



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



In the matter of:)
)
 ---) ISCR Case No. 19-00985
)
 Applicant for Security Clearance)

Appearances

For Government: L. M. Apostol, Esquire, Department Counsel
For Applicant: *Pro se*

01/23/2020

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 February 27, 2018, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On April 26, 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 a sworn statement dated May 15, 2019, Applicant responded to the SOR, and he elected to have his case decided on the written record in lieu of a hearing. (Item 1) A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on July 16, 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 July 19, 2019. His response was due on August 18, 2019. Applicant timely responded to the FORM and submitted a response and several documents attached to it. Those materials were admitted without objection. The case was assigned to me on September 6, 2019. However, it was later determined that Applicant had separated from employment on August 29, 2019, and as DOHA had lost jurisdiction because of his separation, the case file was closed and returned. Applicant eventually obtained new employment (and a sponsor), so the matter was reopened on January 13, 2020. The case was reassigned to me on January 16, 2020.

Findings of Fact

In his Answer to the SOR, Applicant admitted, sometimes with brief comments, nearly all of the SOR allegations pertaining to financial considerations (SOR ¶¶ 1.c. through 1.h., and 1.i.). 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 37-year-old employee of a defense contractor. It is unclear what his current position is. He had been serving as a welder with his former employer from January 2018 until August 2019. He also previously served in similar full-time or part-time positions with other employers from December 2014 until January 2018. He enlisted in the U.S. Navy Reserve (Inactive) in July 2000, and he served until he was honorably discharged in January 2012. He is a 2000 high school graduate. He attended one college for ten months and received a certification as a pharmacy technician in 2013, and he attended another university at several locations around the country for over two years, but has not received a degree. He has never held a security clearance. He was married in 2011, and divorced in 2013. He has been cohabiting since 2015. He has three children, born in 2004, 2016, and 2017.

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated April 11, 2018); Item 4 (Equifax Credit Report, dated March 18, 2019); Item 5 (Enhanced Subject Interview, dated November 2, 2018); Item 2 (SF 86),

dated February 27, 2018); Item 1 (Applicant's Answer to SOR, dated May 15, 2019); and Response to the FORM, undated).

Applicant noted that he was unemployed from February 2012 until April 2013 while he was attending college; from July 2013 until April 2014, after he quit a job because he was enrolled in college and could not balance both the school and work hours required, and he relocated from one state to another. He was also unemployed from February 2017 until June 2017, after he resigned in anticipation of a furlough. (Item 2, at 16-17, 20-21) While he did not attribute his financial problems to any factors other than having insufficient funds, he did mention that he had been irresponsible. (Item 5, at 6)

On November 2, 2018, Applicant was interviewed by an investigator from the U.S. Office of Personnel Management (OPM). During the interview, he claimed that after February 2018, he had engaged the professional services of a particular national law firm to assist him in resolving his delinquent debts by negotiating reduced balances for potential settlement, and removing certain accounts from his credit report. He said that he was paying that firm \$129 per month to fulfill its obligations. He also stated that he has received financial counseling and debt consolidation services, but he failed to identify by whom those services were being provided, and when those services took place. (Item 5, at 4-6) Applicant failed to submit any documentation regarding the reported professional relationship with the national law firm, or to confirm any of the reported activities that may have been taken on his behalf.

The SOR alleged a failure to timely file his 2016 federal income tax return, as well as ten delinquent accounts totaling nearly \$31,500, as set forth as follows:

SOR ¶ 1.a. is an automobile insurance account with an unpaid balance of \$302 that was placed for collection in 2016. (Item 3, at 8; Item 5, at 6) During his OPM interview, Applicant claimed he had paid it off in April 2018. (Item 5, at 6) However, in his Answer to the SOR, he claimed the account was paid in full as of March 2018. (Item 1, at 4) One of the attachments to his Response to the FORM is a letter from the collection agent for the creditor, dated August 2, 2019, attesting to the fact that the account has been paid in full. The account has been resolved.

SOR ¶ 1.b. is an unspecified type of account with an unpaid balance of \$3,370 that was charged off and placed of collection in 2010, and eventually purchased by another lender. (Item 3, at 8) Neither Applicant nor his national law firm had any knowledge about the account, and it is no longer listed in his 2019 credit report. (Item 5, at 6; Item 1, at 4) The account remains unresolved.

SOR ¶ 1.c. is a charge account with a furniture store with an unpaid balance of \$610 that was charged off and placed for collection in 2010. (Item 3, at 9; Item 5, at 6) Applicant admitted the allegation, but subsequently submitted a document from the creditor entitled "credit card payment arrangements," dated August 13, 2019, calling for payments of \$329 to commence on September 5, 2019, and continue each month thereafter until the unpaid balance, by August 2019, increased to nearly \$1,302, is paid in full. (Letter, dated August 13, 2019, attached to Applicant's Response to the FORM)

During the ensuing five months, Applicant failed to submit any documentation, such as a cancelled check, a bank register, a credit card statement, or a receipt from the creditor to confirm that he has been in compliance with those arrangements. In the absence of such documentation, it is impossible to determine if Applicant is yet in the process of resolving the account.

