DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 18-02822
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Carroll Connelley, Esq., Department Counsel
For Applicant: *Pro se*

02/07/2020

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Decision

_____

HARVEY, Mark, Administrative Judge:

Applicant gambled for years, resulting in financial losses that contributed to his two decisions to file for bankruptcy. He continued to gamble up to the night before his hearing when he lost $3,000. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On July 3, 2016, Applicant completed and signed a Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On April 8, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether his clearance should be granted, continued, denied, or revoked.

Specifically, the SOR set forth security concerns arising under Guideline F (financial considerations). (HE 2) On May 1, 2019, Applicant responded to the SOR and requested a hearing. (HE 3)

On November 21, 2019, Department Counsel was ready to proceed. On December 4, 2019, the case was assigned to me. On December 19, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for January 15, 2020. (HE 1A) The hearing was held as scheduled.

During the hearing, Department Counsel offered six exhibits; there were no specific objections to particular exhibits; and all proffered exhibits were admitted into evidence. (Tr. 26-29; GE 1-6) I granted Applicant's request for additional time until January 31, 2020 for him to submit documentation. (Tr. 56) On January 24, 2020, I received the transcript of the hearing. Applicant provided one post-hearing exhibit composed of multiple documents. (Applicant Exhibit (AE) A) Department Counsel did not object to my consideration of AE A. The record closed on January 31, 2020. (Tr. 56)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

In Applicant's SOR response, he admitted all of the allegations. (HE 3) He also provided extenuating and mitigating information. His admissions are accepted as findings of fact.

Applicant is a 74-year-old security officer employed by a DOD contractor. (Tr. 6, 9; GE 1) Applicant has been working since he was nine years old when he had a newspaper route. (Tr. 17, 21) He graduated from high school in 1963. (Tr. 6) He completed 18 months of college. (Tr. 7) He has never served in the U.S. military. (Tr. 7-8) In 1971, he married, and his daughter is 43 years old. (Tr. 8) He and his spouse are hard workers who sometimes worked multiple jobs. (Tr. 22)

Applicant has been employed for 65 years, including 54 years with the same employer, even though the name of his company had changed over the years. (Tr. 17, 21; HE 3; AE A) He has worked for 19 years in security. (Tr. 9; HE 3) He emphasized his reliability and ability to contribute to accomplishing his employer's mission. (Tr. 18, 20) He never missed a day in school because of being sick. (Tr. 18) He never missed a day of work due to sickness until a few weeks ago. (Tr. 21) He is an honest person, and he promised to tell the truth. (Tr. 18-19) There is no evidence of security violations, improper disclosure of classified information, or that Applicant compromised national security.

Financial Considerations

The SOR alleges the following financial allegations:

SOR ¶ 1.a alleges Applicant filed for bankruptcy under Chapter 13 of the Bankruptcy Code in 2000. His unsecured nonpriority debts were discharged under Chapter 13 in 2005. Most of the reason for his bankruptcy related to unemployment and underemployment in 2000 or 2001 for himself or his spouse or both. (Tr. 17) About $12,000 to $15,000 of his financial problems related to Applicant's gambling. (HE 3; GE 2 at 11) Applicant said his bankruptcy debts were mostly from "credit card[s] and a little gambling charges." (Tr. 36; HE 3) He learned during financial counseling that gambling was not a good idea, and he regretted not following that advice. (Tr. 42)

SOR ¶ 1.b alleges Applicant filed for bankruptcy under Chapter 13 of the Bankruptcy Code in September 2015. About $45,000 of his bankruptcy debt resulted from gambling. (GE 2 at 11) Applicant listed $92,000 for credit cards and cash advances, and some of that debt was due to gambling. (Tr. 38) He filed bankruptcy because he lost money on a real estate property, and Applicant or his wife or both lost their employment and had to settle for lower paying employment. (Tr. 39-40) His secured claims were $147,854; his priority claims were $20,588; and his nonpriority unsecured claims totaled $124,652. (GE 5 at 38) In his SOR response, Applicant said he and his spouse paid $123,975 to the trustee, and he had 15 payments of $2,755 totaling $41,325 remaining in his payment plan. (HE 3) He said he never missed a payment to the trustee. He worked multiple jobs in order to fund payments to the bankruptcy trustee. (Tr. 23) He received financial counseling, which included an online class on gambling. (Tr. 41-42; GE 2 at 11) He completed the bankruptcy one year early by paying all of the creditors. (Tr. 23) In August 2019, Applicant's unsecured nonpriority debts were discharged under Chapter 13. (AE A)

