



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



In the matter of:)
)
) ISCR Case No. 17-01587
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

03/05/2019

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant failed to timely file his 2013, 2014, and 2015 Federal income tax returns and his 2015 state income tax return. The Statement of Reasons (SOR) listed two student loan obligations of approximately \$27,000 and three charged-off accounts totaling approximately \$750. He has filed his tax returns and received sizable refunds. He paid his charged-off accounts and is current on his student loan obligation. He has made sufficient progress toward resolving his past-due debts to continue his security clearance eligibility. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

On June 2, 2017, 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.¹

On June 30, 2017, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On February 7, 2018, DOHA issued a Notice of Hearing scheduling a hearing that was conducted on February 27, 2018. At the hearing, six Government exhibits (Ex. 1-6) and eleven Applicant exhibits (Ex. A-K) were admitted into evidence without objection. Records submitted by Applicant as attachments to his answer were considered. Applicant testified, as reflected in a transcript (Tr.) received on March 7, 2018. I held the record open after the hearing for Applicant to submit additional documents which were received through January 2019, and were admitted into the record as Ex. L – AG.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective “for all covered individuals” on or after June 8, 2017. Accordingly, I have evaluated Applicant’s security clearance eligibility under the new AGs.²

Findings of Fact

In Applicant’s answer to the SOR, he denied the allegations of failing to file his Federal tax returns in a timely manner (SOR 1.a), failing to file his state income tax returns in a timely manner (SOR 1.b), and denied owing a gas utility bill (SOR 1.g), which he asserted he had paid. He admitted the remaining four delinquent obligation allegations. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 42-year-old senior software engineer who has worked for a defense contractor since February 2015. (Tr. 39, Tr. 18) He seeks to obtain a security clearance. (Ex. 1) He previously held a clearance from 2005 to 2015, with a different defense company. (Tr. 19) He honorably served in the U.S. Navy from July 1994 through June 1995. (Ex. 1, Tr. 18) He is married and has a son age 19 and twins aged 17. (Ex. 1) In May 1999, he obtained a bachelor-of-science degree in computer science. (Tr. 19) Applicant’s monthly income after taxes is \$4,800 to \$5,000. (Tr. 48) His wife’s income

¹ 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.

² Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/5220-6_R20170608.pdf.

varies. His wife operated her own business making craft items sold at craft shows. (Tr. 27, 48)

In 2011, Applicant made a job-related relocation from Texas to Florida. (Tr. 54) In February 2015, Applicant made another job-related relocation from Florida to his current state. (Ex. 1, Ex. E, Tr.25) On June 26, 2017, he filed a 2015 part-year resident state income tax return. (Ex. E, AE) He listed \$61,439 state income, \$2,666 of state withholding tax, and a refund due of \$2,613. (Ex. E)

On Applicant's September 2015 Electronic Questionnaires for Investigations Processing (e-QIP), he indicated he had not filed his 2013 Federal income tax return because he could not locate all the documentation he needed to file the return. (Ex. 1) In his August 2015 enhanced subject interview, he indicated he had not filed his 2013 or 2014 Federal tax returns³ because he was missing documents and planned to file the returns by December 2015. (Ex. 2) His tax filings were further delayed when his tax documents were boxed up when he moved in February 2015. (Ex. 5) He was in the process of filing his returns when things became misplaced during the move. (Tr. 22)

In November 2016, Applicant contacted the Internal Revenue Service (IRS) about his failure to file his 2013, 2014, and 2015 returns. (Tr. 30) He was granted an extension until December 2016 and told if he was unable to meet the deadline, he should continue working to get his returns filed. (Ex. 5, Tr. 28) He had initially received an extension on the 2013 Federal income tax filing due date, but that extension did not extend until the returns were actually filed in June 2017. (Tr. 28) He did not request an extension for tax year 2014 or 2015 because he believed he could do nothing with his 2014 or 2015 returns until he had filed his 2013 return. (Tr. 29)

Once Applicant had obtained the bank statements and other missing document he needed to file his 2013 return, he did so. (Tr. 30) Once his 2013 return was filed, he was able to complete his 2014 and 2015 returns. (Tr. 30) Applicant submitted a copy of his 2013 Federal income tax return signed on February 1, 2017, copies of his 2014 and 2015 Federal income tax returns signed and dated June 26, 2017, and a copy of his 2015 state income tax return signed and dated June 24, 2017. (Ex. B, C, D, E, and SOR Response⁴) His 2015 Federal tax return listed wages of \$85,152, a \$9,528 business loss, \$5,750 Federal tax withheld, and a refund due of \$3,039. (Ex. B) His 2014 Federal tax return, dated June 26, 2017, listed wages of \$83,205, an \$8,998 business loss, \$5,755 Federal income tax withheld, and a refund due of \$3,531. (Ex. C) His 2015 Federal tax return, dated June 26, 2017, listed wages of \$97,183, a \$469 business loss, \$8,651 Federal income tax withheld, and a refund due of \$3,637. (Ex. D) He received a Federal tax extension for tax year 2016, and he made a timely filing of that year's returns. (Tr. 32)

³ During 2013 and 2014, Applicant lived in a state that did not have personal income tax. (Ex. 1, Ex. 5)

⁴ The copies of Applicant's tax returns that accompanied his SOR Response were much more complete, contained additional schedules and forms, and included an additional state return not included in the documents presented at the hearing.

