DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 17-03314
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Rhett E. Petcher, Esq., Department Counsel
For Applicant: *Pro se*

04/26/2019

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Decision

_____

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant incurred delinquent debt because of an expensive divorce and some unemployment. Small debts were satisfied in late 2017, but he still owes past-due Federal income taxes exceeding $80,000 and a credit-card debt that was charged-off for $34,264. More progress is needed toward resolving those debts. Clearance is denied.

Statement of the Case

On October 20, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations. The SOR explained why the DOD CAF 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 (EO) 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

Applicant responded to the SOR on November 9, 2017, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).[1] On February 19, 2018, Applicant separated from his employment requiring a security clearance. He subsequently regained sponsorship for security clearance eligibility, and on November 1, 2018, his case was assigned to an administrative judge to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On January 9, 2019, the case was transferred to me for a hearing. On January 16, 2019, I scheduled a hearing for February 13, 2019.

At the hearing, the SOR was amended without objection at the request of the Government. Five Government exhibits (GEs A-E) were admitted.[2] GE D, a credit report dated July 31, 2017, was admitted over Applicant's objections. A December 17, 2017 letter (HE 1) forwarding the proposed GEs to Applicant and a list of the GEs (HE II) were marked as hearing exhibits (HE) for the record but not admitted in evidence. A binder of documents from Applicant, containing tabs 1-15, was marked collectively as AE 1. Applicant testified, as reflected in a transcript (Tr.) received on February 27, 2019.

Applicant provided me with two additional documents at the hearing consisting of a summary of his qualifications (AE 2) and bank statements covering the dates from July 25, 2017, through October 23, 2017 (AE 3). I had indicated that I would incorporate the documents in the record, but then did not clearly address their inclusion within AE 1. On April 17, 2019, I advised the parties that, as a matter of clarification, the documents would be marked for identification as separate exhibits AEs 2 and 3. Neither party had any objection. Accordingly, the summary and bank statements were admitted in evidence.

Ruling on Pleadings

Before the introduction of any evidence, Department Counsel moved to amend the SOR to add a Guideline E, personal conduct, security concern based on evidence to be presented by Applicant indicating that he had received psychological counseling from July 2010 to May 2014, which was not disclosed on his security clearance application (e-QIP). Applicant did not object to the amendment and declined the opportunity for time to respond, including continuing or reconvening the hearing at a future date to address the allegation. Accordingly, the SOR was amended to allege under AG ¶ 2(a) as follows:

> You provided materially false information in your answers to an Electronic Questionnaire for Investigations Processing signed by you on September 2, 2015. In response to Section 21 — Psychological and Emotional Health . . . In the last seven years, have you consulted with a healthcare professional regarding an emotional or mental health condition? . . . You answered No,

[1] Applicant's Answer to the SOR allegations bears a typewritten date of November 11, 2017, but it was notarized on November 9, 2017. There was no explanation for the discrepancy.

[2] At the request of Department Counsel, the Government's exhibits were marked by letter because Applicant had pre-marked his exhibits by number. A decision was then made to mark Applicant's exhibits collectively as AE 1.

when, in fact, you were treated by Dr. [name omitted] from at least July 2010 through May 2014 for depression and anxiety.

Summary of SOR Allegations

The amended SOR alleges under Guideline F that Applicant had lost a property to foreclosure in 2013 because of his inability to make his monthly mortgage payment (SOR ¶ 1.a), and that as of October 20, 2017, he owed the following delinquencies: a $34,264 charged-off account (SOR ¶ 1.b); a $1,111 charged-off credit card (SOR ¶ 1.c); telecommunications collection debts of $308 (SOR ¶ 1.d) and $283 (SOR ¶ 1.e); a $25 medical collection debt (SOR ¶ 1.f); Federal income taxes for 2014 of $8,226 (SOR ¶ 1.g) and for 2015 of $61,862 (SOR ¶ 1.h); and state income taxes for $3,108 (SOR ¶ 1.j). Also under Guideline F, Applicant allegedly had not yet filed his Federal income tax return for tax year 2013 (SOR ¶ 1.i). Under Guideline E, Applicant is alleged to have falsified his September 2015 Electronic Questionnaire for Investigations Processing (e-QIP) by not disclosing his mental health counseling from July 2010 through May 2014.