SOR ¶ 1.c alleges Applicant is indebted to the Internal Revenue Service (IRS) for $2,877 for tax years 2014 to 2017. Applicant's tax transcript for tax year 2013 shows adjusted gross income of about $163,000 and taxable income of about $73,000. (Tr. 53; GE 2 at 19) Applicant does not prepare his own federal income tax returns, and he did not know the basis for the deduction or deductions that reduced his taxable income by about $90,000 in tax year 2013. (Tr. 53-54) In his 2015 bankruptcy filing, he indicated he owed $12,339 to the IRS for tax years 2013 and 2015. (GE 5 at 22) In June 2018, the IRS wrote that Applicant owed $1,566 for tax year 2017. (HE 3) On April 24, 2019, the IRS said Applicant owed $2,660 for tax years 2015 and 2017. (HE 3) His federal taxes for tax years 2013 and 2014 were paid through his Chapter 13 bankruptcy. (HE 3) Applicant's January 22, 2020 IRS tax transcript shows that he paid the IRS $2,755 on May 6, 2019, and $1,000 on October 30, 2019, resolving all delinquent tax debts except for tax year 2018. (HE 3; AE A) The tax debts for years before 2018 are resolved because the IRS applies tax payments to the oldest tax debt first, and the $1,000 payment was applied to tax year 2018. Applicant's April 8, 2019 and January 22, 2020 IRS income tax transcripts provided the information reflected in the following table. Amounts above $1,000 are rounded to nearest thousand dollars.

Tax Year	Adjusted Gross Income	Taxable Income	Account Balance on January 22, 2020	Balance When Return Filed	Exhibit
2013	$164,000	$73,000	$0	$5,000 owed	AE A; GE 2 at 19
2014	$186,000	$99,000	$0	$7,000 owed	AE A; GE 2 at 23
2015	$191,000	$121,000	$0	$3,000 owed	AE A; GE 2 at 26
2016	$170,000	$112,000	$0	$800 surplus	AE A; GE 2 at 28
2017	$163,000	$118,000	$0	$500 owed	AE A; GE 2 at 30

SOR ¶ 1.d alleges Applicant is indebted to a state tax authority for $1,676. In his 2015 bankruptcy filing, he indicated he owed $6,284 to the state tax authority for tax years 2013 and 2015. (GE 5 at 22) On January 29, 2019, the state tax authority wrote that tax returns for tax years 2013 to 2017 were timely filed. (GE 2 at 31) Each tax year from 2013 to 2017, he owed from $1,934 to $3,280 when his tax returns were filed. (GE 2 at 31) As of January 29, 2019, all state taxes were paid except for $1,656 owed for tax year 2017. (HE 3; GE 2 at 31-32) On January 22, 2020, the state tax authority wrote that his state taxes were all paid. (AE A)

SOR ¶ 1.e alleges Applicant continues to gamble. Applicant said he had been gambling for 35 years. (Tr. 19) Applicant's July 12, 2017 Office of Personnel Management personal subject interview summary of interview states:

> In [the] 1990's or early 2000's he may have gone [to casinos] two times per week, but for the most part he has gone once per week on the weekends with his wife. He continues to go once per week because this is his only source of entertainment.
>
> Over the last fifteen to eighteen years, Subject and his wife have spent from $200-300 to $800-900 per week. They would take cash advances from credit cards, which [were] tough to pay back. As a result, they had about $45,000 in credit card debt for this most recent bankruptcy. . . . For his first bankruptcy, he may have had about $12,000 to $15,000 in gambling debt included in that. (GE 2 at 11)

Applicant said no one in security or his company told him he was not allowed to gamble or that it was illegal for him to gamble. (Tr. 16, 20) He used gambling to relieve stress. (GE 2 at 11) Applicant said he was in the "process of curtailing the gambling scene." (HE 3) He currently gambles about once every week or two. (Tr. 34) He usually stays at the casino for two or three hours. (Tr. 35) He typically spends $300 to $400 gambling per session. (Tr. 35) He decided to continue gambling because he did not enjoy other hobbies as much as gambling. (Tr. 42-43) The night before his hearing, he gambled and lost $3,000. (Tr. 43) He had the cash to pay for his gambling loss, and he did not need to charge his loss on his credit cards. (Tr. 45-46) He is willing to stop gambling if this decision indicates he should stop gambling. (Tr. 52) Otherwise, he intends to continue gambling as long as he is employed. (Tr. 51-52)

