



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 18-02404
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

02/06/2020

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant has not mitigated the security concerns raised by his late income tax filings, his more than \$50,000 in past-due taxes and other debts, his termination for cause from employment with the Department of Defense (DOD) in 2014, and his lack of complete candor on December 2013 and June 2017 security clearance applications (SCAs). Eligibility for a security clearance is denied.

Statement of the Case

On March 29, 2019, 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, and Guideline E, personal conduct. 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.

On May 11, 2019, Applicant responded to the Guideline F allegations and to the Guideline E allegations in SOR ¶¶ 2.a and 2.g, and he requested a decision based on the written record in lieu of a hearing. His response was incomplete for his failure to respond to SOR ¶¶ 2.b through 2.f. On August 22, 2019, Applicant submitted a supplemental response in which he answered all the allegations and again requested a decision on the written record. On October 31, 2019, the Government submitted a File of Relevant Material (FORM), including documents identified as Items 1 through 13. The Defense Office of Hearings and Appeals (DOHA) forwarded a copy of the FORM to Applicant on November 1, 2019, and instructed him that any response was due within 30 days of receipt. Applicant received the FORM on November 13, 2019. No response was received by the December 13, 2019 deadline. On January 15, 2020, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file on January 21, 2020. Items 1 through 13 included in the FORM are admitted into the record as exhibits for the Government.

Findings of Fact

The SOR alleges under Guideline F that Applicant failed to timely file federal income tax returns for tax years 2010 through 2017 (SOR ¶ 1.a); owes \$18,240 in delinquent federal income taxes for tax years 2010 through 2013 (SOR ¶ 1.b); failed to file his state income tax returns for tax years 2015 through 2017 (SOR ¶ 1.c); owes \$7,785 on a state income tax lien filed against him in 2016 (SOR ¶ 1.d); owes judgment debts filed against him in 2016 for \$4,944 (SOR ¶ 1.e) and in 2017 for \$3,954 (SOR ¶ 1.f); and owes charged-off or collection debts on seven other accounts totaling \$28,138 (SOR ¶¶ 1.g-1.m). Under Guideline E, Applicant allegedly was terminated from federal employment in September 2014 following an investigation for time-and-attendance abuse from January 2012 through at least January 2013 (SOR ¶ 2.a); was terminated from a defense-contractor job in approximately August 2015 for poor performance (SOR ¶ 2.b); falsified material facts on a December 17, 2013 Electronic Questionnaires for Investigations Processing (hereafter SCA) by deliberately failing to disclose that he had failed to timely file federal income tax returns for tax years 2010 through 2012 and owed delinquent income taxes (SOR ¶ 2.c); and falsified material facts on a June 23, 2017 SCA by not disclosing his terminations from federal employment (SOR ¶¶ 2.d and 2.e) and his federal-contractor employment (SOR ¶ 1.f) and by denying whether, in the last seven years, he had failed to file or pay federal, state, or other taxes when required by law or ordinance (SOR ¶ 2.g). (Item 1.)

When Applicant answered the SOR allegations, he admitted that he failed to timely file federal and state income tax returns for the years alleged but added that all his federal tax returns are filed. He admitted owing the federal and state income tax delinquencies, explaining that he plans to establish payment arrangements for his federal taxes once he is gainfully employed. He admitted owing the judgment debts, but indicated that he had reduced the balance of the judgment in SOR ¶ 1.e to \$1,500. He admitted defaulting on the

other accounts in the SOR except for the \$8,041 allegedly owed the Defense Finance and Accounting Service (DFAS) (SOR ¶ 1.h). Applicant admitted the Guideline E allegations, but indicated that he was unjustly terminated from his federal employment and had filed an appeal “to fight allegations” of being absent without leave and of conduct unbecoming a federal employee; that his poor performance with a defense contractor was due to poor training; and that his nondisclosure of his failure to file timely tax returns on his December 2013 SCA “was an oversight.” Applicant admitted without comment SOR ¶¶ 2.e and 2.f, which respectively allege falsification of his June 2017 SCA for failing to disclose that he had been fired from his federal and defense-contractor employments. (Items 2-3.) Regarding his negative response on his June 2017 SCA to the tax filing or tax payment inquiry, Applicant’s initial response was “I admit. However, done by accident without intent.” (Item 2.) In his supplemental response, Applicant simply answered, “I admit.” (Item 3.) After considering the FORM, I make the following findings of fact:

Applicant is 52 years old and unmarried. There is no evidence in the record indicating that he is currently employed. He seeks a security clearance so that he can work as a “proprietary systems specialist” for a defense contractor, who continues to sponsor him for a security clearance despite the passage of more than two years since he submitted his SCA in June 2017. (Item 4.)