When Applicant responded to the SOR allegations, he explained that the foreclosure of his mortgage loan (SOR ¶ 1.a) was because of his divorce. He indicated that he had fully paid the debts in SOR ¶¶ 1.c-1.f, and his state tax debt in SOR ¶ 1.j; that he had a repayment arrangement in place for the debt in SOR ¶ 1.b; and that he was in the process of making an installment agreement with the IRS to address his Federal tax delinquencies in SOR ¶¶ 1.g and 1.h. He denied SOR ¶ 1.i because he had filed his Federal income tax return for tax year 2013, albeit late. He volunteered that he owed Federal income taxes for tax year 2013, which he planned to repay under an installment agreement with the IRS. Applicant attributed his financial issues to his separation, divorce, and foreclosure, and to 19 months of unemployment from December 2014 to July 2016. As for the personal conduct allegation, Applicant admitted that he had received the counseling as alleged, but he denied that he intentionally lied on his e-QIP. He explained that he viewed his counseling as related to marital and family issues, and believed it was not required to be reported under Section 21 of the form.

Findings of Fact

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

Applicant is a 53-year-old college graduate. He served in the enlisted ranks in the National Guard from February 1990 to February 1993, while also working as a Federal employee from July 1990 to December 1994. (GE A.) He held a top secret clearance and sensitive compartmented information (SCI) eligibility from August 1990 to late November 2014. (Tr. 60.) Applicant has worked for his current defense-contractor employer since August 2018. (Tr. 56, 58.) He was previously employed by the company from December 1995 to June 2012. According to his former supervisor, Applicant held his security clearance without any issue for the duration of his tenure at the company. (AE 1 Tab 12.)

Applicant married in November 1998. He and his now ex-wife had two sons, who are 16 and 13. (GE A; AE 1 Tab 13; Tr. 62.) He and his ex-wife began having marital problems in 2008. (Tr. 61.) In late July 2010, Applicant began treatment with a licensed professional counselor also licensed in marriage and family therapy. (AE 1 Tab 12; Tr. 65.) He and his spouse attended two or three sessions as a couple, but his ex-wife was not interested in pursuing marital counseling. (Tr. 68.)

Applicant and his ex-wife separated in July 2011. (AE 1 Tab 13; Tr. 61.) Applicant moved into an apartment, and his ex-wife continued to reside in the marital residence with their two sons for another year. (Tr. 41.) In January 2012, on his attorney's advice, Applicant began paying spousal and child support totaling $5,007 per month (child support of $1,204 and spousal support of $3,803) on his gross income of $12,933 per month. (GEs B, E; AE 1 Tabs 3, 8, 15; Tr. 61) Applicant defaulted on a credit-card account (SOR ¶ 1.b) after July 2011, and the creditor eventually charged off his account for $34,264. (GE D-E.) Applicant could not maintain his support obligations and living expenses if he paid the credit card. (Tr. 96.)

In approximately February 2012, Applicant's then employer laid off some managerial staff. Applicant took a reduction in salary of $25,000 so that he could stay on for a few months until June 2012. (GE A.) Applicant began a new job almost immediately as a senior principal systems engineer with another defense contractor. (GE A; AE 1 Tab 2.) On annual wages totaling $129,498 in 2012, he paid $44,705 in alimony. (AE 1 Tabs 7-8.)

Applicant and his ex-wife were divorced in February 2013. On his monthly gross salary of $12,833, Applicant agreed to pay spousal support for his wife for seven years from February 2013, initially at $3,400 per month and then declining by $200 each year thereafter, subject to recalculation should his earnings decline by 10% or more from a stipulated $148,000 in gross income and his ex-wife's earnings equal or exceed $40,000 annually. Applicant also agreed to pay child support of $1,174 per month starting in February 2013 for his sons, to terminate when his sons turn 18 or graduate from high school or are not self-supporting and not yet 19 years old. (AE 1 Tabs 8, 13; Tr. 62-65.) In their divorce settlement, Applicant and his ex-wife were held fully responsible for their own debts. They agreed on joint legal custody of their sons, with his ex-wife being the primary custodial parent. (AE 1 Tab 14.) For income tax purposes, Applicant was entitled to claim their older son as a dependent. (AE 1 Tab 13.)

At the time of their divorce, Applicant and his ex-wife jointly owned their marital residence, which was encumbered by a deed of trust securing payment of a joint note (mortgage) in the approximate amount of $449,000 (SOR ¶ 1.a). Applicant was liable for a home-equity line of credit (HELOC) obtained in February 2006 for $167,671 to add a porch and for landscaping. (Tr. 45.) Neither Applicant nor his ex-wife made the payments on the mortgage or the HELOC after July 2012. Applicant could not afford to make the payments. (Tr. 43.) His rent was $1,850 per month (AE 1 Tab 12), and he had incurred $20,000 to $30,000 in legal fees for his divorce. (Tr. 97.) A buyer was willing to purchase the home in a short sale, but the HELOC remained in collections, and they lost the buyer. In April 2013, the primary lender foreclosed on the property. The house sold at auction in May 2013 to

resolve the first mortgage. The HELOC with a balance of $167,852, was not resolved in the foreclosure. (GEs B, E; AE 1 Tabs 2-3, 13; Tr. 41.)