Applicant indicated he and his spouse's gross monthly pay totals $13,300. (HE 3) Their net monthly pay is about $9,500. (Tr. 46-49) He currently has a net monthly remainder of about $5,000. (Tr. 49) He has $1,400 in his checking account and $22 in his savings account. (Tr. 50) He estimated that he owed the federal government $6,000 for tax year 2018. (Tr. 50-51) He said he might owe the federal government additional taxes when he files his tax return for tax year 2019. (Tr. 51) When he gambled after his second bankruptcy filing, he did not take cash advances from credit cards, and he limited his gambling to the amount of funds in his bank accounts. (GE 2 at 11)

Applicant concluded his statement at his hearing commenting:

> I'm sorry. I'm sorry I gambled. I'm sorry I did both bankruptcies. I was not very smart. At the time, it was fun. At the time now, it ain't fun. At the time coming up, it ain't going to be fun, the way it looks. So I've worked all my life and I've tried to do the best I can both ethically and honorably. But again, I failed. So sorry. (Tr. 57)
>
> And again, I'm not the smartest man in the world. But I'm just a hard worker. And I try to do my best. And I try to help people. But the gambling was part of it. The credit cards [were] the other part of it. The whole situation is, it's dire now. And like I said, I'm 74. I'm having physical and health problems. (Tr. 60)

After his hearing, Applicant said he was quitting gambling "cold turkey." (AE A) He sent gambling coupons and discounts from casinos that he would be able to use if he gambled. (AE A) He also provided two IRS Forms W-2G, Certain Gambling Winnings, showing he received income on January 7, 2020, of $4,266, and on January 14, 2020, of $$1,250. (AE A)

Applicant described a variety of physical and medical problems that make it difficult for him to continue to work. (Tr. 21, 23-24, 65) Nevertheless, he indicated he wanted to continue to work for his current employer, a DOD contractor. He did not indicate his financial problems were due to paying for medical treatments.

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." *Id*. at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. 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 it is based, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "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 guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). 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). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

> 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. (emphasis added)

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.

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(b) unwillingness to satisfy debts regardless of the ability to do so"; "(c) a history of not meeting financial obligations"; "(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"; "(h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts"; and "(i) concealing gambling losses, family conflict, or other problems caused by gambling." The record establishes AG ¶¶ 19(b), 19(c), 19(f), 19(h), and 19(i).

AG ¶ 20 lists financial considerations mitigating conditions which may be applicable in this case:

> (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;
>
> (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;
>
> (f) the affluence resulted from a legal source of income; 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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

> Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. *See* Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan*, *supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant and his spouse had periods of unemployment and underemployment. Real estate values declined around 2008 causing a reduction in the value of his real estate property. These are circumstances beyond his control that adversely affected his finances. However, these circumstances are insufficiently detailed to prove he acted responsibly under the circumstances for both bankruptcies. There are not clear indications his financial problems are under control.

SOR ¶ 1.a alleges Applicant filed for bankruptcy under Chapter 13 of the Bankruptcy Code in 2000. His unsecured nonpriority debts were discharged under Chapter 13 in 2005. Applicant said unemployment and underemployment caused his financial problems, and he believed it was necessary to file for protection under Chapter 13.

The U.S. Courts Website, http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-13-bankruptcy-basics states:

> A chapter 13 bankruptcy is also called a wage earner's plan. It enables individuals with regular income to develop a plan to repay all or part of their debts. Under this chapter, debtors propose a repayment plan to make installments to creditors over three to five years. If the debtor's current monthly income is less than the applicable state median, the plan will be for three years unless the court approves a longer period "for cause." (1) If the debtor's current monthly income is greater than the applicable state median, the plan generally must be for five years. In no case may a plan provide for payments over a period longer than five years. 11 U.S.C. § 1322(d). During this time the law forbids creditors from starting or continuing collection efforts.

The bankruptcy court assessed Applicant and his spouse's ability to pay their creditors and established a payment plan. There is no reason to believe Applicant was dishonest in his bankruptcy filings, and there is a presumption the bankruptcy court set an appropriate payment scheme. Applicant successfully completed his payment plan. His creditors were paid to the extent warranted by law and the Chapter 13 process. He received a fresh financial start in 2005. 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) 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)). Underemployment and unemployment were the primary causes of the first Chapter 13 bankruptcy, and Applicant's completion of the five-year payment plan shows adherence to duty or obligation. He established his good faith with respect to his first Chapter 13 bankruptcy. I conclude Applicant mitigated SOR ¶ 1.a.

SOR ¶ 1.b alleges Applicant filed for bankruptcy under Chapter 13 of the Bankruptcy Code in 2015. His unsecured nonpriority debts were discharged under Chapter 13 in August 2019. Applicant mentioned unemployment and underemployment as a cause of his financial problems; however, his adjusted gross income (AGI) in 2013, was $164,000; in 2014, his AGI was $186,000; and in 2015, his AGI was $191,000. He said about $45,000 of the debt addressed in the bankruptcy came from gambling losses. His income was increasing and well above the national mean, and he failed to establish that he lived within his means and did not spend excessively. He receives some mitigating credit for paying his creditors under his Chapter 13 plan; however, he failed to provide sufficient evidence that he acted reasonably and prudently when he accumulated so much debt leading up to his bankruptcy filing in 2015. He did not establish his good faith, as defined by the Appeal Board in ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004).

SOR ¶¶ 1.c and 1.d allege federal and state tax problems for tax years 2014 to 2017. When he filed his federal tax returns, he owed or had a surplus in the following amounts: 2014 ($7,000 owed); 2015 ($3,000 owed); 2016 ($800 surplus); and 2017 ($500 owed). The Chapter 13 bankruptcy trustee paid his delinquent taxes for 2014 as a priority debt. By January 2020, all of the tax debts alleged in the SOR were paid. SOR ¶ 1.d alleges he owed delinquent state taxes in the amount of $1,676. Applicant also under-withheld his state income taxes for several years and then was unwilling or unable to pay his state income taxes when due. On January 22, 2020, the state tax authority said his state taxes were paid.

Applicant's SOR does not allege that he estimated he owed the federal government $6,000 for tax year 2018. He said he might owe the federal government when he files his tax return for tax year 2019. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

> (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). *See also* ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR

Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). The non-SOR allegations will not be considered except for the five purposes listed above.

Applicant has corrected his federal income tax problems that were alleged in the SOR; however, even in instances where an "[a]pplicant has purportedly corrected [his or her] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant's security worthiness in light of [his or her] longstanding prior behavior evidencing irresponsibility" including a failure to timely file federal income tax returns. *See* ISCR Case No. 15-01031 at 3 and n. 3 (App. Bd. June 15, 2016) (characterizing "no harm, no foul" approach to an Applicant's course of conduct and employing an "all's well that ends well" analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR). AG ¶ 20(g) applies in part. All of Applicant's tax returns are filed, and he has made substantial payments over the years to the IRS and state tax authority.

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)).

In sum, Applicant's gambling contributed to his decision to file for bankruptcy in 2015. Applicant lost $3,000 gambling the night before his hearing despite having clear notice in SOR ¶ 1.e that his continued gambling raised a security concern. He had less than $2,000 in his savings and checking accounts at the time of his hearing. He did not establish he was unable to make greater progress resolving his delinquent debts. Applicant failed to establish mitigation of financial considerations security concerns.

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 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.

Under AG ¶ 2(c), "[t]he 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. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 74-year-old security officer employed by a DOD contractor. He completed 18 months of college. Applicant and his spouse are hard workers who sometimes worked multiple jobs. Applicant has been employed for 65 years, including 54 years with the same employer. He has worked for 19 years in security. He emphasized his reliability and ability to contribute to accomplishing his employer's mission. He is an honest person. Applicant is an excellent employee who made substantial contributions to his company and the national defense over a lengthy career. There is no evidence of security violations, improper disclosure of classified information, or that Applicant compromised national security. *See* ISCR Case No. 18-02581 at 4 (App. Bd. Jan. 14, 2020) (noting admissibility of "good security record," and commenting that security concerns may nevertheless not be mitigated).

The Appeal Board's emphasis on security concerns arising from tax cases is instructive and binding on administrative judges. *See* ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016) (reversing grant of security clearance and stating, "His delay in taking action to resolve his tax deficiency for years and then taking action only after his security clearance was in jeopardy undercuts a determination that Applicant has rehabilitated himself and does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation's secrets."). *See also* ISCR Case No. 14-03358 at 3, 5 (App. Bd. Oct. 9, 2015) (reversing grant of a security clearance and stating, "A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information.").

The primary problems here relate to Applicant's gambling, his 2015 bankruptcy filing, and his history of failing to timely pay his federal and state income taxes in full when due. Applicant engaged in gambling for 35 years, and he admitted it was his favorite hobby. He knew that his gambling raised a security concern, and he lost $3,000 gambling the night before his hearing. He did not establish he was unable to stop gambling and to make greater progress sooner resolving his tax issues. His actions under the Appeal Board jurisprudence are too little, too late to fully mitigate security concerns. Applicant's failure to "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 [his] reliability, trustworthiness, and ability to protect classified or sensitive information." AG ¶ 18.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. *See Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Unmitigated financial

considerations security concerns lead me to conclude that grant or continuation of a security clearance to Applicant is not warranted at this time.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b through 1.e:	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 Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

_____
Mark Harvey
Administrative Judge