



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-03157

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel

For Applicant: *Pro se*

01/26/2015

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations and personal conduct. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On March 25, 2013, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On August 21, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility – Division A (CAF) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the DOD on September

¹ GE 1 ((e-QIP), dated March 25, 2013).

1, 2006) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct), and detailed reasons why the DOD adjudicators could not make an affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on September 4, 2014. In a sworn statement, dated September 23, 2014, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On November 6, 2014, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on November 14, 2014. A Notice of Hearing was issued on December 2, 2014. I convened the hearing, as scheduled, on December 17, 2014.

During the hearing, six Government exhibits (GE 1 through GE 6) and eight Applicant exhibits (AE A through AE H) were admitted into evidence without objection. Applicant testified. The transcript of the hearing (Tr.) was received on January 5, 2015. I kept the record open to enable Applicant to supplement it, but he chose not to do so. The record closed on December 30, 2014.

Findings of Fact

In his Answer to the SOR, Applicant admitted three of the factual allegations in the SOR under financial considerations (§§ 1.b., 1.f., and 1.g.). He failed to address the personal conduct allegation (§ 2.a.). Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact.

Applicant is a 46-year-old employee of a defense contractor. He has been serving as a logistics specialist since January 2013.² He also went through periods of unemployment from May 2003 until October 2003 (because his employer had lost the contract on which Applicant was working) and from May 2009 until August 2009 (while Applicant was competing in mixed martial arts fights and sparing matches).³ A May 1987 high school graduate,⁴ Applicant attended a community college for several years, but did not earn a degree.⁵ He was granted a secret security clearance in either 1998 or 1999,⁶ but the status of that security clearance is not known. Applicant has never

² GE 1, *supra* note 1, at 10.

³ GE 1, *supra* note 1, at 14, 16; GE 2 (Personal Subject Interview, dated May 21, 2013), at 2.

⁴ GE 2, *supra* note 3, at 1.

⁵ GE 1, *supra* note 1, at 9.

⁶ GE 1, *supra* note 1, at 30-31; GE 2, *supra* note 3, at 3.

served with the Unitary States military.⁷ Applicant was married in July 1990 and divorced in August 1991.⁸

Financial Considerations

There was nothing unusual about Applicant's finances until August 2005. From about 1998 until 2005, Applicant's accountant routinely filed his personal tax returns under his power of attorney authority. Applicant owned a local business – a sole proprietorship – from March 2003 until August 2005, and his accountant also did his business payroll. One day in late August 2005, while Applicant was in another state, a catastrophic event occurred that significantly altered his life: Hurricane Katrina struck. The storm was so destructive that President Bush declared both a major disaster and a state of emergency in the state in which Applicant had his residence and business. Applicant's business was destroyed and documentation was lost. His accountant's building was destroyed, and her business was temporarily closed, but it subsequently reopened.⁹ She assisted him in wrapping up the final financial details of his business.¹⁰

Applicant presumed his accountant had routinely filed his tax returns and never questioned her about the issue. Applicant failed to timely file his tax returns for three reasons: 1. he still believed his accountant was doing so, 2. he was still overwhelmed with other hurricane-related priorities such as providing for his family, shelter, and keeping his job, and 3. oversight.¹¹ In 2013, after he unsuccessfully attempted to contact her, he hired another accountant, and learned that his first accountant had not filed his tax returns for several years.¹² The new accountant filed the missing returns for him. Applicant also personally filed his most recent income tax return.

In addition to his unfiled federal income tax returns for the tax years 2006, 2007, and 2009, with an unspecified liability, the SOR identified six purportedly continuing delinquencies as reflected by credit reports from May 2013¹³ and June 2014,¹⁴ totaling approximately \$76,631. Those debts listed in the SOR and their respective current status, according to the credit report, other evidence in the case file, and Applicant's admissions regarding the same, are described below.

⁷ GE 1, *supra* note 1, at 18.

⁸ GE 1, *supra* note 1, at 20-21.

⁹ Tr. at 22-29.

¹⁰ Tr. at 32-33.

¹¹ Tr. at 42-43.

¹² Tr. at 35-36, 44.

¹³ GE 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated May 11, 2013).

¹⁴ GE 3 (Equifax Credit Report, dated June 3, 2014).