Applicant became very depressed, despite ongoing counseling with his therapist for depression and anxiety. He had 111 counseling sessions between July 2010 and May 2014. His therapist reports that he was late reporting for work at times, and was disorganized in his thinking. (AE 1 Tab 12.) He stopped checking his mail, and he did not file his income tax returns when they were due for tax year 2013. (AE B; Tr. 78.) Applicant understood that he should he filed his return even if he could not pay the taxes owed. He explained that he "was in a pretty dark place . . . and for a period of time there had a hard time just making it to and from work." (Tr. 42.) Collection debts of $308 (SOR ¶ 1.d) and $283 (SOR ¶ 1.e) owed to a cable television and Internet provider since 2012 went unpaid. (GE E.) Applicant had boxed up the cable equipment when he moved from an apartment and then forgot about it. (Tr. 47.)

In August 2014, Applicant started a new job at gross income of $13,000 a month. In November 2014, he left that employment under mutual agreement following alleged misconduct. Applicant admits that, in September 2014, he lied about being at a company site when he was at home. He had charged his time to the contract. (GE A.)

Applicant was unemployed from December 2014 through June 2016. He made little effort to look for a job before September 2015 "by choice." (GE A; AE 1 Tab 2.) When asked about his lengthy unemployment, he testified that he "was completely burned out" (Tr. 74), but then also indicated that he "was taking it easy and was living life and pursuing happiness." (Tr. 77.) He supported himself largely by taking approximately $250,000 in 401(k) withdrawals, which had income implications of $223,687 for tax year 2015. (AE 1 Tab 7; Tr. 75-76.) Applicant did not set aside any funds to pay his taxes or penalties for the early withdrawals from his 401(k). (Tr. 76.) He continued to default on some financial accounts. He made no payments on a credit card (SOR ¶ 1.c) after November 2014, and the creditor charged off his account for $1,111. (GEs C-D.) In January 2015, a medical creditor placed a $25 debt for collection (SOR ¶1.f). (GE E.) On July 29, 2015, the creditor holding the defaulted HELOC issued a 1099-C, Cancellation of Debt form, for $167,671. (AE 1 Tab 7.) Available checking account statements from that time are incomplete, but they show that he made several PayPal purchases for gaming in 2015 as the aforesaid debts went unpaid. (AE 1 Tab 10.)

On September 2, 2015, Applicant completed an e-QIP in application for a security clearance to commence work as a systems engineer for a consulting group. He disclosed that he had not filed his Federal and state income tax returns for tax years 2013 and 2014 due to "simple neglect" on his part. Applicant estimated that he was owed tax refunds from the IRS and state for the tax years because of his spousal support. He described his life as "somewhat overwhelming for the last several years," and expressed a plan to file his returns and pay any penalties by the end of September 2014. In response to any delinquency involving enforcement in the last seven years, Applicant listed the HELOC on his marital home that he was unable to repay because of his support obligations and payments to his lawyer. Applicant also responded affirmatively to whether he owed any

delinquency on routine accounts. He listed credit card debts of $17,000 (not alleged)[3] and $34,000 (SOR ¶ 1.b), and the HELOC, which he indicated was in collection. He explained his financial problems, stating in part:

> All of the financial problems begin [sic] as a result of my separation and divorce from my ex-wife. Prior to then my bill[s] were paid on time. We were underwater on our house after the market collapsed but home life became unbearable so I moved out. I could not sustain two households on my income; as a result debts mounted, including $30,000 in legal fees. I agreed to take the second mortgage and two credit card bills if she would take the other four. My thinking at the time was that I would declare bankruptcy but I have not done so yet. . . . I've opt[ed] to walk away from the debts instead and to pay them after I'm done paying spousal support. I am paying my lawyer and my [creditor name omitted] bill, but not the [routine delinquencies listed on his SF 86]. (GE A.)

Applicant responded negatively on his e-QIP to an inquiry in section 21 concerning whether he had consulted with a health care professional regarding an emotional or mental health condition in the last seven years. (GE A.) Instructed to respond "No" if the counseling was "strictly marital, family, grief not related to violence by you" and not court-ordered, Applicant testified that he "honestly felt [his] counseling was related to his marriage." (Tr. 55.) On cross-examination, he admitted that he was treated for anxiety and depression as well as for marital issues, and that of his 111 sessions with the therapist, only two or three were with his ex-wife. (Tr. 67-69.) Applicant elaborated about his state of mind as follows:

> So I think a lot of the result—the impact of what happens to me was as a result of my marriage. And I think working and living within a family was also part of that. And so when I answered no I thought of it as being a legitimate answer of, I was trying to repair myself because of the injury that had occurred to me because of my marriage and because of how I was working within a family and having to take care of children who had just been through a divorce as well. (Tr. 70-71.)

However, Applicant also acknowledged that his counseling was not strictly related to his marital and family issues. He admitted that "[he] did not pay close attention in answering that question and [he] should have." (Tr. 71.)

In January 2016, Applicant's ex-wife began earning a salary of $4,083 per month. There was no adjustment to his child support or spousal support obligations to accommodate for her income. Applicant asserts that he overpaid his spousal support by $10,000 to $15,000 as a result, but he did not pursue his ex-wife for the overpayment because he had fallen behind in his spousal support in June 2016 and July 2016. He had

[3] Available creditor records show that the lender cancelled debt of $10,502 on December 31, 2015. (AE 1 Tab 7.)

paid only $826 of his then $2,800 monthly spousal support obligation. In July 2016, Applicant began working as a systems engineer for a defense contractor at a gross monthly salary of $14,166. Between August 2016 and January 2017, Applicant paid extra to catch up on his spousal support. (GE C; AE 1 Tabs 4, 8; Tr. 52-53.)

Realizing that he had to file his delinquent federal and state income tax returns for tax years 2013 through 2015, Applicant hired a professional tax service in early October 2016. The tax preparer finished his Federal income tax return for those tax years in October 2016. Applicant assets that he filed his delinquent tax returns in October 2016 (Tr. 43, 77), although IRS tax transcripts show that his returns for 2014 and 2015 were not received until November 17, 2016. On wages of $141,059, he paid $40,800 in alimony, so his adjusted gross income for 2013 was reduced to $100,259. He underpaid his Federal income taxes for 2013 by $4,328.[4] On adjusted gross income of $105,131 for tax year 2014, he owed $7,028 with penalties and interest. Even though he was unemployed for the entire year of 2015, he calculated his Federal tax debt at $44,380 for 2015 because of cancelled debt and the premature withdrawal of his 401(k) on reported adjusted gross income of $265,887.[5] (GE B; AE 1 Tabs 7-8.)

On October 20, 2016, Applicant was notified that he owed state income taxes of $3,108 (SOR ¶ 1.j). Applicant indicates that the taxes were owed for 2012, although documentation indicates that his tax liability was for tax year 2015. On his state tax return for tax year 2014 submitted with the assistance of the tax service, he claimed a refund of $2,051. (AE 1 Tab 7.) In December 2016, he was assessed a state tax liability of $4,385 for tax year 2015. His wages were levied at $150 every two weeks starting in May 2017 for his state tax delinquency. (AE 1 Tab 4; Tr. 83-84.)

On January 31, 2017, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He indicated that he had filed his delinquent tax returns for tax years 2013 through 2015 in October 2016, but that the IRS could not process his return for 2013 because he was missing a required 8332 form from his ex-wife so that he could claim their older son as a dependent on his income tax return. (GE C; Tr. 44.) Applicant admitted that he owed Federal income taxes of approximately $5,442 for 2014 and $44,380 for 2015. He also acknowledged that he had become $4,358 delinquent on his spousal support in May 2016 and June 2016, but he paid off the arrearage at $626 per month from July 2016 to January 2017. About his HELOC and credit-card delinquencies, Applicant indicated that his debts would be cancelled and become "unrealized income" for income tax purposes. He did not recognize the collection debts in SOR ¶¶ 1.d-1.f. (GE C.)

[4] Applicant provided no evidence to corroborate that his 2013 Federal income tax return was filed with his 2014 and 2015 income tax returns in October or November 2016, but the return was signed by the tax preparer on October 10, 2016, and by Applicant on October 12, 2016. (AE 1 Tab 7.)

[5] The cancellation of his HELOC led him to incur a significant tax liability for tax year 2015. He included as income $78,174 (cancelled debt less the equity in the property) in cancelled debt on his Federal income tax return for tax year 2015. His remaining tax liability came from the 401(k) transactions in 2015. (GE B; AE 1 Tab 7; Tr. 83.)

From February 2017 through February 2018, Applicant paid child support of $1,539 per month. He paid $2,235 monthly in spousal support from February 2017 through May 2017; $2,146 in June 2017; $2,057 monthly from July 2017 through October 2017; $1,853 in November 2017; $1,645 each in December 2017 and January 2018, but only $87 in February 2018. (AE 1 Tab 8.)

Applicant filed his Federal income tax return for tax year 2016 on time in April 2017. On adjusted gross income of $61,945, he was entitled to a $13,225 refund that was applied by the IRS to taxes Applicant owed for tax year 2012. (GE B; AE 1 Tab 7; Tr. 43.) In May 2017, he re-filed his tax return for tax year 2013 with the IRS. (Tr. 78.)

In response to DOD CAF interrogatories, Applicant indicated on September 11, 2017, that he owed a significant amount in Federal and state income taxes, largely because of the delayed impact of his defaulted HELOC and the taxes and penalty on the distribution of his 401(k) while he was unemployed. He explained that his nonpayment of taxes was "not one of intent, but one of means, and a lack of understanding about a cleared path forward." Applicant provided IRS tax transcripts for tax years 2014 and 2015 showing unpaid balances of $8,226 for tax year 2014 and $61,863 for tax year 2015 as of September 2017. He submitted a notice from the IRS of a request for more information before it could provide a tax transcript for 2013. A collection notice from the state showed a balance due of $3,108. Applicant submitted a personal financial statement indicating that the state had levied against his wages and was taking $300 a month to address his state tax liability. He estimated his net monthly discretionary income at $743. (GE B.)

On October 25, 2017, Applicant paid his $308 cable bill in collection (SOR ¶ 1.d). On October 26, 2017, he paid the $25 medical debt in collection (SOR ¶ 1.f). On October 30, 2017, Applicant made a final payment of $2,317 to fully resolve his state tax delinquency for tax year 2015 under a tax amnesty program. On October 21, 2017, Applicant authorized recurring payments of $50 every two weeks from his checking account from November 2017 to April 2018 toward his $34,264 credit-card delinquency (SOR ¶ 1.b). He indicated in response to the SOR that he would renew the payments until the debt is paid. (AE A Tab 3.) At his hearing, he testified that he has not missed any payments since entering into the agreement. (Tr. 98.) On November 6, 2017, he returned the cable equipment to resolve the collection debt in SOR ¶ 1.e. On November 9, 2017, he satisfied the $1,111 credit-card delinquency (SOR ¶ 1.c). (AE 1 Tabs 3-4; Tr. 84, 95.) About the delayed resolution, Applicant testified that he was overwhelmed with his debts, and it "just got lost in the chaos." (Tr. 99.) Applicant admitted that he was irresponsible and should have addressed his debts sooner. (Tr. 102.) Available checking account statements for Applicant covering the period July 25, 2017, through October 23, 2017, show that Applicant made several purchases for gaming and ITunes before his delinquencies were paid. (AE 3.)

As of October 2017, Applicant owed the IRS approximately $89,105 for tax years 2012 through 2015 ($10,534 for 2012, $6,403 for 2013, $8,458 for 2014, and $63,708 for 2015). (AE 1 Tab 4.) The issuance of the SOR on October 20, 2017, prompted him to contact the IRS on November 30, 2017, about an installment plan to repay his substantial

tax delinquency.[6] (AE 1 Tab 6; Tr. 79.) On December 12, 2017, Applicant entered into an installment agreement to pay his Federal income tax delinquency at $524 per month. He made payments of $417 and $524 in February 2018 and $524 in March 2018 that were applied to his tax liability for 2012. Payments of $524 in April 2018 and again in May 2018 were applied to his income tax liability for tax year 2014. (AE 1 Tabs 5-6.)

In February 2018, Applicant was laid off from his job paying him approximately $170,000 a year. (Tr. 72-73.) Security clearance and access requests had been submitted for Applicant, but they had not been granted, and he was let go for lack of unclassified work. (AE 1 Tab 12.) He paid nothing in spousal or child support while he was unemployed. (AE 1 Tab 8.) In April 2018, he moved in with his parents because he was unemployed. (AE 1 Tab 2.)

Applicant filed his income tax returns for tax year 2017 on time. (Tr. 43, 85.) On adjusted gross income of $137,203, he expected a tax refund of $13,147. (AE 1 Tab 7.) In July 2018, he received notice from the IRS that his Federal tax liability for tax year 2012 had been satisfied, but he still owed Federal income taxes of $6,580 for 2013, $3,885 for 2014, and $68,903 for 2015. In August 2018, Applicant began working for his current employer at a monthly income of approximately $12,916, and he renewed his support payments. (AE 1 Tabs 2, 8-9; Tr. 56, 58, 72.) He contacted the IRS to resume his installment agreement at $524 per month, but no payments were deducted from his bank account. In November 2017, the IRS notified him of its intention to cancel his installment agreement for failure to provide income verification to the IRS (Collection Information Statement Form 433-F) that he had not realized was required. He submitted the form in December 2017, but processing was delayed because of the partial government shutdown over the holidays. In late January 2019, the IRS returned his debt to collections. (Tr. 49.) On February 7, 2019, Applicant executed a new Installment Agreement Request with the IRS, proposing to repay $81,383 at $525 per month. (AE 1 Tabs 2, 5-6.) As of Applicant's hearing in mid-February 2019, Applicant was awaiting a response from the IRS about his proposed installment plan. (Tr. 81-82.) Applicant intends to repay his tax delinquency. (Tr. 45.) His income tax returns for 2018 were not yet prepared as of February 2019, so he was unsure whether he would owe taxes for 2018. (Tr. 85.)

In October or November 2018, Applicant's car was "totaled" by a fallen tree. He obtained a $23,000 loan for a 2018 model-year vehicle that he is repaying at $560 per month. (Tr. 87-88.) As of February 2019, Applicant was paying his parents $500 a month to cover rent and monies given him previously. He was current on his spousal and child support. (Tr. 65.) He testified that he had about $5,000 after paying his car loan, support obligations, and parents, but that did not include his other expenses, such as food, gasoline, or car insurance. (Tr. 91.) He had approximately $6,000 in savings to move back to his previous state of residency to be near his sons. He believes he can obtain a job transfer with his current employer, although it would be predicated on him being granted

[6] Applicant testified that he owed the IRS as much as $96,000 at one point, but that his tax liability has been reduced by $26,000 through the IRS interception of his tax refunds for tax years 2016 and 2017. (Tr. 51.) He expressed his belief that he had made some tax payments before the October to November 2017 time frame (Tr. 82), although he provided no documentation of any such payments.

access to SCI. The transfer would likely mean an increase of $1,500 in his monthly expenses, although he estimated that he would likely still have a monthly surplus of $896. (Tr. 86-93.) His spousal support is scheduled to end in January 2020. (AE A 1 Tab 8.) He then plans to pay an additional $1,200 per month toward his IRS debt. (Tr. 93.) He estimates that it is going to take him more than six years to satisfy his Federal income tax delinquency. (Tr. 94.)

Applicant owes his divorce attorney $13,000 to $14,000. He testified that he has been paying about $100 a month consistently, except when he was unemployed between November 2014 and July 2016. Applicant stated that his attorney is allowing him to make payments when he is able. (Tr. 97-98.) Available checking account statements show $200 payments on May 26, 2015, and February 22, 2016. (AE 1 Tab 10.) His checking account activity from July 25, 2017, through October 23, 2017, shows one payment to his divorce attorney during those three months, of $75 on July 28, 2017. (AE 3.) He did not provide any documentation of the claimed $100 consistent payments.

Over the years, Applicant's parents have given him about $18,000. When he was short of funds, they gave him about $4,000 to pay his spousal and child support. They paid about $2,000 for him to put his belongings in storage in April 2018. They purchased furnishings for him in the past. He started repaying them at $1,500 a paycheck in August 2017, but he recently reduced the amount to $500. (Tr. 103-104.)

Applicant provided favorable character reference letters from three former co-workers who had ample opportunity to observe his work during his previous tenure with his current employer. They attest to Applicant's dedication to their mission and to Applicant's recognition and protection of sensitive data. In their experience, Applicant had a "unique combination of analytic experience and technical skills." (AE 1 Tab 12.)

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(a), 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 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 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 EO 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 articulated in AG ¶ 18:

> 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

> This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an

applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

Applicant's admissions, available credit reports, and IRS and state tax records establish the mortgage foreclosure and the delinquencies in the SOR. Regarding his alleged failure to file his Federal income tax return for tax year 2013 (SOR ¶ 1.i), Applicant filed his return late, although the Government did not meet its burden of establishing that it was unfiled as of the issuance of the SOR on October 20, 2017. Applicant's tax returns for tax years 2013 through 2015 were completed by a professional tax service in October 2016, and it is likely that he filed the three delinquent returns to the IRS shortly thereafter. Applicant has consistently maintained that his return for tax year 2013 was rejected by the IRS for the lack of the form authorizing him to claim his older son as a dependent on his return, and that he refiled his Federal income tax return for tax year 2013 in May 2017. The evidence of substantial Federal income tax delinquency is undisputed. Disqualifying conditions AG ¶¶ 19(a), "inability to satisfy debts," 19(c), "a history of not meeting financial obligations," and 19(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," apply.