Applicant used the refunds of \$12,800 to pay his wife's student loan obligation and to make payments on his debts. (Tr. 57)

Applicant asserts he now has a better way of collecting the data he needs to file his taxes. (Tr. 45) He is more vigilant and disciplined in the collection of the data. He now puts everything on a spreadsheet including a budget, when bills are due, and data needed when filing his tax returns. (Tr. 46) His wife pays her taxes on her business monthly. (Tr. 48)

In April 2013, his 2005 Honda automobile was "totaled" in the accident when he was rear ended by an ambulance. (Tr. 21) The ambulance caved in the back end of his vehicle. (Tr. 21) On his e-QIP, he listed medical bills of \$3,200 and incurred during the accident. (Ex. 1) He incurred \$1,500 in medical bills for a rotator cuff injury, and his wife incurred \$3,500 in medical bills for a dislocated disc. (Ex. 2, Tr. 21) He did not pay the debts because he was waiting for settlement from the ambulance company. (Ex. 2, Tr. 25) It took four years of working with the ambulance company's insurance company to address a portion of the medical bills. (Tr. 23)

Applicant has continued making payments on his medical bills and has paid off numerous medical bills. (Ex. L, N, O, X, Y, Z, AA, AB, AC) He paid more than \$5,000 on his wife's medical bills resulting from the automobile accident. The SOR does not list any medical bills as being past due, charged-off, or in collection.

At the time of the accident, Applicant owed \$11,093 on his vehicle. The insurance companies paid 75% of the car's value, which was \$7,800 leaving a balance owed of \$3,293 (SOR 1.d). (Tr. 24) The SOR lists an \$8 charged-off account (SOR 1.d). Applicant admits he owed \$3,292 on the account. In June 2017, the creditor offered to settle the debt for \$1,317. (SOR Response) Applicant accepted and paid the settlement offer. (Ex. I, Tr. 42) The debt has been paid. His February 2018 credit report lists a zero balance and zero past due on this debt. (Ex. 6)

Between 1995 and 1999, Applicant incurred student loan obligations. (Ex. 2) He made regular payments on his student loans until 2002 when unemployment caused his payments to become irregular. (Ex. 2, Tr. 55) At some point, he stopped making payments until 2004, when he started making irregular payments. He continued making irregular payments until the April 2013 automobile accident. (Ex. 2, Tr. 55) In 2015, the accounts were again in forbearance. He requested forbearance so he could address some medical bills. (Tr. 34, 35) In a February 2018, Applicant's student loan services' provided a letter stating his student loan forbearance had been approved. (Ex. G) His next monthly payment of \$167 was due on May 7, 2018. (Ex. 2, Ex. G, Ex. K)

Applicant's April 2015 credit report lists the two student loan obligations as being "paid as agreed." (Ex. 3) His August 2016 credit report lists the loans as being approximately \$900 past due. (Ex. 4) His February 2018 credit report lists, both accounts with zero past due. (Ex. 6) One student loan had a balance of \$2,717 with a scheduled \$17 monthly payments and the other had a balance of \$28,971 with scheduled monthly payments of \$182. (Ex. 6) The two student loans have now been consolidated into a

single loan with monthly payments of \$207. (Tr. 33) He provided documentation of timely payments of his \$207 student loan payments through January 2019. (Ex. S, T, W, AD, AF)

Applicant's April 2015 credit report, lists 15 accounts as being paid as agreed that includes two student loans. (Ex. 3) The report also showed the auto loan on the wrecked Honda was listed as \$2,675 past due. His most recent credit report, February 2018, listed eight accounts all of which indicate a zero-past-due amount. (Ex. 6) As previously discussed, the auto loan was settled and paid. Applicant has read books on how to get out of debt, how to manage one's money, becoming debt free, and financial management. (Tr. 45) In March 2018, he attended the first session of a financial planning course. (Ex. M) In May 2018, he completed a financial planning course. (Ex. L)

Applicant's \$250 gas bill (SOR 1.g) was paid, and his most recent credit report listed no amount as past due. (Ex. H) The \$496 power bill (SOR 1.f) was paid, and there was no amount past due. (Ex. J) The two utility bills were the last bills for services received just before he left the state and moved to his current state. (Tr. 43, 44)