(SOR ¶ 1.a.): There were federal income tax returns for the tax years 2006, 2007, and 2009 that were not timely filed. The tax returns for the two earlier years were filed on February 21, 2013 – three months before Applicant was interviewed by an investigator from the U.S. Office of Personnel Management (OPM).¹⁵ For the tax year 2006, because of a tax overpayment, Applicant would have been entitled to a refund of \$1,185, but because the tax return was filed more than three years after it was due, the refund claim was disallowed by the Internal Revenue Service (IRS).¹⁶ For the tax year 2007, because of another tax overpayment, Applicant would have been entitled to a refund of \$562, but, once again, because the tax return was filed more than three years after it was due, the refund claim was disallowed by the IRS.¹⁷ For the tax year 2009, because of another tax overpayment, Applicant would have been entitled to an unspecified refund, but because the tax return would have been filed more than three years after it was due, the IRS stated that Applicant was no longer bound to file his tax return and he was no longer eligible for the refund.¹⁸ The tax return filing issues have been resolved.

(SOR ¶ 1.b.): There is a federal tax lien in the amount of \$42,179.79 covering the tax periods of 2006, 2007, and 2008.¹⁹ When Applicant's business was destroyed and closed, the proper paperwork was submitted to the state authorities, but the information was not forwarded to the IRS. As a result, the IRS treated the business as a continuing enterprise and taxes and interest kept accumulating.²⁰ Once Applicant found out about the lien, he called the IRS and the error was corrected.²¹ The entire tax lien was released on October 1, 2014.²² The issue has been resolved.

(SOR ¶ 1.c.): There is a home mortgage loan on Applicant's primary residence with a high credit of \$48,750 that went into foreclosure in February 2009.²³ Applicant owed the mortgage holder \$23,279 at the time of foreclosure.²⁴ The house was purchased at auction by the highest bidder for \$25,471.76,²⁵ an amount which exceeded Applicant's responsibility. There is no deficiency balance.²⁶ Applicant

¹⁵ Tr. at 38-39.

¹⁶ AE A (IRS Letter, dated July 11, 2013).

¹⁷ AE B (IRS Letter, dated July 11, 2013).

¹⁸ AE C (IRS Facsimile, dated September 10, 2014).

¹⁹ GE 4, *supra* note 13, at 6; GE 3, *supra* note 14, at 3.

²⁰ Tr. at 49-51.

²¹ Tr. at 51.

²² AE D (Certificate of Release of Federal Tax Lien, dated October 1, 2014).

²³ GE 4, *supra* note 13, at 7; GE 3, *supra* note 14, at 1; Tr. at 52-54.

²⁴ Tr. at 54.

²⁵ GE 5 (Substitute Trustee's Deed, dated February 19, 2009); Tr. at 54.

²⁶ AE E (Letter, dated September 10, 2014).

eventually repurchased the residence, and does not have a mortgage. He spent \$42,000 rebuilding the residence for his grandmother who resides in the house.²⁷ The account has been resolved.

(SOR ¶ 1.d.): There is a home mortgage loan on Applicant's rental property that he built in 2001 or 2002 with a high credit of \$60,000 that went into foreclosure in February 2010.²⁸ Applicant owed the mortgage holder approximately \$50,000 at the time of foreclosure.²⁹ The house was purchased by the highest bidder, the mortgage holder, for \$59,428.25,³⁰ an amount which exceeded Applicant's responsibility. The residence was subsequently resold to another purchaser for \$95,000.³¹ Applicant has spoken to the mortgage holder on several occasions, and they have told him there is a zero balance, but they refuse to put the facts in written form without his sending them his social security by facsimile or going to a local bank branch to prove who he is.³² Applicant is reluctant to put his social security number on a facsimile, and he noted that the closest local bank branch for the mortgage holder is 300 miles away.³³ It is unlikely that a deficiency balance remains. Applicant has submitted some documentation to support his contentions, and it appears that the matter has been resolved.

(SOR ¶ 1.e.): There is a gas utility account with a past-due balance of \$100 that was placed for collection and charged off in 2010.³⁴ Applicant had previously converted the residence to electric and cancelled the gas account, and was not aware that the account was delinquent until he tried to reconnect the gas for his grandmother.³⁵ Applicant paid the entire amount on July 11, 2014, over a month before the SOR was issued.³⁶ The account has been resolved.

(SOR ¶ 1.f.): There is a telephone account with a past-due balance of \$420 that was placed for collection in 2010.³⁷ The account was subsequently transferred or sold to another collection agent who increased the unpaid balance to \$433.83.³⁸ Applicant was

²⁷ Tr. at 54-55, 82.

²⁸ GE 4, *supra* note 13, at 7; GE 3, *supra* note 14, at 1; Tr. at 56-57.

²⁹ Tr. at 59.

³⁰ GE 6 (Substitute Trustee's Deed, dated February 24, 2010); Tr. at 54.

