



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



In the matter of: )  
 )  
 REDACTED ) ISCR Case No. 18-01082  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Nicholas T. Temple, Esq., Department Counsel  
For Applicant: *Pro se*

12/06/2018

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant did not timely file his Federal and state income tax returns for tax years 2012 through 2016. His delinquent tax returns were filed in the fall of 2017, but more than \$35,000 in past-due consumer credit debt and \$1,678 in delinquent property taxes had not been resolved as of September 2018. He is in the process of filing for bankruptcy, but financial judgment concerns persist. Clearance is denied.

**Statement of the Case**

On April 20, 2018, 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 May 14, 2018, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On July 18, 2018, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On August 6, 2018, I scheduled a hearing for September 19, 2018.

At the hearing, three Government exhibits (GEs 1-3) were admitted. A June 28, 2018 letter forwarding the proposed GEs to Applicant was marked as a hearing exhibit (HE 1) for the record but not admitted in evidence. Eleven Applicant exhibits (AEs A-K) were admitted in evidence. Applicant testified, as reflected in a transcript (Tr.) received on September 28, 2018.

I held the record open for one month for post-hearing documentation from Applicant. There is no indication that Applicant submitted any matters for the record by the October 18, 2018 deadline.

### **Findings of Fact**

The SOR alleges under Guideline F that Applicant failed to timely file his Federal (SOR ¶ 1.a) and state (SOR ¶ 1.b) income tax returns for tax years 2011 through 2016, and that he owed \$27,748 in past-due consumer credit debt on a total balance of \$36,702, and \$1,678 in delinquent property taxes. Applicant admitted that he had not filed his income tax returns on time as alleged, but indicated that his returns have been filed. Applicant admitted the outstanding indebtedness as alleged, and explained that his attorney has prepared a Chapter 13 bankruptcy filing. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 69-year-old engineering technician, who has worked for his defense-contractor employer since July 1969. He earned an associate's degree in January 1983 and a bachelor's degree in July 1996. He has never married, but has affection for a godchild. Applicant seeks to retain a secret clearance that he has held throughout his career. (GE 1; Tr. 38-40, 43.)

An ex-nephew by marriage to Applicant's niece lived with Applicant from 2010 until March 2018, when he was arrested for a reason not explained in the record. This nephew abused Applicant (AE A) and took advantage of Applicant financially.<sup>1</sup> He ran up debt on Applicant's credit card account in SOR ¶ 1.c, which Applicant had given him for a couple of months to use for gasoline expenses. (Tr. 49.) His nephew used the card for other expenses as well. As Applicant paid down the balances, his nephew "charged it up again." Applicant also used the credit card for purchases. Applicant ran into trouble because he

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<sup>1</sup> Applicant endured the abuse because his nephew was custodial parent on the weekends for Applicant's godchild. Applicant's godchild, who is very special to Applicant, spent the weekends at Applicant's house when her mother was working. (Tr. 43.)

“was actually spending the money, and then paying it off.” At some point, Applicant was either unable or unwilling to make the payments according to the terms of his account, and the creditor charged off a balance of \$17,059 in November 2014. (Tr. 49-50.) Applicant used another credit card (SOR ¶ 1.d) to pay for the restoration of electricity service for some family members. (Tr. 54-55, 64.)

Applicant did not file his Federal or state income tax returns for tax years 2011 through 2016 when they were due.<sup>2</sup> Applicant’s explanation for his non-filing is that his nephew drank excessively and “trashed [Applicant’s] records several times.” Applicant did not have all the records needed to file his tax returns, and he did not then know how to obtain them. Apparently because of the cost (“it was like \$2,000 to go out and get an accountant to pull the—to be able to file for the 2011, the 2012 [tax years]”), Applicant did not seek professional assistance. He rationalized that he had already paid his income taxes because his income tax withholdings were more than sufficient to cover his tax liabilities. (Tr. 33-34, 36, 41-44.)

To renew his security clearance eligibility, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) on January 13, 2016. He responded affirmatively to a financial-record inquiry concerning whether he had failed to file or pay Federal, state, or other taxes when required by law or ordinance in the last seven years. He disclosed that he had not filed his Federal or state income tax returns for tax years 2011 through 2014. He estimated his tax liabilities at \$1,200 per year for those tax years and indicated that he was working with a certified public accountant to prepare and file his delinquent tax returns. In response to inquiries concerning delinquency on routine accounts, Applicant disclosed that he owed \$2,885 in bank-overdraft fees (SOR ¶ 1.f), and \$16,000 (SOR ¶ 1.c) and \$2,000 (SOR ¶ 1.g) in past-due credit-card debt. He explained that he was working with a credit counselor “to develop a sustainable plan to resolve [his] deficiencies.” (GE 1.)