Applicant has taken some college classes but has yet to earn a college degree. (Items 4-6.) He paid for his college classes in part with a federal student loan obtained for \$17,560 in January 2003. (Items 11-13.)

While working as a help-desk agent for a federal contractor, Applicant completed an SCA on March 12, 2009. He reported financial delinquencies on three consumer credit accounts totaling \$1,769 and a \$14,000 tax debt to the Internal Revenue Service (IRS). He indicated that he had arrangements in place to repay his smallest debt of \$187 and his IRS debt, and that he would establish repayment plans for his other credit-card delinquencies. He indicated on his SCA that another department of the U.S. government had granted him a confidential clearance in August 2007 (Item 6), which he now believes was a grant of eligibility for a public trust position. (Item 7.)

In May 2010, Applicant resigned from his employment with a federal contractor to work as a civilian information technology asset manager for the DOD in June 2010. (Items 4- 6.) In 2013, Applicant was investigated for claiming 200 work hours on his time sheets between January 2012 and January 2013 that could not be accounted for. In approximately May 2014, he was placed on administrative leave from his position with the DOD, and in September 2014, he was involuntarily terminated for being absent without leave and for conduct not becoming a federal employee (SOR ¶ 2.a). Applicant unsuccessfully appealed his termination (Item 7), and in April 2015, the DFAS sought to recoup \$8,017 in unspecified overpayments, most likely wages to which he was not entitled. As of June 2017, Applicant owed a collection balance of \$8,041 to DFAS (SOR ¶ 1.h). (Item 13.) Applicant denies any wrongdoing with regard to his time and attendance and disputes the validity of the debt. (Items 2-3, 7.)

On December 17, 2013, Applicant completed and certified to the accuracy of an SCA on which he responded negatively to the following inquiry: “**In the past seven (7) years** have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?” (SOR ¶ 2.c). (Item 5.) Available account transcripts from the IRS show that he filed his federal income tax return for tax year 2010 in December 2011, after the IRS inquired about his non-filing in November 2011. He was assessed a penalty of \$251 in February 2012 for late filing, and, in March 2013, the IRS issued a notice of intent to levy for nonpayment of taxes owed. IRS records also show that he had not yet filed his federal income tax returns for tax years 2011 and 2012 as of his December 2013 SCA. Applicant was apparently granted a DOD top secret clearance in March 2014. (Items 4, 7.)

After he was fired from his federal employment in September 2014, Applicant was unemployed through May 2015. In June 2015, he began working as a service-desk analyst with a defense contractor. (Item 4.) In August 2015, he was involuntarily terminated from that job for unsatisfactory performance. (Item 7.)

Applicant was unemployed from September 2015 to February 2016. He supported himself on his savings and unemployment compensation. (Item 7.) Applicant worked as a contract service-desk analyst from February 2016 to August 2016, when his contract ended, and the company decided to hire a different contractor. Applicant supported himself on savings and on unemployment compensation received from at least November 2016 through April 2017. In June 2017, Applicant received a job offer from a defense contractor contingent on him obtaining a DOD security clearance. (Item 7.)

On June 23, 2017, Applicant completed and certified to the accuracy of an SCA. Regarding the employment inquiries, Applicant stated that his federal employment ended for the following reason: “My Contract had ended for my agreement.” He responded “No” to inquiries concerning whether he had been fired from that employment; quit after being fired; left by mutual agreement following charges of allegation of misconduct; or left by mutual agreement following notice of unsatisfactory performance (SOR ¶ 2.d). He also responded “No” to an inquiry concerning whether he had received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in that job (SOR ¶ 2.e). As to why he lost his job with a federal contractor in August 2015, Applicant stated that he left because his contract ended, and he denied that he was fired; quit after being told that he would be fired; left by mutual agreement following charges or allegations of misconduct; or left by mutual agreement following notice of unsatisfactory performance (SOR ¶ 1.f). (Item 4.)