³¹ Tr. at 59.

³² Tr. at 60-62.

³³ Tr. at 60-61.

³⁴ GE 4, *supra* note 13, at 7.

³⁵ GE 2, *supra* note 3, at 6; Tr. at 64.

³⁶ AE F (Letter, dated September 10, 2014); Tr. at 64.

³⁷ GE 4, *supra* note 13, at 10.

³⁸ AE G (Letter, dated December 15, 2014).

not aware that the account was delinquent until he was interviewed by the OPM investigator.³⁹ It took him several months to track down the actual creditor and collection agent, and once he was successful, he paid the entire bill on December 8, 2014.⁴⁰ The account has been resolved.

(SOR ¶ 1.g.): There is a motorcycle insurance account with a past-due balance of \$81 that was placed for collection in 2009.⁴¹ The account was subsequently transferred or sold to another collection agent.⁴² Applicant was not aware that the account was delinquent until he was interviewed by the OPM investigator.⁴³ It took him some time to track down the actual creditor and collection agent, and he paid the entire bill on December 8, 2014.⁴⁴ The account has been resolved.

When asked about his financial priorities with regard to his delinquent debts, Applicant stated that he prioritized by addressing the larger debts first and worked his way down to the lower balances.⁴⁵ Applicant's annual salary has increased since he started working for his current employer, and he now earns about \$75,000 per year.⁴⁶ He had no credit cards, no auto or school loans, and doesn't borrow money.⁴⁷ Applicant uses an Excel spreadsheet to keep track of his expenses, and estimates that he has a monthly remainder of \$4,000.⁴⁸ He has never had financial counseling.⁴⁹

Personal Conduct

(SOR ¶ 2.a.): As noted above, Applicant failed to timely file his federal income tax returns for 2006, 2007, and 2009.

Policies

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

³⁹ Tr. at 65.

⁴⁰ AE G, *supra* note 38.

⁴¹ GE 4, *supra* note 13, at 10.

⁴² AE H (Letter, dated December 8, 2014).

⁴³ Tr. at 68.

⁴⁴ AE H, *supra* note 42.

⁴⁵ Tr. at 67-68.

⁴⁶ Tr. at 69.

⁴⁷ Tr. at 79-80, 83.

⁴⁸ Tr. at 83.

⁴⁹ Tr. at 79.

emphasizing, “no one has a ‘right’ to a security clearance.”⁵⁰ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”⁵¹

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”⁵² The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.⁵³

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the

⁵⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁵¹ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁵² “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁵³ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”⁵⁴

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”⁵⁵ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out 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 guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. In addition, a “failure to file annual Federal, state, or local income tax returns as required. . .” may raise security concerns under AG ¶ 19(g). Applicant failed to timely file his federal income tax returns for 2006, 2007, and 2009. He lost two houses to foreclosure, and three accounts became delinquent. A federal tax lien was filed against him and various accounts were placed for collection or charged off. AG ¶¶ 19(a), 19(c), and 19(g) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition

⁵⁴ *Egan*, 484 U.S. at 531.

⁵⁵ See Exec. Or. 10865 § 7.

may be mitigated where “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.” Also, under AG ¶ 20(b), financial security concerns may be mitigated where “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.” Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”⁵⁶

AG ¶¶ 20(a), 20(b), 20(c), and 20(d) apply. Applicant’s financial problems were not caused by frivolous or irresponsible spending, and he did not spend beyond his means. Instead, as noted above, Applicant’s initial significant financial problems started when Hurricane Katrina struck and destroyed his business. For a substantial period thereafter, he was overwhelmed with hurricane-related priorities such as providing for his family, shelter, and keeping his job, as well as simple oversight on his part. With his business destroyed, Applicant attempted to save his two remaining important financial assets – his primary residence and his rental property – but he was unable to do so. When both properties were lost in foreclosure, there were no deficiency balances. He repurchased the primary residence for his grandmother and pumped \$42,000 into it. Unknown to him at the time, Applicant had three accounts with relatively minor balances that were delinquent and placed for collection. Once he learned of their existence, and located the proper creditors, he paid those accounts in full. The federal tax lien was the unfortunate result of miscommunication between the state and the IRS which led to the IRS treating Applicant’s destroyed business as a continuing enterprise. Once Applicant found out about the lien, he called the IRS and the error was corrected. The entire tax lien was released on October 1, 2014.

As for the delinquent income tax filings, as noted above, Applicant was under the impression that his accountant had filed them. He eventually found out that she had not done so, and he turned to another accountant to do so. The tax returns for 2006 and 2007 were filed three months before Applicant was interviewed by an investigator from

⁵⁶ The Appeal Board has previously explained what constitutes a “good-faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good-faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good-faith” mitigating condition].

ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (internal citation and footnote omitted, quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

OPM. Because those tax returns were filed beyond the three-year filing period, Applicant forfeited the refunds of \$1,185 and \$562 to which he would have been entitled had the returns been timely filed. Applicant would have also been entitled to an unspecified refund for the tax year 2009, but the IRS stated that Applicant was no longer bound to file his tax return and he was no longer eligible for the refund.

Applicant has never received counseling from a financial counselor. Nevertheless, all of Applicant's newer accounts are current. He has no credit cards, no auto or school loans, and doesn't borrow money. Applicant uses an Excel spreadsheet to keep track of his expenses, and estimates that he has a monthly remainder of \$4,000. Applicant prioritized his purportedly delinquent accounts by addressing the larger debts first and worked his way down to the lower balances. There are clear indications that Applicant's financial problems are under control. Applicant's actions under the circumstances confronting him, do not cast doubt on his current reliability, trustworthiness, or good judgment.⁵⁷

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(d), it is potentially disqualifying if there is

credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations. . . .

Under AG ¶ 16(e), it is also potentially disqualifying if there is

personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . .

⁵⁷ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

engaging in activities which, if known, may affect the person's personal, professional, or community standing. . . .

Applicant failed to timely file his federal income tax returns for 2006, 2007, and 2009. AG ¶¶ 16(a) and 16(e) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. AG ¶ 17(c) may apply if “the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.” Also, AG ¶ 17(e) may apply if “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.”

AG ¶¶ 17(c) and 17(e) apply. In late August 2005, an extraordinarily unique circumstance, Hurricane Katrina, struck. Devastation was everywhere. President Bush declared both a major disaster and a state of emergency. Applicant's business was destroyed and documentation was lost. His accountant's building was destroyed, and her business was temporarily closed. For a substantial period thereafter, he was overwhelmed with hurricane-related priorities such as providing for his family, shelter, and keeping his job. Because his accountant had previously routinely prepared and filed his income tax returns under a power of attorney, Applicant presumed she had routinely continued to do so and he never questioned her about the issue. Unfortunately, she failed to perform as Applicant had expected, and the income tax returns were not filed. In 2013, after he unsuccessfully attempted to contact her, he went to another accountant and discovered the truth. He filed or attempted to file those tax returns only to learn that he was no longer eligible for the refunds to which he would have been eligible had the tax returns been timely filed. With the pressures created by the hurricane's impact on Applicant now subsiding with time, Applicant has taken positive steps to eliminate or avoid similar circumstances. He now personally files his income tax returns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

There is some evidence against mitigating Applicant's conduct. Applicant failed to timely file federal income tax returns for 2006, 2007, and 2009. He lost his primary residence and a rental property to foreclosure. He incurred a federal tax lien and had several accounts become delinquent and placed for collection.

The mitigating evidence under the whole-person concept is more substantial than the disqualifying evidence. Applicant's initial significant problems erupted when Hurricane Katrina struck and destroyed his business. For a substantial period thereafter, he was overwhelmed with hurricane-related priorities such as providing for his family, shelter, and keeping his job, as well as simple oversight on his part. With his business destroyed, Applicant attempted to save his two remaining important financial assets, but he was unable to do so. Unknown to him at the time, Applicant had three accounts with relatively minor balances that were delinquent and placed for collection. Once he learned of their existence, and located the proper creditors, he paid those accounts in full. The federal tax lien was the unfortunate result of miscommunication between the state and the IRS which led to the IRS treating Applicant's destroyed business as a continuing enterprise. Once Applicant found out about the lien, he called the IRS and the error was corrected. The entire tax lien was released. The failure to file his income tax returns was, in no small measure, due to his reliance on his previous professional relationship with his accountant and reliance on her filing the returns under his power of attorney. When he found out she had not filed them as he thought she had, Applicant turned to another accountant. There are clear indications that Applicant's financial problems and associated personal conduct are under control. His actions under the circumstances do not cast doubt on his current reliability, trustworthiness, or good judgment.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁵⁸

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily 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 [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available,

⁵⁸ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment 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.

Applicant has demonstrated a “meaningful track record” of debt reduction and elimination efforts. While he failed to timely file his federal income tax returns, his explanations for those failures, in light of the continuing circumstances following the hurricane, are credible. Overall, the record evidence leaves me without substantial questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial considerations and personal conduct. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

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.

ROBERT ROBINSON GALES
Administrative Judge