As of February 9, 2016, Applicant’s accounts in SOR ¶¶ 1.c and 1.g had been charged off and were in collection for \$17,059 and \$1,840. His bank-overdraft account (SOR ¶ 1.f) had been charged off for \$2,885 in July 2013, and he owed an accrued balance of \$3,464. Applicant was also 60 days past due on a loan balance of \$3,070 for an automobile redeemed after repossession. He was making payments according to terms acceptable to his creditors on credit cards with balances of \$15,767 and \$9,551 (SOR ¶ 1.d). A line of credit for \$1,000 with a credit union was current with a \$938 balance (SOR ¶ 1.i). (GE 3.)

In May 2017, Applicant consulted with an attorney about filing a Chapter 13 bankruptcy petition. The attorney advised Applicant on June 13, 2017, that he was not able to represent him (AE C), apparently because the attorney did not know enough about Applicant’s tax situation. (Tr. 34-35, 42.)

Applicant consulted with another attorney (attorney X), who advised him to obtain his account transcripts from the Internal Revenue Service (IRS). (AE B; Tr. 34-35.) After

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<sup>2</sup> Applicant works in a state that collects taxes on non-residents that earn income in the state.

obtaining the documents needed to prepare his delinquent tax returns, Applicant then consulted with an enrolled tax agent, who prepared his Federal and state income tax returns for tax years 2012 through 2015 on September 13, 2017, and for tax years 2011 and 2016 on October 16, 2017.<sup>3</sup> (AEs E-J.) On adjusted gross income of \$166,415 for tax year 2011, he owed the IRS \$4,425 and the state \$86. (AE E.) On adjusted gross income of \$137,338 for tax year 2012, he owed the IRS \$2,101. He expected a refund of \$32 in state taxes. (AE F.) On adjusted gross income of \$112,164 for tax year 2013, he overpaid his Federal taxes by \$1,595 and his state income taxes by \$176. (AE G.) On adjusted gross income of \$98,014 for tax year 2014, he overpaid his Federal income taxes by \$1,530 and his state income taxes by \$207. (AE H.) On adjusted gross income of \$83,922 for tax year 2015, he expected a Federal income tax refund of \$1,671 and a state income tax refund of \$218. (AE I.) On adjusted gross income of \$90,820 for tax year 2016, he overpaid his Federal income taxes by \$1,987 and his state income taxes by \$219.<sup>4</sup> (AE J.) Applicant incurred tax preparation fees of \$365 for his 2014 tax returns (AE H), \$319 for his 2015 tax returns (AE I), and \$1,987 for his 2016 tax returns (AE J). Applicant understands that he forfeited his tax refunds for those tax years where his returns were filed more than three years after the returns were first due. (Tr. 35.) Applicant testified that he returned a tax refund check to the IRS and had it applied to his Federal tax liabilities, which because of assessed penalties and likely also interest totaled \$9,000 to \$10,000 as of September 2018. He testified that he was making payments of \$100 a month to the IRS. (Tr. 46-47.) At Applicant's request, I held the record open after the hearing for him to document his Federal tax balance and his payments to the IRS. No documents were received.

Applicant had the same tax agent prepare his Federal and state income tax returns for tax year 2017. She completed the returns on September 17, 2018. On adjusted gross income of \$91,189,<sup>5</sup> he expected refunds of \$1,873 from the IRS and \$218 from the state. He incurred fees totaling \$473 for the tax preparation. (AE K.)

As of April 2018, Applicant had made no progress toward resolving his delinquent consumer-credit accounts. He owed charged-off credit-card balances of \$17,059 (SOR ¶ 1.c) and \$1,840 (SOR ¶ 1.g). In December 2017, the credit union identified in SOR ¶ 1.d

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<sup>3</sup> Both the IRS and the state allow for a six-month extension of the tax deadline, which was April 18, 2017, for tax year 2016. However, there is no evidence that Applicant filed for extensions by the April 18, 2017 tax deadline. With his income tax returns prepared for tax year 2016 on October 16, 2017, Applicant was advised that if he had filed for an extension, the return must be filed by October 15 and that any balance due had to be paid by April 18, 2017, to avoid penalties and interest. (AE J.)