Applicant also responded “No” on his June 2017 SCA to an inquiry concerning whether he had failed to file or pay federal, state, or other taxes within the last seven years (SOR ¶ 1.g). (Item 4.) Available IRS account transcripts reflect Applicant had belatedly filed his federal income tax returns for tax years 2010 through 2012, but he had not filed his federal income tax returns for tax years 2014, 2015, or 2016 as of June 2017. His delinquent federal income tax returns for those tax years were filed late in October 2017. (Item 7.) No account transcript was submitted for tax year 2013, although Applicant admits that he filed late for that tax year. (Items 2-3.) Applicant did not disclose on his June 2017

SCA a state tax lien of \$7,785 (SOR ¶ 1.d) that was filed against him on April 13, 2016. (Item 8.)

On his June 2017 SCA, Applicant indicated that a financial judgment of approximately \$3,000 had been entered against him in December 2016 (SOR ¶ 1.f) after he fell behind on his payments due to unemployment. He explained that he had set up payment arrangements for the debt. (Item 4.) Available court records show that a judgment was filed against Applicant by the creditor in November 2016 and that a consent judgment was entered for \$3,880 in August 2017. (Item 10.) Applicant also listed on his June 2017 SCA three other delinquencies of \$900 (SOR ¶ 1.j), \$6,000 (SOR ¶ 1.g), and \$500 (not alleged in SOR) that he indicated he would begin to repay when he started working. (Item 4.) Applicant did not disclose on his SCA that a \$4,347 affidavit judgment had been entered against him in January 2016 (SOR ¶ 1.e). (Item 9.)

As of June 30, 2017, Applicant owed two consumer-credit judgments of \$4,459 (SOR ¶ 1.e) and \$3,954 (SOR ¶ 1.f); charged-off balances of \$13,388 on an unsecured loan (not \$6,000 as reported on his SCA) (SOR ¶ 1.g), \$8,041 to the DFAS (SOR ¶ 1.h), and \$2,254 on a credit-card account (SOR ¶ 1.i); and collection debts of \$1,090 on a credit-card account (SOR ¶ 1.j), \$306 for storage fees (SOR ¶ 1.m), and three medical debts (not alleged in the SOR) of \$101, \$97, and \$38. Applicant's federal student-loan debt had accrued to \$40,517, and his account was rated as current. (Item 13.)

On December 19, 2017, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). About his employment history, Applicant explained that he was unemployed since September 2016, but was in a defense contractor's system "as an employee awaiting security clearance to start physically working." Applicant claimed that he left his defense-contractor employment in August 2015 after his contract ended and that he left his job with the DOD in September 2014 because "he did not interview to renew employment for his position" and that the position was moved to another location. Applicant denied that he had any difficulties with any of his previous employers. When asked about the adverse financial information on his credit record, Applicant did not deny the debts except for the DFAS debt, which he was disputing. He claimed that his supervisor had signed off on his hours worked, and that the badge in-and-out system was faulty. Applicant explained that he had some credit cards that spiraled out of control, and that he obtained loans (SOR ¶¶ 1.e and 1.g) to repay his debts but then could not pay them. He attributed his delinquencies to unemployment and indicated that he would begin to repay them once he began working. (Item 7.)

Applicant was interviewed by a different investigator for the OPM on January 31, 2018. He indicated that he had seasonal employment for two weeks in 2017 but that he was again unemployed. When confronted about his termination from his defense-contractor position in August 2015, Applicant stated that his supervisor would make him work on tasks that were beyond his knowledge and familiarity, and he expressed his belief that he should have received training. When asked to explain his removal from his DOD position for being absent without leave and for conduct unbecoming a federal employee, Applicant stated that the allegations were untrue and that he never would steal time from

an employer. He stated that he filed an appeal of his termination that was still pending. On March 5, 2018, Applicant told the OPM investigator that he intends to file for bankruptcy to address his “overwhelming” debts, and had completed pre-counseling sessions. (Item 7.)

The OPM investigator re-interviewed Applicant on May 24, 2018. Applicant reported that he began working in retail in December 2017. He indicated that, due to oversight, he had not disclosed on his June 2017 SCA that he had been terminated from his defense-contractor employment in August 2015. He explained that he had not reported the circumstances or his termination on from his DOD employment because he wanted to disclose the information in person to an investigator. (Item 7.)

On June 8, 2018, Applicant was interviewed by another OPM investigator. Regarding his finances, Applicant stated that he did not include all of his debts on his SCA because he had only a handful of account statements, “was going by memory for the rest of his debts,” and figured he would discuss the rest in person. Applicant indicated that he was still disputing the DFAS debt (SOR ¶ 1.h). He asserted that he had filed a timely appeal of his termination, but that his initial attorney “several months later” referred him to another attorney, who told him it was too late to file an appeal. On June 13, 2018, the OPM investigator obtained from Applicant “copies of documents pertaining to financial issue[s] caused by employment issue.” (Item 7.) Those documents were not included with the FORM.

When re-interviewed on August 8, 2018, Applicant indicated that he was no longer working for the retailer because he found another job. He did not provide any details about his new employment or the date that he left his previous employer. When confronted by the OPM investigator about the state tax lien filed against him in April 2016 for \$7,785 (SOR ¶ 1.d). Applicant acknowledged that he was aware of the lien for unpaid state taxes and explained that he had insufficient withholdings in 2012. He indicated that he had started repayment with the state but then dropped the payment arrangements without informing the state when he became unemployed. When he tried to reinstate the repayment in 2016, the state demanded half of his tax debt, and he could not afford it. He stated that the situation would not recur because he would make sure he had enough taxes withheld from future earnings. (Item 7.)

By way of interrogatories, DOHA provided Applicant with summarized reports of his interviews with the OPM investigators. Applicant affirmed on February 25, 2019, the summarized reports of his interviews with OPM investigators were accurate, and he made no corrections or comments in that regard. In response to an interrogatory inquiry concerning whether he had ever knowingly submitted an inaccurate time card or failed to submit a leave form for time that he was not at work during his federal employment from June 2010 through September 2010, Applicant answered “No” and added, “I have disputed the claims alleged against me. I filed an appeal in October of 2014.” In response to inquiries concerning whether he had failed to file federal and state income tax returns on time, Applicant indicated that he had failed to timely file both federal and state returns for tax years 2015, 2016, and 2017, but listed only “2018” as currently unfiled. Applicant admitted that he owed back taxes to the IRS of \$18,240 (SOR ¶ 1.b) for tax years 2010

through 2013, and that he owed back state taxes (no amount listed). He answered “No” to whether he currently had any federal or state tax liens against him for delinquent taxes. (Item 7.)

With his response to DOHA interrogatories, Applicant submitted IRS account transcripts for tax years 2010 through 2012 and 2014 through 2017. Relevant tax information as reported by the IRS is set forth in the following table.

Tax Year	Filing Date	Adjusted Gross Income (AGI)	Balance due
2010	December 19, 2011, after November 22, 2011 IRS inquiry for non-filing; penalty assessed February 13, 2012 for late filing.	\$47,600 as single	Notice of intent to levy issued March 25, 2013; \$1,920 due as of March 11, 2019.
2011	April 1, 2014, after November 21, 2012 IRS inquiry for non-filing; penalty assessed April 28, 2014 for late filing.	\$45,533 as single	\$6,395 as of March 11, 2019
2012	April 1, 2014; penalty assessed April 28, 2014, for late filing.	\$44,941 as single	\$6,053 as of March 11, 2019
2014	October 12, 2017	\$46,795 as head of household	April 15, 2015 \$478 of refund credited to tax year 2005 and \$93 credited to tax year 2006; \$0 balance owed as of November 6, 2017.
2015	October 12, 2017	\$28,699 as head of household	\$349 refund credited to tax year 2006 on April 15, 2016.
2016	October 12, 2017; no evidence of extension to October 2017.	\$25,163 as head of household	\$1,482 refund credited to tax year 2006 on April 15, 2017.
2017	Claims filed, IRS has no record of filing as of February 2019.	AGI not available	Not available.

In response to the March 29, 2019 SOR, Applicant indicated on May 11, 2019, that all federal income tax returns had been filed through 2018. He admitted that he had not timely filed state income tax returns for tax years 2015 through 2017 but did not indicate whether those tax returns have been filed. He admitted that he owed past-due federal income taxes of \$18,240 and state income taxes of \$7,785, and the consumer-credit delinquencies totaling \$24,051 alleged in SOR ¶¶ 1.f through 1.m. Applicant denied that he owed the DFAS \$8,041. He indicated with respect to the \$4,944 judgment balance (SOR ¶ 1.e) that he was repaying the debt “due to garnishment.” (Item 2.) Court records of the judgment proceedings indicate that a writ of garnishment was issued for the debt in August 2018 and that the garnishee reported being employed as of October 1, 2018. (Item 9.) On August 22, 2019, Applicant stated about the judgment debt that he now owes \$1,500. (Item 3.) As of October 31, 2019, Equifax reported a \$1,533 debt balance with the creditor and a last payment in May 2019. No progress was being reported by Equifax on the consumer-credit debts in SOR ¶¶ 1.f through 1.i. The storage debt in collection in 2017 was no longer on his credit report, but there is no evidence showing it has been paid. (Item 11.)