SOR ¶ 1.d. is a medical account from the emergency room at a local hospital with an unpaid balance of \$518 that was placed for collection in 2016. (Item 3, at 9; Item 5, at 6) During his OPM interview, Applicant acknowledged that the account had not yet been resolved and that his national law firm was negotiating with the creditor. In his Answer to the SOR, he admitted the allegation, but noted that there was a repayment arrangement under which Applicant would pay the creditor \$100 starting June 1, 2019, and the account would be paid in full by the end of that month. (Item 1, at 4) Things apparently changed, for Applicant subsequently submitted a receipt for \$120 that was paid on August 2, 2019, supposedly leaving an unpaid balance of \$190. (Receipt, dated August 2, 2019, attached to Applicant's Response to the FORM) Applicant failed to explain the changes in the repayment arrangements, and with the exception of the receipt for \$120, he failed to submit any documentation, such as a cancelled check, a bank register, a credit card statement, or a receipt from the creditor to confirm that he has been in compliance with those revised arrangements. Nevertheless, it appears that the account is in the process of being resolved.

SOR ¶ 1.e. is a gymnasium or fitness center account with an unpaid balance of \$624 that was placed for collection in 2013. (Item 3, at 10; Item 5, at 6) In his Answer, Applicant admitted the allegation, but noted that there was a repayment arrangement under which Applicant would pay the creditor a total of approximately \$312, split into two payments starting June 7, 2019, and the account would be paid in full by the end of that month. (Item 1, at 4) Applicant subsequently submitted a receipt, dated August 2, 2019, which stated that the account is now "settled in full." (Receipt, dated August 2, 2019, attached to Applicant's Response to the FORM) The account has been resolved.

SOR ¶ 1.f. is an automobile loan that Applicant co-signed for a friend with an unpaid balance of \$12,801 that was placed for collection in 2013. (Item 3, at 10; Item 5, at 6) Applicant admitted the allegation, but noted that his co-signer – the primary debtor – on the loan has already commenced payment arrangements as of February 2018. (Item 1, at 4) Applicant failed to submit any documentation, such as a copy of the repayment arrangements, cancelled checks, a bank register, credit card statements, a statement from the co-signer, or receipts from the creditor to confirm that one or both co-signers have been in compliance with those arrangements. In the absence of such documentation, it is impossible to determine if the account is yet in the process of being resolved.

SOR ¶ 1.g. is a telephone account with an unpaid balance of \$987 that was placed for collection in 2018. (Item 3, at 10; Item 5, at 5) Applicant initially claimed that the issue first arose in 2015, but admitted the allegation, and indicated that the national law firm was trying to negotiate a potential settlement amount. (Item 5, at 5; Item 1, at 4) In his Response to the FORM, Applicant stated that the collection agent advised him that the

account had been taken from them and forwarded to another collection agency, and that the creditor was unable to furnish him information regarding the new collection agent, or give him a written note of their conversation. Applicant failed to submit any documentation, including reports from the national law firm, or correspondence from him or the national law firm to the creditor or collection agent, or back to them. The account is not yet in the process of being resolved.

SOR ¶ 1.h. is a school loan or grant with an unpaid balance of \$3,018 that was charged off in 2013 for which Applicant was responsible when he failed to finish college. (Item 3, at 11; Item 4, at 2; Item 5, at 5) He admitted the allegation, and he acknowledged that the account remains unresolved. (Item 1, at 4; Response to the FORM)

SOR ¶ 1.i. is a child support indebtedness or arrearage with an unpaid balance of \$605. He was delinquent in his payments in April, May, and June 2018. (Item 3, at 11; Item 4, at 2; Item 5, at 5) In his Answer to the SOR, Applicant denied the allegation and claimed that the account has been in good standing and current as of April 2018. (Item 1, at 4) His current monthly support obligation is \$521. As of July 29, 2019, his balance to the payee – the mother of his first child – is zero. (Case Summary Information, dated July 29, 2019, attached to Applicant's Response to the FORM) The account has been resolved.

