



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



In the matter of:)
)
 ---) ISCR Case No. 18-02081
)
 Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esquire, Department Counsel
For Applicant: *Pro se*

05/08/2019

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance is denied.

Statement of the Case

On July 27, 2016, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On a May 9, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued him a set of interrogatories. He responded to those interrogatories on June 14, 2018. On September 28, 2018, the DOD CAF issued a Statement of Reasons (SOR) to him, under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG) for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn statement, dated November 8, 2018, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on December 20, 2018. The case was assigned to me on January 10, 2019. A Notice of Hearing was issued on March 13, 2019. I convened the hearing as scheduled on April 3, 2019.

During the hearing, Government exhibits (GE) 1 through GE 4, and Applicant exhibits (AE) A through AE F were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on April 15, 2019. I kept the record open to enable Applicant to supplement it. He took advantage of that opportunity and timely submitted additional documents which were marked and admitted into evidence as AE O through AE X without objection. The record closed on May 3, 2019.

Procedural Issues

During the commencement of the hearing, Department Counsel moved to amend the SOR to correct what he identified as an administrative or clerical error to conform to the expected evidence in the record. The motion was to amend SOR ¶ 1.b, by deleting the number \$19,071.29, and substituting therefor the number \$28,703.35. The motion was granted over Applicant's objection.¹

Findings of Fact

In his Answer to the SOR, Applicant admitted with comments most of the factual allegations in the SOR (SOR ¶¶ 1.b. through 1.d.). Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 70-year-old employee of a defense contractor. He has been serving under a variety of titles (*i.e.*, drafting supervisor, lead technologist, and engineering analyst) with his current employer (known by a variety of names after acquisitions) since December 2005. A 1966 high school graduate, he received an associate's degree in 1974. Applicant enlisted in the U.S. Navy in April 1968, and he was honorably discharged in October 1969 with a pre-existing physical disability. He was granted a secret clearance in October 2006. Applicant was married in 1970, and divorced in 1982. He remarried in 1986, and was divorced three months later that same year. He married his current wife in 1987. He has two daughters, born in 1973 and 1984.

¹ Tr. at 11-14.

Financial Considerations²

It is unclear to what factors Applicant attributed his financial problems, or to when those factors actually commenced. He generally referred to various situations with some financial significance to him, but he does not claim that they caused him not to timely file his federal income tax returns or to have insufficient funds to pay any of his debts. They were simply alternative ways to spend his money. For example, he mentioned taking a sabbatical or temporary retirement at the age of 50; a year of sailing from Michigan around the Gulf of Mexico to various locations in Florida; family medical issues; there was a stock market “setback;” being disorganized; he lost or misplaced all of his records for the tax year 2012 during a move in 2013; his parents died in 2016; there was a hurricane in October 2018; he purchased some property for an autistic grandson; and he and his wife have paid for, and attended, various real estate investment programs to create a business for a decent retirement income.³ While Applicant mentioned those factors, he submitted no specific information or documents to indicate in what way they were largely beyond Applicant’s control; and what impact they may have had on his finances and actions relative thereto.

(SOR ¶ 1.a.): When it was time for Applicant to file his federal income tax return for the tax year 2012, he timely filed for an extension, and he sent the IRS an estimated payment of \$1,397. The IRS granted the extension until October 15, 2013.⁴ During the extension period, Applicant was unable to locate the necessary supporting documentation, such as his W-2, *Wage and Tax Statement*, and other documents, and he eventually failed to timely file his income tax return by the end of the extension period.⁵

² General source information pertaining to the financial issues discussed below can be found in the following exhibits: GE 2 (e-QIP, dated July 27, 2016); GE 4 (Answers to Interrogatories, dated June 14, 2018); GE 3 (Enhanced Subject Interview (ESI), dated September 14, 2017); AE A (Statement, dated April 3, 2019); AE H (Internal Revenue Service (IRS) Account Transcript – 2013, dated October 3, 2016); AE F (IRS Account Transcript, dated June 4, 2018); AE J (IRS Account Transcript – 2015 (IRS Account Transcript, dated June 1, 2018); and Applicant’s Answer to the SOR, dated November 8, 2018.

³ Applicant’s Answer to the SOR, *supra* note 2; GE 3, *supra* note 2, at 5; AE A, *supra* note 2; Tr. at 30, 38-39. See also AE V (Business Card, undated).

⁴ GE 4 (IRS Account Transcript – 2012, dated June 25, 2018).

⁵ The legal requirement to file a federal income tax return is based upon an individual’s gross income and other enumerated conditions. Once it is determined that there is an obligation to so file, the following applies:

Any person required under this title to pay any estimated tax or tax, or 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 pay such estimated tax or tax, 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 and, upon conviction thereof, shall be fined not more than \$25,000 (\$100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution. In the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure. In the case of a willful violation of any provision of section 6050I, the first

Although he made some unspecified efforts to locate the necessary documentation, both from the IRS and from his employer, his efforts proved fruitless, and they were essentially abandoned by him.⁶ As of June 2018, when he responded to the interrogatories, Applicant had still not filed his federal income tax return for the tax year 2012. In April 2019, six and one-half years after the extended due date for the filing, and over six months after the SOR was issued, Applicant reported that he was able to obtain a copy of his W-2. He claimed that he finally sent his federal income tax return for the tax year 2012 to the IRS during the week of the April 2019 hearing.⁷ Applicant did not submit a copy of the subject federal income tax return to support his claim that it had finally been filed.

(SOR ¶ 1.b.): Although not alleged in the SOR, Applicant failed to timely file his federal income tax return for the tax year 2013.⁸ An official Account Transcript from the IRS reflects that Applicant failed to file his 2013 income tax return until March 2015, one year after it was required to be filed.⁹ Applicant's adjusted gross income during the tax year 2013 was reported to be \$186,348. During the period 2014 through early 2017, the IRS issued several notices to Applicant, assessed penalties, additional taxes, and interest, and eventually issued a levy. In April 2017, an Installment Agreement was established under which Applicant agree to have \$700 per month automatically withdrawn from his bank account. Because of some incorrect bank account information, monthly withdrawals were attempted but promptly cancelled. As of June 4, 2018, Applicant's tax balance plus accruals was \$28,703.35.¹⁰ In October 2018 – approximately one month after the SOR was issued – Applicant agreed to a new Installment Agreement, restarting the \$700 monthly withdrawals. As of April 2, 2019, the unpaid balance for 2013 has been reduced to \$26,936.90.¹¹ The 2013 delinquencies are finally in the process of being resolved.

sentence of this section shall be applied by substituting "felony" for "misdemeanor" and "5 years" for "1 year."

26 U.S.C. § 7203, *Willful failure to file return, supply information, or pay tax.*

⁶ Applicant's Answer to the SOR, *supra* note 2; AE A, *supra* note 2; GE 4 (Answers to Interrogatories), *supra* note 2, at 2.

⁷ AE A, *supra* note 2; Tr. at 28, 30-31.

⁸ Unalleged conduct can be considered for certain purposes, as discussed by the DOHA Appeal Board. (Conduct not alleged in an SOR may be considered: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive § 6.3.). See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006); (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See *also* ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). Applicant's unlisted and unalleged failure to timely file his federal income tax returns will be considered only for the five purposes listed above.

⁹ AE H, *supra* note 2; GE 4 (IRS Account Transcript – 2013, dated June 4, 2018)

¹⁰ GE 4 (IRS Account Transcript – 2013), *supra* note 9.

(SOR ¶ 1.c.): Applicant timely filed his federal income tax return for the tax year 2014. His adjusted gross income during that tax year was initially reported to be \$86,275,¹² but that amount was subsequently increased to \$130,675.¹³ During the period 2015 through early 2017, the IRS issued several notices to Applicant, assessed penalties, additional taxes, and interest, and eventually issued a levy. In April 2017, the Installment Agreement described above was established, but eventually terminated. Although the new Installment Agreement was established in October 2018, restarting the monthly withdrawals, priority has been given to the resolution of unpaid 2013 taxes while Applicant's unpaid 2014 taxes wait in line with the unpaid balance increasing. In March 2019, Applicant's unpaid 2014 balance was \$15,294.48,¹⁴ and on April 2, 2019, it had increased to \$15,344.15.¹⁵ The 2014 delinquencies are not yet in the process of being resolved.

(SOR ¶ 1.d.): Although not alleged in the SOR, Applicant failed to timely file his federal income tax return for the tax year 2015, claiming that when he received IRS notification regarding his tax issues for the tax years 2012 through 2014, he "was flustered . . . and forgot to file or pay."¹⁶ An official Account Transcript from the IRS reflects that Applicant failed to file his 2015 income tax return until November 2016, one month after it was required to be filed if an extension request had been made, or six months after the original due date.¹⁷ In this instance, there is no evidence that Applicant requested an extension. Applicant's adjusted gross income during the tax year 2015 was reported to be \$132,246. During the period late 2016 through early 2017, the IRS issued several notices to Applicant, assessed penalties and interest, and eventually issued a levy. In April 2017, the Installment Agreement described above was established, but eventually terminated. Although the new Installment Agreement was established in October 2018, restarting the monthly withdrawals, priority has been given to the resolution of unpaid 2013 taxes while Applicant's unpaid 2014 and 2015 taxes wait in line with the unpaid balances increasing. In March 2019, Applicant's unpaid 2015 balance was \$9,447.65,¹⁸ and on April 2, 2019, it had increased to \$9,476.19.¹⁹ The 2015 delinquencies are not yet in the process of being resolved.

¹¹ AE E (IRS Report, dated April 2, 2019); AE D (IRS Report, dated March 11, 2019); AE L (IRS Report, undated).

¹² AE I (IRS Account Transcript – 2014, dated October 3, 2016); AE X (IRS Account Transcript (short form), dated October 3, 2016).

¹³ AE F, *supra* note 2.

¹⁴ AE D, *supra* note 11.

¹⁵ AE E, *supra* note 11.

¹⁶ GE 3, *supra* note 2, at 5.

¹⁷ AE J, *supra* note 2.

¹⁸ AE D, *supra* note 11.

¹⁹ AE E, *supra* note 11.

Applicant submitted a Personal Financial Statement to reflect his \$7,195 net monthly income; \$3,311 in monthly expenses; and a purported \$3,428 in debt payments, including his IRS payments, with a \$456 monthly remainder.²⁰ As of April 2019, in addition to \$51,757 in unpaid federal income taxes,²¹ Applicant currently owes a total of \$176,604 for a mortgage, a vehicle loan, and six credit cards or charge accounts.²² In Applicant's payoff schedule, he set priorities for the resolution of all of his accounts, including his unpaid IRS balance. Of the nine accounts listed, the IRS holds the least priority, and it has him scheduled to continue making monthly \$700 payments over the next five years, with three final balloon payments of nearly \$4,000 commencing in December 2023.²³ He noted that such a plan does not interfere with his 401(k) contributions, and it allows him to retire again in five years as previously planned.²⁴

Approximately five years ago, Applicant met with a financial planner to set up an annuity for his eventual retirement.²⁵ While he claimed to have a three-ring binder of paperwork from his financial planner, Applicant did not specify or identify any of the documents, and, although he was asked to submit such information, and indicated that he would do so, he failed to submit any documentation to indicate the nature of the financial counseling that he received. In addition, Applicant stated that he is now working with a different financial planner, since his first one passed away, and they are reviewing Applicant's retirement plans to make sure they are sound, and Applicant does not incur any additional tax burdens as a result of turning 70 and one-half.²⁶ There is some evidence to indicate that Applicant's financial situation, with respect to his federal income taxes, is now under better control.

Work Performance and Character References

The current project manager of the program in which Applicant works, has known and worked with Applicant since 2005. He characterized Applicant as honest to a fault, dependable, and a consummate professional in every sense of the word. He also described him as a very valued friend, confidant, and a dedicated colleague. Applicant provides exceptional services vetting procurements, providing quality control for prototype fabrication, and ensuring the government client receives fair value for every tax dollar spent, as well as ensuring the warfighter receives the best products, services and

²⁰ AE W (Personal Financial Statement, undated).

²¹ AE E, *supra* note 11.

²² AE U (Account Payoff Schedule, dated May 3, 2019).

²³ AE U, *supra* note 22.

²⁴ AE S (Statement, dated May 3, 2017).

²⁵ Tr. at 60-61; AE M (Advertisement, undated).

²⁶ AE S, *supra* note 24.

support that can be provided.²⁷ A coworker who has known Applicant for 14 years, described him as honest, professional, and very diligent in his work efforts.²⁸

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”²⁹ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”³⁰

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”³¹ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant

²⁷ AE B (Character Reference, dated March 16, 2019).

²⁸ AE M (Character Reference, dated July 19, 2018).

²⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³⁰ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

³¹ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.³²

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."³³

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."³⁴ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure 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

³² See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

³³ *Egan*, 484 U.S. at 531.

³⁴ See Exec. Or. 10865 § 7.

engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG 19:

- (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.

Applicant failed to timely file his federal income tax return for the tax year 2012 (as well as for the tax year 2015); failed to pay annual federal income taxes as required for a multi-year period; and currently owes the IRS approximately \$51,757 in unpaid federal income taxes, interest, and penalties. The failure to timely file income tax returns has security implications because:³⁵

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 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 clarified 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

³⁵ ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis in original). See ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

evidencing irresponsibility” including a failure to timely file federal income tax returns.³⁶ Furthermore, since a security clearance represents an obligation to the federal government for the protection of national secrets, a failure to honor other obligations to the government has a direct bearing on an applicant’s reliability, trustworthiness, and ability to protect classified information.³⁷ In this instance, while Applicant may have eventually filed his two late federal income tax returns, and he may now be properly motivated, he waited six and one-half years after the extended due date for the filing, and over six months after the SOR was issued, to supposedly file his federal income tax return for the tax year 2012, during the week of the April 2019 hearing. As for the unpaid 2013, 2014, and 2015 income taxes, Applicant waited until April 2017 to establish an Installment Agreement (that was eventually terminated because of incorrect information), and then reestablished in October 2018 – approximately one month after the SOR was issued – restarting \$700 monthly withdrawals. AG ¶¶ 19(a), 19(c), and 19(f) have been established. As there is no evidence that Applicant was unwilling to satisfy his debts regardless of the ability to do so, AG ¶ 19(b) has not been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;³⁸

(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 individual has received or is receiving financial 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;

³⁶ See ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. June 15, 2016) (characterizing “no harm, no foul” approach to an Applicant’s course of conduct and employing an “all’s well that ends well” analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR).

³⁷ See ISCR Case No. 14-03358 at 3-4 (App. Bd. Oct. 9, 2015).

³⁸ A debt that became delinquent several years ago is still considered recent because “an applicant’s ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions.” ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;³⁹

(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 compliance with those arrangements.

AG ¶¶ 20(d) and 20(g) partially apply, but none of the remaining mitigating conditions apply. The nature, frequency, and recency of Applicant's continuing financial difficulties make it difficult to conclude that it occurred "so long ago" or "was so infrequent," or that it is "unlikely to recur." While Applicant generally referred to various situations with some financial significance to him, he does not claim that they caused him not to timely file his federal income tax returns or to have insufficient funds to pay his federal income taxes. They were simply alternative ways to spend his money. Taking a sabbatical at the age of 50; spending a year of sailing around the Gulf of Mexico; and seeking alternative avenues of funds for retirement, do not qualify as being largely beyond Applicant's control. Being disorganized seems to be Applicant's major problem with regard to his federal income tax issues. Losing or misplacing all of his records for the tax year 2012 during a move in 2013 does not explain his failure to file his 2012 federal income tax return until 2019. Other than the ineffective and terminated Installment Agreement that was established in 2017, Applicant essentially made little meaningful efforts to file his income tax return for the tax year 2012 or make voluntarily good-faith payments to reduce his outstanding 2013 through 2015 income tax balances until after he was seemingly motivated to do so by the issuance of the SOR.

The Appeal Board previously observed that:⁴⁰

³⁹ The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

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

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

⁴⁰ ISCR Case No. 17-01256 at 5 (App. Bd. Aug. 3, 2018) (quoting ISCR Case No. 17-01807 at 3-4 (App. Bd. Mar. 7, 2018)).

[t]he mere filing of delinquent tax returns or the existence of a payment arrangement with an appropriate tax authority does not compel a Judge to issue a favorable decision. As with the application of any mitigating condition, the Judge must examine the record evidence and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. The timing of corrective action is an appropriate factor for the Judge to consider in the application of [pertinent mitigating conditions].

An applicant who begins to resolve his financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests.⁴¹ Applicant's actions, or inaction, under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment.⁴²

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time.

Mere promises to pay debts in the future, without further confirmed action, are insufficient. In this instance, Applicant's evidence of self-reformation and self-rehabilitation to voluntarily comply with the tax filing requirements in the future fail to remove the lingering doubts that remain whether he has demonstrated the judgment, reliability, and willingness to abide by well-established rules and regulations that is required for granting a security clearance.⁴³

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 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

⁴¹ See, e.g., ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018).

⁴² See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

⁴³ See ISCR Case No. 17-01256, *supra* note 39, at 5.

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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁴⁴

There is some evidence mitigating Applicant's conduct. Applicant is a 70-year-old employee of a defense contractor, serving under a variety of titles with his current employer since December 2005. A 1966 high school graduate, he received an associate's degree in 1974. Applicant enlisted in the U.S. Navy in April 1968, and he was honorably discharged in October 1969 with a pre-existing physical disability. He was granted a secret clearance in October 2006. His project manager and a coworker both think highly of him, and they essentially describe him as honest, dependable, professional, and a very valued friend, confidant, and a dedicated colleague. Applicant may have eventually filed both of his late federal income tax returns, and he may now be properly motivated to timely file federal income tax returns in the future. There is no evidence of any security violations.

The disqualifying evidence under the whole-person concept is more substantial. Applicant failed to timely file federal income tax returns for a multi-year period; failed to pay annual federal income taxes as required; and currently owes approximately \$51,757 in unpaid federal income taxes, interest, and penalties. He waited six and one-half years after the extended due date for the filing, and over six months after the SOR was issued, to supposedly file his federal income tax return for the tax year 2012, during the week of the April 2019 hearing. As for the unpaid 2013, 2014, and 2015 income taxes, Applicant waited until October 2018 to establish a working Installment Agreement with the IRS – approximately one month after the SOR was issued – starting \$700 monthly withdrawals.

Applicant's current financial focus is on his second retirement, five years from now, and his repayment plans reflect that paying his unpaid federal income taxes is low on his listed priorities. When an issue involving taxes arises, it is proper to consider how long an applicant waits to file their tax returns, and how long the applicant waits after a tax debt arises to begin and complete making payments. The primary concern in this instance is that Applicant has repeatedly been late filing his federal income tax returns, and while he offered some explanations for his actions, those explanations do not adequately justify the lengthy delays in completing the required actions. Under the circumstances described

⁴⁴ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

above, I am unable to reach a positive conclusion pertaining to Applicant's eligibility for a security clearance.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁴⁵

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant has demonstrated an extremely poor track record of both debt reduction and elimination efforts and in his efforts to timely file his federal income tax returns, seemingly avoiding doing so until he was alerted that his eligibility for a security clearance had become an issue. Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations. See SEAD 4, App. A, ¶¶ 2(d)(1) through AG 2(d)(9).

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.d.:	Against Applicant

⁴⁵ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ROBERT ROBINSON GALES
Administrative Judge