Applicant has the burden of establishing matters in mitigation. One or more of the following conditions under AG ¶ 20 may apply:

(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;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented

proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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.

Applicant lost his marital home to foreclosure more than five years ago because of his divorce, which is a circumstance that is not likely to recur. AG ¶ 20(a) applies in mitigation of the security concerns associated with his failure to make his monthly mortgage payment. Applicant stopped paying on the credit cards in SOR ¶¶ 1.b and 1.c in 2011 and 2014, respectively. The cable service debts in collection (SOR ¶¶ 1.d and 1.e) were from 2012. The debts were also not incurred recently, but they are not mitigated under AG ¶ 20(a) because of Applicant's disregard of those debts before the SOR was issued. As for his tax delinquencies, although Applicant began addressing his delinquent tax returns in October 2016, available documentation reflects no voluntary payments toward his tax indebtedness before October 2017, when he paid $2,137 to resolve his state tax delinquency under a state tax-amnesty program. The state began garnishing his wages at $150 per month in May 2017, but those payments pursuant to a tax levy are not considered voluntary. Applicant's first payment of record under an installment plan with the IRS was made in February 2018. With more than $81,353 in delinquent Federal income taxes still owed as of February 2019, AG ¶ 20(a) cannot reasonably apply.

Applicant's marital separation and divorce had a considerable impact on his finances, so AG ¶ 20(b) has some applicability. In addition to incurring the expenses of a separate residence starting in July 2011, Applicant began paying $5,007 a month in spousal and child support. After his divorce was final in February 2013, Applicant's monthly support obligation declined to $4,574, but it was still a considerable amount. The delayed debt cancellation of his HELOC in 2015, which he had to report as income on his tax returns for 2015, was not within his control. However, Applicant also made some questionable financial decisions that show he did not act responsibly under the circumstances. He was unemployed "by choice" for many months after resigning from a job in November 2014 following his improper billing of time to a contract when he was not at work. He was depressed during his lengthy unemployment. Even so, there were apparently times when he "was taking it easy and was living life and pursuing happiness." His decision not to make a serious effort to find employment is difficult to justify when he had support obligations then at $4,174 monthly. His withdrawal of his 401(k) assets with some $223,687 in tax implications in 2015 raises concerns about his financial judgment. It should have been enough to cover his expenses, and he did not set aside any funds to pay the taxes on the premature withdrawals. Applicant held employment from July 2016 to February 2018 at a job paying him approximately $170,000 a year, and yet he waited until the SOR was issued to address his consumer credit delinquencies. The second component of AG ¶ 20(b) is not satisfied.

AG ¶ 20(c) and AG ¶ 20(d) are partially established because Applicant satisfied the delinquencies in SOR ¶¶ 1.c-1.f and 1.j between late October 2017 and early November 2017. There is no evidence that Applicant was pursued for any balance on the foreclosed mortgage loan in SOR ¶ 1.a. AG ¶ 20(g) has some applicability because Applicant filed his delinquent tax returns, including for the 2013 tax year alleged in SOR ¶ 1.i, before the SOR was issued, and he satisfied his state tax delinquency with a payment on October 30, 2017. Applicant has not had the credit counseling required under AG ¶ 20(c), however.

Applicant expressed an intention to resolve the remaining debts in the SOR. He authorized recurring payments of $50 twice monthly toward the credit card debt in SOR ¶ 1.b from November 14, 2017, through April 3, 2018. There is no documentation showing that he continued to make those payments, although he testified that he has missed no payments as of February 2019. Even assuming that he has made 15 or 16 months of payments, he owes more than $30,000 on the credit-card debt. He entered into an installment agreement in December 2017 with the IRS to address his $89,924 income tax delinquency. He provided evidence of payments totaling $2,513 between February 2018 and May 2018, but he stopped paying the IRS after he was laid off in July 2018. His debt went into collections, apparently because he did not realize that he had to submit a new income verification form. Because of the partial government shutdown, paperwork he submitted in December 2018 was not processed timely. As of February 2019, he was awaiting IRS approval of a newly submitted installment plan to address his $81,383 in outstanding Federal income tax delinquency under which he proposes to pay $525 per month. While neither the layoff in July 2018 nor the partial government shutdown in December 2018 were within his control, I cannot ignore that Applicant made no efforts to address his delinquencies until they became an issue for his security clearance. The Appeal Board recently reaffirmed that an applicant who begins to resolve his debts only after being placed on notice that his clearance was in jeopardy "may be disinclined to follow rules and regulations when [his] personal interests are not at stake." *See* ADP Case No. 17-00263 at 3 (App. Bd. Dec. 19, 2018) (citing ISCR Case No. 16-03122 at 3-4 (App. Bd. Aug. 17, 2018)).

Applicant is not required to pay off every debt in the SOR to be granted security clearance eligibility, but he lacks a sufficient track record of documented payments toward the credit card in SOR ¶ 1.b and the tax delinquencies in SOR ¶¶ 1.g and 1.h for me to conclude that he can be counted on to continue to make the promised payments. Concerns persist about his financial priorities. Expenditures for gaming and other recreational activities are difficult to justify when he owes more than $80,000 in Federal income taxes, $13,000 to $14,000 to his divorce attorney, and more than $30,000 in charged-off credit card debt. He seemingly can afford to pay more than $50 every two weeks toward the credit-card debt in SOR ¶ 1.b in light of his present income and expenses. Should he proceed with a planned relocation, he expects his monthly expenses for rent and utilities to increase significantly, but he estimates that he would still have $896 in discretionary income. He can reasonably be held to have made more progress toward reducing his significant debt burden, notwithstanding his large support obligations. The financial considerations security concerns are only partially mitigated.

Guideline E: Personal Conduct

The security concern about personal conduct is articulated 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigations or adjudicative processes.

Applicant certified to the accuracy of a September 2015 e-QIP on which he responded negatively to an inquiry concerning any mental health counseling in the last seven years. Applicant admits, and a reference letter from his therapist shows, that he had 111 sessions with his therapist from July 2010 to May 2014 for treatment of anxiety and depression prior to and after his divorce. Applicant denies any intention to misrepresent, explaining that he regarded his treatment as marital and family counseling, which was not required to be reported on the form. The Appeal Board has repeatedly held that, to establish a falsification, it is not enough merely to demonstrate that an applicant's answers were not true. To raise security concerns under Guideline E, the answers must be deliberately false. In analyzing an applicant's intent, the administrative judge must consider an applicant's answers in light of the record as a whole. *See, e.g*. ISCR Case No. 14-05005 (App. Bd. Sep. 15, 2017); ISCR Case No. 10-04821 (App. Bd. May 21, 2012). Applicant admitted on cross-examination that his treatment was not only for marital counseling, but it was also for his depression. He testified that of his 111 sessions, only two or three were jointly with his ex-wife. It is also noted that he continued in counseling after he was divorced, although as he credibly explained, he still had family issues in helping his sons cope with their parents' divorce. There is no evidence that Applicant's depression or anxiety symptoms predated his marital problems, which began in 2008. Applicant could reasonably relate his mental health issues to the breakup of the family unit. The evidence falls short of establishing that Applicant knowingly falsified his e-QIP. Accordingly, none of the disqualifying conditions under AG ¶ 16 are established. Had Applicant intended to conceal his mental health issues, he would not have submitted a character reference letter from his therapist mentioning his treatment. The personal conduct allegation is found for Applicant.

Whole-Person Concept

In assessing the whole person, 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(d). The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

The security clearance adjudication 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). It is not intended as a debt collection process or designed to punish applicants for past mistakes or shortcomings. *See* ISCR Case No. 17-01473 (App. Bd. Aug. 10, 2018). Applicant handled classified information appropriately when he held a clearance. At the same time, as someone who held a top secret clearance and SCI access eligibility for many years, Applicant can reasonably be expected to have complied with such an important obligation as filing his income tax returns on time, whether or not he could afford to pay the taxes owed. Even where tax problems have been corrected, the administrative judge is not precluded from considering an applicant's trustworthiness in light of prior behavior evidencing irresponsibility. *See e.g.*, ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 2015). The Appeal Board has long held that the failure to file tax returns suggests a problem complying with well-established government rules and systems. *See e.g.*, ISCR Case No. 14-04437 (App. Bd. Apr. 15, 2016).

Applicant's belated filing of his income tax returns for tax years 2013 through 2015 and his timely filing of his 2016 and 2017 income tax returns reflect reform and suggest that he is likely to file his income tax returns on time in the future. Yet, some concerns about his financial judgment persist, as identified above. Based on the evidence before me, it would be premature to conclude that his financial problems are sufficiently resolved to where they no longer present a security risk.

This decision should not be construed as a determination that Applicant cannot or will not attain the financial reform and rehabilitation necessary to be eligible for a security clearance in the future. After applying the disqualifying and mitigating conditions to the evidence presented, I conclude that it is not clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant at this time.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraphs 1.c-1.f:	For Applicant
Subparagraphs 1.g-1.h:	Against Applicant
Subparagraphs 1.i-1.j:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance.

Elizabeth M. Matchinski
Administrative Judge