On August 22, 2019, Applicant admitted that he was terminated from his DOD employment in 2014 and defense contractor employment in 2015, but contended that he was unjustly terminated from his federal job and that poor training was a factor in the loss of his defense-contractor employment. He admitted that he failed to disclose that he failed to timely file federal income tax returns for tax years 2010, 2011, and 2012 on his December 2013 SCA, but claimed that it was “an oversight.” He admitted that he had deliberately failed to disclose relevant information about his employment terminations and about his delinquent tax returns and tax liabilities on his June 2017 SCA. (Item 3.)

Applicant also indicated on August 22, 2019, that he plans “to set up reasonable payment arrangements [for his federal tax delinquency] once gainfully employed.” (Item 3.) There is no evidence that Applicant has made any payments toward his past-due federal and state income taxes. The record before me contains scant information about Applicant’s income or expenses since 2017, so any reasonable assessment cannot be made as to when Applicant will be able to address the outstanding delinquencies on his credit record.

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. . . .

An applicant is not required to be debt free, but is required to manage his finances in a way as to exhibit sound judgment and responsibility. 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.

Guideline F security concerns are established when an individual fails to comply with his tax-filing obligations whether or not any taxes are owed. Available IRS tax transcripts, Applicant's admissions, or both establish that he filed his federal income tax returns late for tax years 2010 through 2017 (SOR ¶ 1.a). Applicant admitted that he failed to timely file state income tax returns for tax years 2015 through 2017 (SOR ¶ 1.c). Given his state required him to report his adjusted gross income from his federal return on his state return, it is unlikely that he filed timely state returns for tax years 2010 through 2014 as well. However, the SOR does not allege timely failure to file state returns for tax years 2010 through 2014, and no information is in the record about his state tax filings for those years, so it was not considered.

Available IRS account transcripts show that, as of March 2019, Applicant owed \$1,920 for tax year 2010, \$6,395 for tax year 2011, and \$6,053 for 2012. A tax transcript for tax year 2013 was not provided for review. Applicant indicated in February 2019 that he owed \$18,240 in past-due federal income taxes for tax years 2010 through 2013 (SOR ¶ 1.b). In April 2016, a state tax lien of \$7,785 was filed against him for delinquent income taxes (SOR ¶ 1.d), reportedly due to insufficient tax withholdings for tax year 2012. Applicant also does not dispute that he defaulted on the accounts totaling almost \$29,000 in SOR ¶¶ 1.e-1.g, and 1.i-1.m. He contests the validity of the \$8,041 debt to the DFAS (SOR ¶ 1.h), asserting that his supervisor signed his time sheets and that he did not claim time not worked. Under ¶ E3.1.14 of the Directive, the Government has the burden of presenting evidence to establish controverted facts. The DFAS debt appears on Applicant's June 30, 2017, August 22, 2018, and October 31, 2019 credit reports as a collection debt. The Appeal Board held in ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010) that a credit report is sufficient to meet the government's burden of producing evidence of delinquency:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

Based on the facts in this case, three disqualifying conditions under AG ¶ 19 apply:

(a) inability to satisfy debts;

(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 burden is on Applicant to mitigate the negative implications for his financial judgment raised by his late tax filings and delinquent debts. Application of the aforesaid disqualifying conditions triggers consideration of the potentially mitigating conditions under AG ¶ 20. One or more of the following conditions may apply in whole or in part:

(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.

Concerning AG ¶ 20(a), Applicant filed his federal income tax return for tax year 2010 in December 2011 and his federal income tax returns for tax years 2011 and 2012 in April 2014. While those late tax filings were rectified some time ago, he then did not file his federal tax returns for 2014, 2015, or 2016 until October 2017, and, as of February 2019,

the IRS had no record of him having filed an income tax return for tax year 2017. Applicant provided no evidence confirming that his state income tax returns for tax years 2015 through 2017 have been filed. It cannot be reasonably concluded that his tax filing problems occurred so long ago to no longer be of concern for his security clearance eligibility. Moreover, Applicant has yet to make any payments toward his tax delinquencies or his other debts in the SOR with the exception of the judgment debt in SOR ¶ 1.e, which is being repaid through garnishment. Applicant's debts are 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)). AG ¶ 20(a) does not apply.

