increased to \$35. He owed an outstanding balance of \$1,352 as of June 2016. Yet, he has a sufficient track record of payments to provide confidence that he is likely to continue to make those payments until the debt is resolved. AG ¶¶ 20(c) and 20(d) also apply to that debt.

Concerning his federal income tax delinquency, Applicant owes approximately \$17,000 after making payments to the IRS since May 2014, including at \$337 per month since June 2015. See AE J, AE GG. At his present rate of repayment, it will take about five years to satisfy his federal income tax delinquency unless the IRS intercepts any future tax refunds. Nevertheless, the security clearance adjudication is not aimed at collecting an applicant’s personal debts. Rather, it involves an evaluation of an applicant’s judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). In evaluating Guideline F cases, the Appeal Board has established that an applicant is not required to pay off every debt in the SOR:

The Board has previously noted that the concept of a meaningful track record necessary includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All

that is required is that an applicant demonstrated that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that the plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant has been complying with his installment agreement with the IRS for over a year, which augurs favorably for whether he can reasonably be expected to continue to make his tax payments. The salient issue is whether he can be counted on to make his payments without taking on more debt to do so.

Applicant made some questionable financial decisions in the past. Recently, in April 2016, he borrowed \$25,000 against his retirement to pay \$5,000 for his daughter's high school tuition. While he testified that the remainder went to settle some debts and pay household bills, his payments to resolve the debts in SOR ¶ 1.c, 1.d, 1.g, and 1.h do not account for the full \$20,000. He paid \$2,475 to resolve the debt in SOR ¶ 1.c on May 31, 2016. Between December 2015 and June 2016, he paid \$2,821 to resolve the debt in SOR ¶ 1.d. Even assuming three months of \$35 weekly payments toward the debt in SOR ¶ 1.g, those payments would account for only another \$420. His arrearage on his natural gas bill was less than \$250. He reported \$14,500 in combined checking and savings deposits as of late July 2016, which could account for some of the loan monies.

Under his revised budget prepared with the assistance of a debt resolution company in November 2015, Applicant had \$1,024 in net monthly income after expenses, which included \$876 for his daughter's high school tuition and \$1,001 in child support. As of July 2016, he estimated his net discretionary income at \$2,477. The increase is largely due to the fact that his child support ended in April 2016. His financial situation appears to be stable at present, even with the repayment of his 401(k) loan at \$576 per month. His solvency is contingent on rental income or part-time work. His budget can sustain the loss of one source of additional income (\$1,800 from the tenancy and \$1,780 from his weekend job). Applicant's \$14,500 in combined bank deposits provides him a financial cushion in the event of unanticipated expenses. While his recent 401(k) loan raises some concerns about his financial judgment, he has worked hard to regain sound financial footing. He has two open credit card accounts with balances that total less than \$2,500, and he is not opening any new credit card accounts. While it does appear that the need to obtain a security clearance was a significant motivation in him resolving his debt, he has made enough progress to mitigate the financial considerations security concerns.

## Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).<sup>3</sup> The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant's decisions involving the lease and then purchase of his present vehicle may not have been the most prudent at the time, as evidenced by his late payments on his car loan throughout most of 2014. In other aspects, he has shown good financial judgment. He moved in with his father in November 2012 and obtained tenants for his home to reduce the financial burden of his mortgage. He started a health savings account to ensure that he has the funds to pay future medical bills. He has been working part time on the weekends since February 2015 to improve his financial situation. While dealing with the financial impact of his divorce and the negative tax consequences of his early 401(k) withdrawal, he has continued to be a valuable contributor to his defense contractor employer. His work performance in 2015 exceeded his employer's expectations while also holding down a second job and making efforts to resolve the financial items of concern to the DOD. The importance of his work to him is well documented and makes him likely to continue to make the payments toward his federal tax debt. Applicant obtained financial counseling in November 2015 to ensure that his financial difficulties do not recur.

A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of the evidence to determine if a nexus exists between established facts and a legitimate security concern. For the reasons noted, I conclude that it is clearly consistent with the national interest to grant Applicant security clearance eligibility.

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a-1.j:	For Applicant

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<sup>3</sup> The factors under AG ¶ 2(a) are as follows:

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Elizabeth M. Matchinski  
Administrative Judge