<sup>4</sup> Applicant's belatedly-filed income tax returns show that his adjusted gross income has routinely exceeded his wage income primarily because of pension income. His wages for tax year 2011 were \$67,964, and he had pension income of \$97,977. (AE E.) His wages for tax year 2012 were \$77,092, and his pension income was \$57,425. (AE F.) His wages for tax year 2013 were \$87,769, and his taxable pension income was \$24,161. (AE G.) His wages for tax year 2014 declined to \$75,729, and his pension income was \$19,163. (AE H.) His wages for tax year 2015 further declined to \$68,757, and his pension income was \$14,773. (AE I.) His wages for tax year 2016 increased to \$76,083, and his pension income was \$14,681. (AE J.) Applicant did not explain the source(s) of his pension income. He is of age to collect Social Security income, but Social Security income is not included in gross income. He admitted at his hearing that he had taken individual retirement account distributions to pay bills. (Tr. 66.)

<sup>5</sup> Applicant's wage income for 2017 was \$76,333, and his pension income was \$13,960. (AE K.)

charged off his account for \$8,801. His account in SOR ¶ 1.e had been placed for collection in May 2016 for \$3,476. (Tr. 55-56.) He owed a charged-off balance of \$3,464 on an overdraft account (SOR ¶ 1.f) and \$1,305 on a charged-off automobile loan (SOR ¶ 1.h) obtained in May 2016. His line of credit in SOR ¶ 1.i was an overdraft account attached to a checking account. It was \$60 past due on a balance of \$957 (SOR ¶ 1.i). (GE 2.)

As of September 18, 2018, attorney X was in the process of preparing a Chapter 13 bankruptcy petition for Applicant to resolve his delinquent debts. Attorney X attests that Applicant was fully cooperative and diligent in providing the documentation needed to complete the petition. (AE B.) Other evidence indicates that the delay in filing for bankruptcy was caused in part by Applicant not following up to ensure that he was receiving correspondence from attorney X's office. When asked about the delay in filing his bankruptcy petition, Applicant responded:

A couple months ago, I was like—I haven't figure out, and, you know—and what they did were sending me and email. I didn't get anything in the—and it was so. It was so hot that I really was just going home. I know it doesn't sound right, but I was just going home after work. I did stop in, and I was using the other email account . . . and that's what they were—what [name omitted] was messaging me on, and so we got everything squared away. (Tr. 71.)

Applicant wants his creditors to be "made whole." (Tr. 36, 51.) He intends to include the debts in SOR ¶¶ 1.c and 1.e on his bankruptcy petition. (Tr. 52, 56.) Sometime during the week preceding his security-clearance hearing, the creditor owed the debts in SOR ¶¶ 1.d and 1.i offered to accept less than his balances to settle the debts. Applicant did not recall the settlement amounts, but he plans to pay them. Regarding the overdraft debt in SOR ¶ 1.f, Applicant testified that he "got in trouble" after the bank starting charging \$60 to \$70 a month against the reserve credit attached to the account. He did not look at his statements. (Tr. 58.) He testified that it will be paid. (Tr. 59.) As for the \$1,000 credit line in SOR ¶ 1.g, he similarly had made no payments toward the debt, but indicated that it will be paid. (Tr. 60.) Applicant incurred the \$1,305 vehicle debt in SOR ¶ 1.h when he totaled the car in a weather-related accident in early 2017 and lacked gap insurance. He was forced to rent a car for eight to nine months and did not pay the balance remaining on his car loan. (Tr. 60-63.)

Applicant does not dispute that he owes delinquent property taxes of \$1,678 for his home, although he does not understand why the debt was not paid because the bank was withdrawing funds to pay his property taxes. (Tr. 64-65.) He has a mortgage on his home that he obtained in September 2003 for \$79,800. As of February 2018, his home loan was rated as current with a \$58,468 balance, although it had been delinquent in May 2017 and July 2017. (GE 2.) His monthly mortgage payment is \$586. He has a car payment of \$480 per month for a 2017 model-year vehicle. He no longer provides any financial support for anyone else. He has one open credit-card account that has a balance of almost \$15,000. He is current on his payments. Applicant has a total of about \$1,000 in his savings and checking accounts. (Tr. 67-70.)

Applicant earns \$38 an hour in his defense-contractor job. He has taken withdrawals from an individual retirement account to pay some of his bills. He exhausted that asset so he no longer has that source of income available to him. (Tr. 66-67.)

## 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 did not timely file his Federal and state income tax returns for tax years 2011 through 2016. Assuming that his ex-nephew destroyed some of his records, it is difficult to believe that his nephew destroyed the records needed for timely filing for six consecutive years. Applicant rationalized his non-filing at the time on the basis that he lacked the intent to defraud the government because he had taxes withheld from his pay that would amply cover his liabilities. Based on the tax returns that were prepared in September 2017 and October 2017 for tax years 2011 through 2016, Applicant overpaid his Federal income taxes for tax years 2013 through 2016 and his state income taxes for tax years 2012 through 2016. Guideline F security concerns are established when an individual fails to comply with his tax filing obligations whether or not any taxes are owed. Disqualifying condition AG ¶ 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," applies.

The evidence also establishes a record of consumer-credit delinquency and property-tax delinquency. As of February 2016, he owed \$17,059 (SOR ¶ 1.c), \$3,464 (SOR 1.d), and \$1,840 (SOR ¶ 1.f) on charged-off accounts. After consulting with attorney X about possibly filing a Chapter 13 bankruptcy petition, Applicant defaulted on the credit-card accounts in SOR ¶¶ 1.d and 1.e, on the car loan in SOR ¶ 1.h, and on the line of credit in SOR ¶ 1.i. He also did not pay a property tax debt of \$1,678 (SOR ¶ 1.j). Disqualifying conditions AG ¶¶ 19(a), “inability to satisfy debts,” and 19(c), “a history of not meeting financial obligations,” also apply.

Applicant has the burden of establishing that matters in mitigation apply. 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.

Regarding his tax-filing issues, Applicant’s failure to file timely Federal and state income tax returns for six consecutive tax years, from 2011 through 2016, is too recurrent and recent for mitigation under AG ¶ 20(a). Assuming that Applicant’s nephew “trashed” some of the documents that Applicant needed to file his income tax returns for tax year 2011 and possibly 2012, it would be an unforeseen circumstance that could partially implicate AG ¶ 20(b). However, it stretches credulity that Applicant’s nephew would have destroyed the paperwork that Applicant needed to file his tax returns for six consecutive tax



years. Moreover, although Applicant testified that he did not then know how he could obtain the needed records, he also indicated that he could have retained an accountant to assist him in filing his returns, but that it would have cost him approximately \$2,000. Applicant did not act responsibly within AG ¶ 20(b) by taking no action for several years to rectify his tax situation. His failure to file is not excused or justified by the fact that he had taxes withheld from his pay and was owed refunds for some years.

In Applicant's favor, he filed his delinquent income tax returns for tax years 2012 through 2015 in September 2017 and for tax years 2011 and 2016 in October 2017, before the SOR was issued. AG ¶ 20(g) partially applies, but he still owes approximately \$9,000 to \$10,000 to the IRS for tax years 2011 and 2012. His belated filing of his income tax returns for tax years 2011 through 2016 is some indication that the problem of his noncompliance with his tax-filing obligations "is being resolved or is under control" under AG ¶ 20(c). He had the same enrolled tax agent prepare his tax returns for 2017. His Federal and state income tax returns for tax year 2017 were completed on September 17, 2018, and were timely if he filed for an extension of the April 17, 2018 deadline. However, he did not provide documentation of his claimed installment plan with the IRS to address his outstanding tax liabilities for tax years 2011 and 2012.

Even where tax problems have been corrected and an applicant is motivated to prevent such problems in the future, the administrative judge is not precluded from considering an applicant's trustworthiness in light of longstanding 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 with complying with well-established government rules and systems. See e.g., ISCR Case No. 14-04437 (App. Bd. Apr. 15, 2016.) When he completed his SF 86 in January 2016, Applicant indicated that he was working with a certified public accountant to file his delinquent returns for tax years 2011 through 2014. He exhibited poor judgment by then not filing his tax returns for 2015 and 2016 when they were due. There is no corroboration of any effort to rectify his tax-filing issues before May 2017, when he consulted with an attorney. His tax situation is not fully resolved in that he owes \$9,000 to \$10,000 to the IRS because of penalties related to his delinquent tax filings. He claimed that he is on a repayment plan to address the tax debt at \$100 a month, but it is unclear how many payments have been made. He submitted no records of payments, even though I held the record open after the hearing for such documentation. His federal tax situation is only partially resolved.

Applicant also showed poor financial judgment in his handling of his personal credit, as evidenced by his outstanding consumer-credit delinquencies exceeding \$35,000 as of April 2018 and by his unpaid past-due property taxes for \$1,678. Applicant stopped paying on his credit-card account in SOR ¶ 1.d, his credit line in SOR ¶ 1.i, and his car loan in SOR 1.h after he consulted with an attorney about filing for bankruptcy, but other debts had been charged off for several years with no efforts to repay them (SOR ¶¶ 1.c and 1.e-1.g). AG ¶ 20(a) does not apply to outstanding delinquency incurred because of overspending or other financial mismanagement. Regarding the overdraft debt in SOR ¶ 1.f, Applicant testified that he "got in trouble" after the bank starting charging \$60 to \$70 a month against

the reserve credit attached to the account. He bears some responsibility because he did not review his bank statements.

AG ¶ 20(b) has very limited applicability in mitigation of his delinquent consumer-credit debts. Applicant incurred the \$1,305 vehicle debt in SOR ¶ 1.h when he totaled the car in a weather-related accident in early 2017 and lacked gap insurance. He was forced to rent a car for eight to nine months and did not pay the balance remaining on his car loan. The accident is an unexpected circumstance contemplated within AG ¶ 20(b). Applicant gave his nephew access to his credit card in SOR ¶ 1.c, apparently so that his nephew could pay for gasoline on trips to pick up Applicant's godchild for the weekends. His nephew used the card for additional purchases that Applicant did not foresee. However, Applicant also allowed his nephew continued access to his account after Applicant had paid down substantial debt incurred by his nephew on the account. Applicant's use of another credit card (SOR ¶ 1.d) to pay electricity bills for some family members was within his control. Applicant showed poor financial judgment by not reviewing his bank statements for the overdraft account in SOR ¶ 1.f.

It would be premature to mitigate the financial considerations security concerns raised by Applicant's consumer delinquencies and unpaid property taxes. Although a Chapter 13 bankruptcy filing is a legal means to address debts, a petition had yet to be filed as of his September 2018 security-clearance hearing. Applicant was not proactive in corresponding with his bankruptcy attorney, and so he bears some responsibility for the filing delay. Assuming that Applicant files a Chapter 13 plan that is approved by the bankruptcy court, he will be required to make monthly payments. Given the lack of progress toward resolving his delinquent accounts over the years, there is insufficient guarantee that he can be counted on to comply with a Chapter 13 plan. Neither AG ¶ 20(c) nor AG ¶ 20(d) apply. The financial considerations security concerns are not adequately mitigated.

### **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). Applicant presented no evidence from his workplace, but it may reasonably be inferred from his 49-year tenure with his employer that he is dedicated to his work and is a valued employee. At the same time, his wage income has consistently exceeded the threshold required for timely filing of Federal and state income tax returns. His reasons for not filing his tax returns on time do not mitigate or justify his failure to comply with such an important obligation. He has mitigated

the tax issues somewhat by filing his delinquent returns, but he owes between \$9,000 and \$10,000 in federal taxes because of assessed penalties for the late returns.

Applicant allowed his feelings of concern and affection for his godchild to get the better of his financial judgment in that he provided a home for her father (his ex-nephew) for over five years and gave him one of his credit cards to use for a couple of months. Applicant assumed the risk to his credit and the responsibility to pay balances incurred by this nephew. Applicant helped other family members by paying their utility bills with another of his credit cards. However well-intentioned Applicant may have been in helping these family members, he has legal repayment obligations that remain unresolved. He has relied on withdrawals from a retirement account to pay some of his bills, which indicates a problem managing his money. The Appeal Board has repeatedly held that the government need not wait until an applicant mishandles or fails to safeguard classified information before denying or revoking security clearance eligibility. *See, e.g., ISCR Case No. 08-09918 (App. Bd. Oct. 29, 2009) (citing Adams v. Laird, 420 F.2d 230, 238-239 (D.C. Cir. 1969))*. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown, 913 F. 2d 1399, 1401 (9th Cir. 1990)*. His failure to give priority to his tax and credit obligations causes doubts about his security worthiness that have not been fully mitigated.

### **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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.j:	Against Applicant

### **Conclusion**

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

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Elizabeth M. Matchinski  
Administrative Judge