SOR ¶ 1.j. is an automobile loan on a vehicle worth approximately \$26,867 that was repossessed in 2016 leaving an unpaid balance of \$8,576 that was charged off. (Item 3, at 11; Item 4, at 1; Item 5, at 4) He admitted the allegation, and he acknowledged that the account remains unresolved. (Item 1, at 4; Response to the FORM)

SOR ¶ 1.k. refers to Applicant's failure to timely file his 2016 federal income tax return. (Item 5, at 4) Applicant denied the allegation, claiming that he had filed his tax return in December 2018, and that he was making monthly \$200 payments to the Internal Revenue Service (IRS). (Item 1, at 4) He failed to submit documentation, such as an IRS account transcript or a copy of his income tax return to indicate the date when the income tax return was actually filed. Although he discussed with the OPM investigator his failure to timely file the income tax return because he didn't have his W-2s; reported that he owed the IRS approximately \$9,000 in unpaid taxes; and that he intended to consult with a tax relief representative in the near future, the SOR did not allege those unpaid taxes, and that fact is considered unalleged conduct. (Item 5, at 4) Applicant submitted an extract of his Installment Agreement with the IRS as part of his Response to the FORM, and while it does not expressly state when the federal income tax return was filed, it does refer to an unpaid balance of nearly \$8,933, including over \$1,255 in interest and penalties as of July 10, 2019, and a \$200 payment having been made on June 17, 2019. (Installment Agreement, dated July 10, 2019, attached to Applicant's Response to the FORM)

As noted above, Applicant's SOR does not allege that he owed federal income taxes. 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. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). Applicant's unpaid federal income taxes, associated with his failure to timely file his 2016 federal income tax return, will not be considered except for the five purposes listed above.

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 other than Applicant unverified comments referring to it. 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. Sept. 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.

Applicant failed to timely file his 2016 federal income tax return, and he had ten delinquent accounts totaling nearly \$31,500. He claimed that his failure to timely file the federal income tax return was because he didn't have his W-2s, and he had insufficient funds to maintain his accounts in a current status. As of the date the SOR was issued, with the possible exception of returning his child support arrearage back up to zero, he had not resolved any of those delinquent accounts, and he failed to provide documentary proof regarding the date he finally filed his federal income tax return. AG ¶¶ 19(a), 19(c), and 19(f) 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; and

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

AG ¶ 20(b) minimally applies, 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, as well as his failure to timely file his 2016 federal income tax return, cause me to conclude that his financial problems were not infrequent and they are likely to continue in the future. While he did not attribute his financial problems to any factors other than having insufficient funds, he did mention that he had been irresponsible.

During his OPM interview, Applicant claimed that after February 2018, he had engaged the professional services of a particular national law firm to assist him in resolving his delinquent debts by negotiating reduced balances for potential settlement, and removing certain accounts from his credit report. He also stated that he has received financial counseling and debt consolidation services, but he failed to identify by whom those services were being provided, and when those services took place. Applicant failed to submit any documentation regarding those reported professional relationships, or to confirm any of the reported activities that may have been taken on his behalf.

As noted above, the first document-supported activity between Applicant and a creditor took place on or about June 1–7, 2019, and actual document-supported payments to creditors were scheduled to occur on June 1, 2019, June 7, 2019, and August 2, 2019, with anticipated payments to one creditor scheduled to commence on September 5, 2019. 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). In this instance, Applicant completed his SF 86 in February 2018; underwent his OPM interview in November 2018; 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. There is no verified evidence that Applicant took any steps to engage his various creditors before the SOR was issued. With respect to his unfiled 2016

federal income tax return, there is no evidence that Applicant took any action to contact the IRS until well after that tax return was required to be filed.

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. Jun. 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. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)). In this instance, there is no evidence, supported by documentation, that Applicant took any good-faith corrective actions with respect to his delinquent debts before the SOR was issued. There are some unverified comments by Applicant that he started to resolve some delinquent accounts before the SOR was issued, 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. Jun. 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 37-year-old employee of a defense contractor. Although it is unclear what his current position is, he had been serving as a welder with his former employer from January 2018 until August 2019. He also previously served in similar full-time or part-time positions with other employers from December 2014 until January 2018. He enlisted in the U.S. Navy Reserve (Inactive) in July 2000, and he served until he was honorably discharged in January 2012. He is a 2000 high school graduate. He attended one college for ten months and received a certification as a pharmacy technician in 2013, and he attended another university at several locations around the country for over two years, but has not received a degree. Applicant finally addressed some of his creditors, made some minimum payments, and filed his 2016 federal income tax return.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. In addition to his failure to timely file his 2016 federal income tax return, Applicant had ten delinquent accounts totaling nearly \$31,500, as alleged in the SOR. Moreover, although not alleged in the SOR, Applicant also owed the IRS approximately \$9,000 in unpaid taxes associated with that tax year. As of the date the SOR was issued, he had not resolved any of those delinquent accounts, and he failed to provide documentary proof regarding the date he finally filed his federal income tax return.

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.

Aside from Applicant's unverified claims regarding his delinquent debts and his failure to timely file his 2016 federal income tax return, there is very little documentary evidence to indicate that Applicant's delinquent accounts have been addressed. Applicant's current track record is poor 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
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	For Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ROBERT ROBINSON GALES
Administrative Judge