Applicant attributes his financial problems to unemployment and low income, which are factors that could trigger AG ¶ 20(b). After he was fired for cause from his DOD job, Applicant was unemployed from October 2014 through May 2015. He then worked as a defense contractor only through August 2015, when he was terminated from that employment for poor performance. He was unemployed from September 2015 to February 2016, and again from August 2016 until December 2017, with the exception of two weeks in 2017. He collected unemployment compensation during part of that time. He worked in retail starting in December 2017 until he found a new job, sometime before his August 8, 2018 interview. He was employed as of October 2018, as reflected in court records for the judgment debt in SOR ¶ 1.e. When he responded to the SOR in August 2019, Applicant indicated that he plans to set up reasonable repayment arrangements for his federal income tax delinquency once he is gainfully employed. Applicant was again unemployed. It is unclear when and whether he resigned, was laid off, or involuntarily terminated. Available income information for Applicant shows his annual adjusted gross income was in the mid-\$40,000s before he was fired from his DOD employment. His adjusted gross income for 2015 and 2016 was \$28,699 in 2015 and \$25,163 in 2016, when most of the consumer-credit debts became delinquent. Low income and unemployment were clearly factors that led to the delinquencies, but Applicant cannot fully benefit from AG ¶ 20(b) where his financial problems resulted from his job loss caused by his own misconduct.

I have to consider whether Applicant acted in a responsible manner when dealing with his financial difficulties. See ISCR Case No. 05-11366 at 4, n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether Applicant maintained contact with his creditors. Applicant's wages were garnished starting in the fall of 2018 to reduce the balance of the judgment in SOR ¶ 1.e to \$1,553 as of June 2019, but he made no efforts to arrange for repayments of his other delinquencies, which include a \$168 cable-television debt (SOR ¶ 1.k) and a \$146 electric-utility debt (SOR ¶ 1.l). There is no evidence that he remained in contact with his creditors to inform them of his financial situation. AG ¶ 20(b) is not fully established.

AG ¶ 20(c), AG ¶ 20(d), and AG ¶ 20(g) warrant some consideration because Applicant belatedly filed federal income tax returns for tax years 2010 through 2012 and 2014 through 2016. Although there is no evidence to corroborate a tax filing for tax year

2013, there is no apparent reason why he would continue to ignore his tax-filing obligation for that tax year, given he has caught up on his returns for the three tax years preceding and following 2013. He reported that he owes federal income taxes for tax year 2013. Even where an applicant has corrected his tax problems, and is motivated to present such problems in the future, the administrative judge is not precluded from considering an applicant's trustworthiness in light of longstanding behavior evidencing irresponsibility. See ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015). As recently noted by the DOHA Appeal Board, "A person who fails repeatedly to fulfill his or her obligations, such as filing tax returns when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information." See ISCR Case No. 18-01045 at 3 (App. Bd. May 14, 2019), citing ISCR Case No. 17-03978 at 3-4 (App. Bd. Mar. 6, 2019). Without proof that he has filed a federal income tax return for tax year 2017 or that he has filed his delinquent state income tax returns, the security concerns raised by his years of failure to comply with such a significant obligation are not fully mitigated.

While some consideration of AG ¶ 20(d) is warranted because of the reduction in the balance of the judgment debt in SOR ¶ 1.e from \$4,944 to \$1,553 by involuntary garnishment, there is no indication that payments are currently being made. The most recent payment of record for that debt is May 2019. Furthermore, involuntary garnishment to repay a judgment debt does not reflect the same good faith as had Applicant arranged to make payments. Applicant has demonstrated no progress toward resolving his other delinquencies, including his past-due income taxes.

Concerning AG ¶ 20(e), Applicant submitted no documentation in response to the FORM to indicate the debt is not his responsibility. He does not deny that he was terminated from his DOD job for reasons related to time and attendance, and it is reasonable to infer that the DFAS is seeking to recoup the wages overpaid to Applicant. His uncorroborated assertions that the debt is invalid are not enough to disprove the debt's legitimacy in light of other evidence indicating that he was terminated for cause from the DOD for time-and-attendance issues. He has made no effort to repay that debt. The financial considerations security concerns are not sufficiently mitigated.

Guideline E: Personal Conduct

The security concern about personal conduct is articulated in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigations or adjudicative processes.