Applicant is current on his \$1,800 monthly rent. He has a 2007 and two 2008 automobiles, all of which were purchased used. (Tr. 50) His car payments were \$600 monthly. (Tr. 50) Following the hearing, he paid off two of his vehicles, thereby eliminating monthly payments of \$246 and \$218. (Ex. 4, 6, L, AF) He is current on his utility bills, insurance, and student loan payments. (Tr. 51) He has \$3,200 in his 401(k) retirement plan. (Tr. 52) He contributes two percent of his wages to his retirement plan, which is matched by two percent by his employer. (Tr. 53) He has approximately \$3,000 in a savings account and \$1,800 in his checking account. (Tr. 58) Applicant is timely repaying his former company's for tuition reimbursement. (Ex. R, U, V)

On Applicant's April 2015 e-QIP, he indicated he was currently working with his mortgage company to resolve a second mortgage debt incurred when he was unable to sell the home when his job relocated him to a new state in September 2011. (Ex. 1, Ex. 2, Tr. 26) He had found a buyer for a short sale. The short sale was unsuccessful, and the house went to foreclosure. (Tr. 54) Applicant's February 2018 credit report lists a zero balance and zero past due on this debt. (Ex. 6) The debt was settled and paid. (Tr. 27, 54) The mortgage debt was not listed as a debt of concern in the SOR.

Applicant's 2017 performance evaluation form indicated Applicant was always positive and encouraged other team members. His overall rating was "Achieved/Substantially Achieved." (Ex. F)

Policies

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 must 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the adjudication process is an examination of a sufficient period and a careful weight of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 of 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

Failure 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 or sensitive information . . . An individual who is financially

overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed-upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant failed to timely file his Federal income tax returns for tax years 2013, 2014, and 2015, and he failed to timely file his 2015 state tax return. Additionally, he owed approximately \$27,000 on his student loans and had three additional charged-off debts, which totaled \$744. AG ¶ 19 includes four disqualifying conditions that could raise a security concern any may be disqualifying in this case: "(a) inability to satisfy debts;" "(b) unwillingness to satisfy debts regardless of the ability to do so;" "(c) a history of not meeting financial obligations;" and "(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required."

Security concerns having been raised, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005)). Applicant has the burden of presenting evidence of explanation, extenuation, or mitigation to overcome the financial considerations security concerns.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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;

(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, a death, divorce or separation, clear victimization by predatory lending practices or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

In 2011, Applicant made a job-related relocation from Texas to Florida and in February 2015, Applicant made another job-related relocation from Florida to his current state. In April 2013, he incurred medical expenses when his automobile was "totaled" in an accident. His vehicle was rear ended by an ambulance that caved in the back end of his vehicle. His automobile insurance paid only 75 percent of the value of his vehicle. These are factors beyond his control. When one job ends and a new job is in a different state, the loss of employment and costs of moving are factors beyond one's control. AG ¶ 20(b) applies.

Applicant has read books on how to get out of debt, how to manage one's money, becoming debt free, and financial management. He attended multiple sessions of a financial planning course, which he completed in May 2018. Applicant is current on his utility bills, insurance, and his \$1,800 monthly rent. He has paid off two of his automobile loans reducing his \$600 monthly car payments by more than \$450. He has \$3,200 in his 401(k) retirement plan, contributes regularly to his retirement plan has approximately \$3,000 in a savings account, and \$1,800 in his checking account. He is current on his student loan obligation, paid the three charged-off accounts, filed his delinquent tax returns, and received sizable tax refunds. His financial counseling course was provided

by a legitimate and credible source. There are clear indications that the problem is being resolved or is under control. AG ¶ 20(c) applies.

AG ¶ 20(a) has limited applicability. Applicant had three debts in addition to his student loan obligation, which indicates his delinquent obligations were few. His initial failure to file his 2013 tax return was due to a lack of documents necessary to prepare his return. He now has a better way of collecting the data he needs to file his taxes. He is more vigilant and disciplined in his data collection, and he puts everything on a spreadsheet including a budget, when bills are due, so that the data needed is available when he has to file his taxes. It is unlikely his non-timely filing of his tax returns will recur. His current handling of his finances does not cast doubt on his current reliability, trustworthiness, or good judgment.

Applicant had three charged-off debts totaling \$744, which have been paid. AG ¶ 20(d) applies to these three debts. The largest listed SOR debts were his two student loan obligations that totaled just over \$27,000. He is current on his student loan obligation. His April 2015 credit report lists the two student loan obligations as being “paid as agreed.” His August 2016 credit report lists the loans as being approximately \$900 past due. His February 2018 credit report lists zero past due on each account. He provided documentation of timely payments of his \$207 student loan payments through January 2019. AG ¶ 20(d) applies to his student loan obligation.

Applicant failed to timely file his 2013, 2014, and 2015 Federal income tax returns and his 2015 state income tax return in a timely manner. He requested various filing extensions, but the extensions did not extend until February 2017 and June 2017 when all the delinquent returns were filed. A willful failure to timely make (means completed and filed with the IRS) a federal income tax return is a misdemeanor-level federal criminal offense.⁵ The failure to timely file federal tax returns has security implications because:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we

⁵Title 26 U.S.C, § 7203, willful failure to file return, supply information, or pay tax, reads:

Any person . . . required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to . . . make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor

A willful failure to make tax return, keep records, or supply information when required, is a misdemeanor without regard to existence of any tax liability. *Spies v. United States*, 317 U.S. 492 (1943); *United States v. Walker*, 479 F.2d 407 (9th Cir. 1973); *United States v. McCabe*, 416 F.2d 957 (7th Cir. 1969); *O’Brien v. United States*, 51 F.2d 193 (7th Cir. 1931). For purposes of this decision, I am not weighing Applicant’s failure to timely file his federal income tax returns against him as a federal crime.

have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns*. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

The Appeal Board ruled that “even in instances where an “[a]pplicant has purportedly corrected [his or her] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant’s security worthiness in light of [his or her] longstanding prior behavior evidencing irresponsibility” including a failure to timely file federal income tax returns. See ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. June 15, 2016).

In this instance AG ¶ 20(g) applies because Applicant has filed all delinquent tax returns and received tax refunds totaling more than \$12,800. He used the refunds to pay his wife’s student loan obligation and to make payments on various other debts. He initially failed to timely file his 2013 Federal return because he did not have the necessary documents related to his wife’s business. His tax filings were further delayed when his tax documents were boxed up when he moved in February 2015. He was in the process of filing his returns when things became misplaced during the move.

The timing of an applicant’s efforts at debt resolution is relevant in evaluating the sufficiency of his case for mitigation. Applicant began his efforts to resolve his tax issues problems before he was placed on notice that his clearance was in jeopardy. In November 2016, prior to the issuance of the June 2017 SOR, Applicant contacted the IRS about his failure to file his 2013, 2014, and 2015 returns. He was granted an extension until December 2016 and told if he was unable to meet the deadline, he should continue working to get them filed as soon as possible.

Applicant believed he was prevented from filing his 2014 and 2015 returns until he had completed and filed the 2013 return. This is an incorrect, but understandable, assumption. In general, each tax year is an independent entity. In actuality, nothing prevents a taxpayer from completing a tax return simply because the prior year’s return had not been filed because a taxpayer is permitted to estimate information for filing when actual information is not available.⁶ However, Applicant’s assumptions are reasonable. I

⁶ When tax information is unavailable, the taxpayer is supposed to provide a good-faith estimate and disclose the estimation to the IRS. See American Institute of Certified Public Accountants website, “Standards for Tax Services No. 4, Use of Estimates,” <https://www.aicpa.org/interestareas/tax/resources/standardsethics/statementsonstandardsfortaxservices/downloadabledocuments/ssts-no.4-use-of-estimates.pdf>.

find Applicant's failure to complete his 2013 return is a reasonable explanation for his failure to file his 2014 and 2015 returns in a timely manner.

Based on Applicant's track record of filing his delinquent tax returns and receiving refunds, paying or resolving the three other listed debts, being current on his student loan obligation, and current on his rent, car payment, utility bills, and his saving and retirement accounts, there are clear indications that his past financial problems are resolved and his finances are under control. He has shown good faith in addressing his debts. He has sufficient income to keep his financial obligations in current status and to continue paying his \$207 monthly student loan obligation. I am confident that Applicant will conscientiously endeavor to maintain his financial responsibility. His efforts are sufficient to mitigate financial considerations trustworthiness concerns.

Whole-Person Concept

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

- (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 common sense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. Applicant is a 42-year-old senior software engineer who has been employed by a defense contractor since February 2015. He honorably served in the U.S. Navy from July 1994 through June 1995.

The largest of the SOR debts of concern were two student loan obligations, which are current. Incurring a student loan is seen as an obligation incurred to improve an individual's life, with respect to future employment and career prospects, and, as such, is viewed differently than a debt obligation incurred to purchase a new car or incurred for

credit card debt. He filed his delinquent tax returns and has established a “meaningful track record” in the repayment of his student loan obligation. Other than his student loan obligation, the only delinquent obligations listed on the SOR totaled less than \$750.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, DOD Manual 5200.02, and the AGs, to the facts and circumstances in the context of the whole person. The issue is not simply whether all the delinquent obligations have been paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(c)) Overall, the record evidence leaves me without questions and doubts about Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the financial considerations security concerns.

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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a – 1.g: 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 a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge