



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 ---) ISCR Case No. 19-00351
)
 Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esquire, Department Counsel
For Applicant: *Pro se*

10/11/2019

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 November 3, 2016, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a Security Clearance Application. On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. Applicant responded to those interrogatories on February 22, 2019. On April 5, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (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* (AG) (December 10, 2016), 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 an unsworn and undated statement, Applicant responded to the SOR. (Item 2) On June 14, 2019, he submitted a supplemental notarized statement, and he elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by DOHA on September 4, 2019, and he was afforded an opportunity after receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. Applicant received the FORM on September 9, 2019. Applicant responded to the FORM by timely submitting a statement and associated documents, all of which were accepted without objection. The case was assigned to me on September 26, 2019.

Findings of Fact

In his initial Answer to the SOR, Applicant failed to admit or deny any of the SOR allegations. Instead, he addressed the allegations and offered comments regarding each allegation. In his Supplemental Answer, Applicant admitted, with brief comments, nearly all, or parts thereof, of the factual allegations pertaining to financial considerations in the SOR (SOR ¶¶ 1.b. through 1.i., 1.k. through 1.n., and 1.p. through 1.t.). 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 40-year-old employee of a defense contractor. He has been serving as an outside electrician with his current employer since May 2017. A 1998 high school graduate, Applicant received a technical certification in electrical business in 2016. He has never served with the U.S. military, and he never registered with the Selective Service System (SSS), claiming that he was not aware of the SSS until 2010, when he applied for a student loan. He has never held a security clearance. Applicant was never married, and he has no children.

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 8 (Combined Experian and TransUnion Credit Report, dated March 4, 2017); Item 7 (Equifax Credit Report, dated August 28, 2018); Item 6 (Equifax Credit Report, dated August 28, 2019); Item 5 (Enhanced Subject Interview, dated March 30, 2018); Item 5 (Applicant's Response to the Interrogatories, dated February 22, 2019); Item 2 (Applicant's Answer to SOR, undated); Item 3 (Applicant's Supplemental Answer, dated June 14, 2019); and Applicant's Response to the FORM, dated September 10, 2019.

Applicant was unemployed over several periods during 2015, 2016, and 2017, with his most recent period being from October 2016 until May 2017. During those periods, he searched for new employment, and was supported either by unemployment compensation, funds from his 401k, or by his parents. (Item 4, at 10-18; Item 5 (Enhanced Subject Interview), at 5) Applicant stated that he was in a relationship with someone who was authorized to use “a couple” of his accounts, and some of his credit card debt was attributed to her. (Response to the FORM, at 1) During Applicant’s periods of unemployment, he did not generate sufficient funds to maintain his financial accounts, and many of them became delinquent. Some of the delinquent accounts were charged off, and some were sold or transferred to debt purchasers. In addition, due to Applicant’s self-described “laziness,” as well as not having much income, Applicant failed to timely file federal and state income tax returns for the tax years 2010, 2011, 2012, 2013, 2015, and 2016. (Item 5 (Enhanced Subject Interview), at 6)

When Applicant completed his November 2016 e-QIP, he acknowledged having six delinquent accounts, as well as having failed to file his federal and state income tax returns for several tax years. (Item 4, at 29-37) In March 2018, during his interview with an investigator from the U.S. Office of Personnel Management (OPM), Applicant discussed his unfiled tax returns, delinquent student loans, and one previously delinquent credit card. It was only after he was confronted with additional delinquent accounts that he shared the facts associated with those accounts.

The SOR alleged six unfiled federal and state income tax returns as well as 17 delinquent accounts totaling approximately \$63,236. Applicant contended that some of the SOR allegations duplicated other SOR allegations. Regarding those accounts for which he had not yet taken any steps to resolve, Applicant indicated that he would contact the creditors to set up repayment plans. The SOR allegations are set forth below:

SOR ¶ 1.a.: This refers to Applicant’s failure to file his federal income tax return for the tax year 2009, as required. In his e-QIP, during his OPM interview, and in his Response to the Interrogatories, Applicant acknowledged that he did not file the subject income tax return. (Item 4, at 29; Item 5 (Enhanced Subject Interview), at 6); Item 5 (Response to the Interrogatories), at 13) In his Answer to the SOR, Applicant acknowledged that he could not confirm the status of the filing of the income tax return. (Item 2, at 1) In his Supplemental Answer to the SOR, he contended that the Internal Revenue Service (IRS) had no record of him not filing an income tax return for the tax year 2009. (Item 3, at 1) However, the IRS acknowledged that a federal income tax return for the tax year 2009 was filed on August 4, 2010, and processed on August 23, 2010. (Item 5 (IRS Account Transcript, dated March 17, 2019) That Account Transcript was furnished to DOHA on February 22, 2019, nearly two months before the SOR was issued. The allegation has been resolved.

SOR ¶ 1.b.: This refers to Applicant’s failure to file his federal income tax returns for the tax years 2010, 2011, 2012, 2013, 2015, and 2016. In his Supplemental Answer to the SOR, Applicant admitted that he had failed to timely file those federal income tax returns (Item 3, at 1), but noted that had recently done so. The IRS confirmed that with respect to the tax year 2010, as of March 17, 2019, no such return had been filed, but a

tax return was received by the IRS on April 29, 2019; for the tax year 2011, as of March 17, 2019, no such return had been filed, but a tax return was received by the IRS on April 29, 2019; for the tax year 2012, as of March 17, 2019, no such return had been filed, but a tax return was received by the IRS on April 29, 2019; for the tax year 2015, as of March 17, 2019, no such return had been filed, but a tax return was received by the IRS on April 29, 2019; and for the tax year 2016, as of March 17, 2019, no such return had been filed, but a tax return was received by the IRS on April 29, 2019. (Item 5 (Account Transcripts attached to Response to Interrogatories); Item 3 (U.S. Individual Income Tax Returns))

There is a legal requirement to file a federal income tax return, and it is based upon an individual's gross income and other enumerated conditions. Once it is determined, under 26 U.S.C. § 7203, *Willful failure to file return, supply information, or pay tax*, 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 60501, the first sentence of this section shall be applied by substituting "felony" for "misdemeanor" and "5 years" for "1 year."

There is no evidence that Applicant made any efforts to contact the IRS until March 17, 2019 – nearly one year after his OPM interview; or to file his multi-year delinquent federal tax returns until April 29, 2019 – over one year after his OPM interview, and two weeks after the SOR was issued. While the federal income tax returns have now been filed, none of them were timely filed as required by law. The issues regarding the federal income tax returns have not been resolved.

SOR ¶ 1.c.: This refers to Applicant's failure to file his state income tax returns for the tax years 2010, 2011, 2012, 2013, 2015, and 2016. In his Supplemental Answer to the SOR, Applicant admitted that he had failed to timely file those state income tax returns (Item 3, at 1), but noted that had recently done so. The state department of revenue services confirmed that with respect to the tax year 2010, a tax return was received on April 30, 2019; for the tax year 2011, a tax return was received on April 30, 2019; for the tax year 2012, a tax return was received on April 30, 2019; for the tax year 2015, a tax return was received on April 30, 2019; and for the tax year 2016, a tax return was received on April 30, 2019. (Item 3 (State Individual Tax Returns))

There is no evidence that Applicant made any efforts to file his multi-year delinquent state tax returns until April 30, 2019 – all one year after the OPM interview and two weeks after the SOR was issued. While the state income tax returns have now been filed, none of them were timely filed as required by law. The issues regarding the state income tax returns have not been resolved.

SOR ¶ 1.d.: This is a bank-issued credit-card account with a \$22,507 credit limit and an unpaid balance of \$21,192 (Item 7, at 1; Item 8, at 6) Applicant admitted that he is indebted to the creditor, but contended that he has been making agreed-upon unspecified payments to the creditor since October 2017. (Item 2, at 1; Item 3, at 1) He failed to submit any documentation, such as a statement from the creditor agreeing to a repayment plan, cancelled checks, copies of money orders, a bank register, or receipts, to support his contention that he has an agreement and that he is making any payments to the creditor. In the absence of such documentation, I must conclude that the account has not been resolved, and is not yet in the process of being resolved.

SOR ¶¶ 1.e., 1.n., and 1.q.: These are three student-loan accounts with unpaid balances of \$5,410, \$1,319, and \$867 that were assigned to the Government. (Item 7, at 2-3) Applicant admitted that he is indebted to the creditor, but contended that he has been making agreed-upon unspecified payments to the creditor on all three accounts since October 2018. (Item 2, at 1; Item 3, at 1) He failed to submit any documentation, such as a statement from the creditor agreeing to a repayment plan, cancelled checks, copies of money orders, a bank register, or receipts, to support his contention that he has an agreement and that he is making any payments to the creditor. However, while those balances and the status of the accounts reported in Applicant's 2018 credit report are as alleged in the SOR, Applicant's 2019 credit report reflects that Applicant "pays account as agreed." (Item 6, at 3-4) Accordingly, I conclude that the accounts are in the process of being resolved.

SOR ¶¶ 1.f. and 1.s.: This is a bank-issued credit-card account with a high credit of \$5,325 that was charged off in January 2017. The account was sold or transferred to one collection agent and subsequently sold to another debt purchaser. Applicant's 2018 credit report indicates that the unpaid balance was \$5,410, and his 2019 credit report reflects an unpaid balance of \$4,797. (Item 8, at 6; Item 7, at 2; Item 6, at 3) Applicant admitted that he was indebted to the creditor, erroneously believing that there were two separate accounts, but contended that he has been making unspecified payments on the two accounts as agreed since December 2017. (Item 2, at 1-2; Item 3, at 1-2) The current owner of the account(s) submitted a payment history supporting Applicant's contention that payments have been routinely been made since December 2017, initially starting with \$30 payments, and increasing over time to \$34 payments. As of April 5, 2019, Applicant had made a total of \$443 in payments on the account. ((Item 2 (Letter and Account Ledger, dated May 2, 2019)) Applicant's 2019 credit report reflects that his last payment was made in June 2019. (Item 6, at 3) Accordingly, I conclude that the account(s) is in the process of being resolved.

SOR ¶ 1.g.: This is a credit-card account with a \$6,250 credit limit and an unpaid balance of \$4,334 that was charged off. (Item 8, at 7; Item 7, at 2) Applicant admitted that

he was indebted to the creditor, but contended that he had settled the account for an unspecified sum and resolved it in July 2018. (Item 2, at 1; Item 3, at 1) He failed to submit any documentation, such as a statement from the creditor agreeing to a repayment plan, cancelled checks, copies of money orders, a bank register, or receipts, to support his contention that he had an agreement and that he made any required payments to the creditor. However, while the status of the account reported in Applicant's 2018 credit report are as alleged in the SOR, Applicant's 2019 credit report reflects that the account was "paid for less than full balance," and it was considered "paid and closed." (Item 6, at 5) Accordingly, I conclude that the account has been resolved.

SOR ¶ 1.h.: This is a bank-issued credit-card account with a \$4,000 credit limit. While Applicant's 2018 credit report reflects that there was a past-due balance of \$4,052 and an unspecified amount had been charged off, his 2019 credit report reflects that \$4,277 had been charged off. (Item 7, at 2; Item 6, at 2) Applicant admitted that he was indebted to the creditor, but contended that he has been making unspecified payments on the account as agreed since November 2017. (Item 2, at 1; Item 3, at 1) The collection agent for the account submitted a payment history supporting Applicant's contention that payments have been routinely been made since November 2017, initially starting with \$30 payments, and increasing over time to \$33 payments. As of April 15, 2019, Applicant had made a total of \$516 in payments on the account. ((Item 2 (Letter and Account Ledger, dated May 2, 2019)) Applicant's 2019 credit report reflects that his last payment was made in August 2019. (Item 6, at 2) Accordingly, I conclude that the account is in the process of being resolved.

SOR ¶ 1.i.: This is a bank-issued charge account with a \$2,150 credit limit, and \$2,810 charged off and purchased by another lender. (Item 7, at 2; Item 6, at 2; Item 8, at 5) Applicant admitted that he was indebted to the creditor, but contended that he has been making unspecified payments on the account as agreed since March 2019. (Item 2, at 1; Item 3, at 1) The collection agent for the account submitted a payment history partially supporting Applicant's contention that payments have been routinely been made, but the commencement date was in December 2018, with \$15 payments. As of April 30, 2019, Applicant had made a total of \$75 in payments on the account. ((Item 2 (Letter and Account Ledger, dated April 30, 2019)) Applicant's 2019 credit report reflects that his last payment was made in July 2019. (Item 6, at 3) Accordingly, I conclude that the account is in the process of being resolved.

SOR ¶¶ 1.j. and 1.t.: This is a bank-issued charge account with a \$1,900 credit limit and past-due and unpaid balance of \$2,280 that was transferred to or purchased by another lender. (Item 7, at 4; Item 6, at 7; Item 8, at 9) Applicant admitted that he was indebted to the creditor, but contended that the two separate listings in the credit reports and the two separate allegations in the SOR referred to the same account, a contention that is correct. His most recent statement claimed that he had written to the original creditor to request payment arrangements. (Item 2, at 1-2; Item 3, at 1-2) He failed to submit a copy of his letter to the creditor requesting a repayment plan. Applicant did not

claim to have made any payments on the account since it was transferred in 2013. Accordingly, in the absence of necessary documentation, I conclude that the account has not been resolved, and is not yet in the process of being resolved.

SOR ¶ 1.k.: This is a bank-issued credit-card account with a \$1,500 credit limit and a past-due and unpaid balance of \$1,941. On an unspecified date, \$1,462 was charged off. (Item 7, at 2; Item 8, at 8; Item 6, at 6) Applicant admitted that he is indebted to the creditor, but contended that he has been making agreed-upon unspecified payments to the creditor since February 2018. (Item 2, at 1; Item 3, at 1) He failed to submit any documentation, such as a statement from the creditor agreeing to a repayment plan, cancelled checks, copies of money orders, a bank register, or receipts, to support his contention that he has an agreement and that he is making any payments to the creditor. In the absence of such documentation, I must conclude that the account has not been resolved, and is not yet in the process of being resolved.

SOR ¶ 1.l.: This is a bank-issued charge account with a \$1,600 credit limit and a past-due and unpaid balance of \$1,814 that was charged off. (Item 8, at 5; Item 6, at 4) Applicant admitted that he was indebted to the creditor, but contended that he had settled the account for an unspecified sum and resolved it in March 2019. (Item 2, at 2; Item 3, at 1) On April 30, 2019, the collection agent for the account submitted a statement that the account had been resolved and closed. ((Item 2 (Letter, dated April 30, 2019)) Applicant's 2019 credit report notes that the account was paid for less than full balance in March 2019 – before the SOR was issued. (Item 6, at 4) The letter from the creditor was attached to Applicant's Answer to the SOR. The account has been resolved.

SOR ¶ 1.m.: This is a bank-issued credit-card account with a \$1,000 credit limit and a past-due and unpaid balance of \$1,355. On an unspecified date, an unspecified amount was charged off. (Item 7, at 2) Applicant admitted that he is indebted to the creditor, but contended that he has been making agreed-upon unspecified payments to the creditor since May 2019. (Item 2, at 2; Item 3, at 1) He failed to submit any documentation, such as a statement from the creditor agreeing to a repayment plan, cancelled checks, copies of money orders, a bank register, or receipts, to support his contention that he has an agreement and that he is making any payments to the creditor. In the absence of such documentation, I must conclude that the account has not been resolved, and is not yet in the process of being resolved.

SOR ¶¶ 1.o. and 1.r.: This is a bank-issued charge account with a \$1,160 credit limit and an unpaid balance of \$1,074. In February 2017, \$1,112 was charged off. The account was transferred to or purchased by another lender. (Item 7, at 2-3; Item 6, at 7; Item 8, at 5, 11) Applicant admitted that he was indebted to the creditor, but contended that the two separate listings in the credit reports and the two separate allegations in the SOR referred to the same account, a contention that is correct. His most recent statement claimed that he had made unspecified payment arrangements with the original creditor with the initial payment made in May 2019. (Item 2, at 2; Item 3, at 2) He failed to submit any documentation, such as a statement from the creditor agreeing to a repayment plan, cancelled checks, copies of money orders, a bank register, or receipts, to support his contention that he has an agreement and that he is making any payments to the creditor.

In the absence of such documentation, I must conclude that the account has not been resolved, and is not yet in the process of being resolved.

SOR ¶ 1.p.: This is a bank-issued credit-card account with a \$2,000 credit limit and a past-due and unpaid balance of \$919. On an unspecified date, \$2,119 was charged off. (Item 7, at 3; Item 6, at 4) Applicant admitted that he was indebted to the creditor, but contended that he had settled the account for an unspecified sum and resolved it in February 2019. (Item 2, at 2; Item 3, at 1) He failed to submit any documentation, such as a statement from the creditor agreeing to a repayment plan, cancelled checks, copies of money orders, a bank register, or receipts, to support his contention that he had an agreement and that he made any payments to the creditor. Applicant's 2019 credit report notes that the account was paid off in February 2019 – before the SOR was issued. (Item 6, at 4) The account has been resolved.

Applicant's income has been relatively modest over the years. According to his federal income tax forms or the IRS Account Transcripts he furnished, his approximate adjusted gross income has been as follows: 2010: \$31,000; 2011: \$33,000; 2012: \$34,000; 2013: \$36,000; 2014: \$36,000; 2015: \$28,000; 2016: \$39,000; 2017: \$21,000; and 2018: \$51,000. It is not known what Applicant's current financial resources may be because he did not report his current net monthly income; monthly expenses; and any monthly remainder that might be available for discretionary spending or savings. There is no evidence of a budget. There is no evidence of financial counseling. In the absence of additional financial information, it remains difficult to determine if Applicant is currently in a better position financially than he had been.

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." (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)) 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." (Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.)

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." "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))

The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005))

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." (*Egan*, 484 U.S. at 531)

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." (See Exec. Or. 10865 § 7) 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 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.

The SOR alleged six unfiled federal and state income tax returns as well as 17 delinquent accounts totaling approximately \$63,236. Applicant contended that some of the SOR allegations duplicated other SOR allegations, and his contentions were correct. With respect to Applicant's failure to timely file his federal and state income tax returns for the tax years 2010, 2011, 2012, 2013, 2015, and 2016, AG ¶ 19(f) has been established. With respect to the allegation that he had not timely filed his federal income tax return for the tax year 2009, AG ¶ 19(f) has not been established. With respect to his failure to satisfy his various delinquent debts, AG ¶¶ 19(a) and 19(c) have been established, but there is no evidence that Applicant has been unwilling to satisfy his debts regardless of an ability to do so, and 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;

(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;

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

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

AG ¶¶ 20(b), 20(d), and 20(g) minimally apply, but none of the other conditions apply. 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)). The nature, frequency, and recency of Applicant’s continuing financial difficulties, and his failure to voluntarily and timely resolve his delinquent accounts for several years, make it rather easy to conclude that it was not infrequent and it is likely to remain unchanged, much like it has been for several years. Applicant has attempted to attribute his financial problems to his periods of unemployment; being in a relationship with someone who was authorized to use “a couple” of his accounts; and having insufficient funds. He did not specify how those issues impacted his finances. Due to Applicant’s self-described “laziness,” as well as not having much income, he failed to timely file federal and state income tax returns for the tax years 2010, 2011, 2012, 2013, 2015, and 2016.

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. (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)). Applicant completed his e-QIP in November 2016; underwent his OPM interview in March 2018; responded to interrogatories in February 2019; and the SOR was issued in April 2019. Each step of the security clearance review process placed him on notice of the significance of the financial issues confronting him. With respect to his delinquent debts,

according to Applicant, only three of those debts were addressed in 2017, after the e-QIP was completed and before he met with the OPM investigator. Eight other delinquent debts were reportedly addressed after that OPM interview. With respect to his unfiled federal and state income tax returns, Applicant did not contact the IRS until March 2019, and he failed to file those delinquent returns until April 29-30, 2019 – approximately three weeks after the SOR was issued.

The DOHA Appeal Board has observed:

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).

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). 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).

The Appeal Board clarified that even in instances where an applicant has purportedly corrected his or her federal tax problem, and the fact that the applicant is now motivated to prevent such problems in the future, does not preclude careful consideration of an applicant's security worthiness in light of his or her longstanding prior behavior evidencing irresponsibility including a failure to timely file federal income tax returns. (See ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. June 15, 2016) (characterizing "no harm, no foul" approach to an Applicant's course of conduct and employed 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).

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.

It should be noted that the Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. (ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)) In this instance, there is evidence, supported by documentation, that Applicant took some good-faith corrective actions with respect to his delinquent debts before he was interviewed by the OPM investigator. There are also substantial unverified comments by Applicant that he resolved or started to resolve some delinquent accounts, but he offered no documentation to support his contentions. His contentions regarding the status of some accounts, and his unverified comments claiming that he had taken certain actions, without documents, to support his claims, are insufficient to reflect good-faith actions. 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).

There is no evidence of financial counseling or a budget. In the absence of additional financial information, it remains difficult to determine if Applicant is currently in a better position financially than he had been. Applicant’s actions, or inaction, under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment. See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

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

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. 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).

There is some evidence in favor of mitigating Applicant's financial concerns. Applicant is a 40-year-old employee of a defense contractor. He has been serving as an outside electrician with his current employer since May 2017. A 1998 high school graduate, Applicant received a technical certification in electrical business in 2016. Applicant made a few verified modest payments on some of his delinquent accounts, generally commencing in late 2017. Applicant contended that some of the SOR allegations duplicated other SOR allegations, and his contentions were correct. He finally filed his federal and state income tax returns for the tax years 2010, 2011, 2012, 2013, 2015, and 2016 on April 29-30, 2019 – approximately three weeks after the SOR was issued.

The disqualifying evidence under the whole-person concept is simply more substantial. Applicant failed to timely file his federal and state income tax returns for the tax years 2010, 2011, 2012, 2013, 2015, and 2016 until April 29-30, 2019. He also had a number of delinquent accounts that were ignored by him until at least 2017. Applicant claimed that he had paid off some of the creditors, or entered into repayment agreements with other creditors. However, with rare exceptions, because of his failure to submit documentation associated with his delinquent accounts, such as receipts, cancelled checks, or bank account transactions, to support his contentions that some accounts have been settled, paid off, or otherwise resolved; or that agreed settlements have actually proceeded to resolution; or that payments have actually been made to his creditors, it is difficult to assess the true situation, for we have mostly Applicant's unverified comments claiming that he had taken certain actions.

In ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008), the Appeal Board addressed a key element in the whole-person analysis in financial cases stating:

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.

While Applicant contended that he took certain actions with respect to his delinquent debts, there is very little documentary evidence to indicate that many of those accounts have been addressed. He finally filed his delinquent income tax returns after he received the SOR. Applicant's current track record is poor to fair at best. 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., 1.f. through 1.i., 1.l., and 1.p.:	For Applicant
Subparagraphs 1.b. through 1.e., 1.j., 1.k., 1.m. through 1.o., and 1.q.:	Against Applicant
Subparagraph 1.r.:	Duplicates subparagraph 1.o.
Subparagraph 1.s.:	Duplicates subparagraph 1.f.
Subparagraph 1.t.:	Duplicates subparagraph 1.j.

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