Security significant personal conduct concerns arise because of Applicant's time-and-attendance abuse that led to his termination from employment with the DOD in September 2014 (SOR ¶ 2.a), and his lack of candor on his June 2017 SCA about the

reasons for why that employment ended. He falsely denied on his SCA that he had received any discipline when the evidence shows that he was investigated, placed on leave, and then removed for misconduct (SOR ¶ 2.e). He claimed on his SCA that he left the job because “[his] contract had ended for [his] agreement” (SOR 2.d).

Applicant’s termination from his defense-contractor job for poor performance (SOR ¶ 2.b) is an employment matter between him and the company that does not in and of itself implicate personal conduct issues where there is no evidence that he engaged in questionable judgment, was dishonest, or intentionally failed to comply with rules and regulations. A favorable finding is consequently warranted as to SOR ¶ 2.b. However, Applicant attempted to conceal from the DOD that he left the job under unfavorable circumstances by responding negatively on his June 2017 SCA about whether he was fired, quit after being told he would be fired, left by mutual agreement following charges or allegations of misconduct, or left by mutual agreement following notice of unsatisfactory performance (SOR ¶ 2.f).

The evidence also shows that Applicant was not candid on either his December 2013 SCA (SOR ¶ 2.c) or his June 2017 SCA (SOR ¶ 2.g) about his failure to timely file income tax returns and pay taxes. Both times, he responded “No” to an inquiry into whether, in the past seven years, he had failed to file or pay federal, state, or other taxes. In Applicant’s supplemental response to the SOR in August 2019, he admitted that he had answered the tax inquiry negatively but indicated that it “was an oversight,” which suggests that it was inadvertent rather than intentional.

The Appeal Board has explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant’s intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant’s intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shift to the applicant to present evidence to explain the omission. ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

As reported by the IRS and not contested by Applicant, he filed his federal income tax return for tax year 2010 in December 2011. Not only had he filed that return late, but he had not yet filed his federal income tax returns for tax years 2011 or 2012 as of his December 2013 SCA. As of his June 2017 SCA, Applicant had not filed federal income tax returns for tax years 2014, 2015, or 2016, and yet he denied on his June 2017 SCA any failure to comply with his tax filing or tax payment obligations in the last seven years. If he was acting in good faith and simply made an inadvertent error or mistake in December

2013, he would have disclosed his noncompliance with his tax obligations on his June 2017, and he did not. The evidence leads me to conclude that he intentionally concealed his tax issues from his December 2013 SCA and his tax issues and adverse employment information from his June 2017 SCA.

Under AG ¶ 16, disqualifying condition 16(a) is established because of Applicant's falsifications of his SCAs. AG ¶ 16(d) applies because of his employment termination from the DOD for misconduct related to time-and-attendance issues. The applicable disqualifying conditions provide:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(4) evidence of significant misuse of Government or other employer's time or resources.

One or more of the following mitigating conditions under AG ¶ 17 may apply in whole or in part:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of the mitigating conditions apply in this case. His concealment of his tax issues was repeated. Although he was removed from his DOD position in September 2014, more than five years ago, he lied on his June 2017 SCA about the circumstances under which his employment with the DOD ended. In December 2017, during his first interview with an OPM investigator, Applicant falsely stated that he left his job with the DOD because he did not want to interview to renew his employment, and he claimed that his position was moved to another location. He attributed the DFAS debt to a faulty badge system. He persists in claiming he was wrongfully terminated because he would never steal time from an employer. His present denials of any culpability in that regard undermine his case for mitigation of his SCA falsifications because it casts doubt about his reform and whether his representations can reasonably be relied on. The personal conduct security concerns are not adequately mitigated.

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 his conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Applicant requested a decision on the written record, so it was incumbent on him to provide the evidence that might extenuate or mitigate the poor judgment raised by his removal from federal service, his unresolved delinquencies, his repeated noncompliance with his income tax filing and payment obligations, and his deliberate misrepresentations. In response to DOHA interrogatories, he provided IRS tax transcripts for several years, showing that most of his delinquent federal tax returns have been filed. That information is not enough to overcome the security concerns that persist about several aspects of his behavior. 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). After applying the disqualifying and mitigating conditions to the evidence presented, I conclude that it is not clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant.

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.m:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Subparagraphs 2.c-2.g:	Against Applicant

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 or continue eligibility for a security clearance for Applicant. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge