



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 ---) ISCR Case No. 19-02166
)
 Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esquire, Department Counsel
For Applicant: *Pro se*

02/21/2020

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 April 8, 2013, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (2013 SF 86). On December 12, 2016, he submitted another Questionnaire for National Security Positions (2016 SF 86). On an unspecified date, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued him a set of interrogatories. He responded to those interrogatories on May 22, 2019. On August 30, 2019, the DOD CAF issued a Statement of Reasons (SOR) to him, under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (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 October 17, 2019, Applicant responded to the SOR, and requested an in-person hearing before an administrative judge. However, on November 21, 2019, he submitted another sworn statement, and this time he elected to have his case decided on the written record in lieu of a hearing. (Item 2) 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 December 19, 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 January 10, 2020. His response was due on February 2, 2020. Applicant responded to the FORM and submitted a response with several documents attached to it. Those materials were admitted without objection. The case was assigned to me on February 14, 2020. The record closed on February 14, 2020.

Findings of Fact

In his Answers to the SOR, Applicant initially admitted most of the SOR allegations, with brief comments, but he eventually changed some of his positions, and admitted only some of the SOR allegations pertaining to financial considerations (SOR ¶¶ 1.a., 1.b., 1.d., and 1.g.). 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:

Background

Applicant's current employment status is unclear. He is reported to be a 41-year-old employee of a defense contractor. While Department Counsel stated that Applicant has been serving in an unspecified position with an identified defense contractor since March 2017, there is no evidence to indicate when he first started working for that contractor, or what his current position might be. In February 2020, he self-reported that he is a full-time employee with a locks and locksmith security company. He has also been self-employed as the owner of a technical company where he has worked part-time since March 2013. With the exception of one relatively brief period of unemployment from October 2011, when he was terminated from a position, until January 2012, he served in a variety of full-time positions with various other companies since April 2006. (Item 3, at 11-17; Item 7, at 4-6; Response to the FORM)

It is unclear if he is a high school graduate. He attended a community college for two years, and while he earned some college credits, he did not receive a degree. Department Counsel stated that he had been granted eligibility for a position of public trust in August 2013, but Applicant merely referred to an unspecified clearance to work in

a federal building on that date. (Item 3, at 33) He has never served with the U.S. military. He has never been married. He has two children, born in 2007 and 2011.

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated March 10, 2017); Item 5 (Responses to Interrogatories, dated May 22, 2019); Item 7 (Enhanced Subject Interview, dated November 9, 2017); Item 3 (2016 SF 86), dated December 12, 2016); Item 2 (Applicant's Answers to SOR, various dates); and Response to the FORM, dated February 8, 2020.

When Applicant completed his 2016 SF 86 in December 2016, he reported that he had one issue associated with his failure to timely file his federal income tax return for the tax year 2015. He denied that there were any delinquent accounts. (Item 3, at 34-36) On November 9, 2017, Applicant was interviewed by an investigator from the U.S. Office of Personnel Management (OPM). During the interview, he acknowledged his failure to timely file his federal income tax return for the tax year 2014 as well. After he denied having any delinquent debts, upon being confronted by the investigator, Applicant acknowledged having some delinquent accounts but continued to deny having any knowledge of the vast majority of the accounts identified by the investigator. He indicated that he would look into the identified debts, and if he owes the particular debt(s), he will make payment arrangements. He attributed his financial difficulties to contractors who were not paying him in a timely manner to enable him to maintain his accounts in a current status; he was too busy to file his income tax returns; and his inability to obtain necessary tax information to enable him to file his income tax returns. (Item 7, at 7-10; Item 5, at 2)

The SOR alleged a failure to timely file his federal income tax returns for a multi-year period, as well as seven delinquent accounts totaling \$21,417, as set forth as follows:

SOR ¶ 1.a. refers to Applicant's failure to timely file his federal income tax returns for the tax years 2014, 2015, 2017, and 2018. (Item 5, at 2; Item 7, at 7-8) Applicant admitted the allegation. (Item 2) Attached to his Response to the FORM, he submitted copies of his individual income tax returns for the tax years 2014 (undated), 2015 (dated January 22, 2020), 2017 (dated January 22, 2020), and 2018 (undated). Other than the dates on some of the income tax forms, he failed to submit documentation, such as an IRS account transcript, to indicate the dates when the income tax returns were actually filed. Nevertheless, even accepting the dates appearing on the individual income tax returns as accurate, it appears that the income tax returns for the alleged tax years were not timely filed.

SOR ¶ 1.b. refers to Applicant's estimated \$15,000 indebtedness to the U.S. Treasury for delinquent income taxes for the tax years 2014 through 2018. He admitted the allegation and indicated that the situation was caused by spreading himself too thin and failing to take care of his personal things while focusing on contractor jobs. (Item 2; Item 5, at 3-5) On February 8, 2020, he stated that he "will . . . be setting up a monthly payment arrangement with the [Internal Revenue Service] (IRS)," but he did not assert

that any payments had already been made by him, and he did not submit any documents to indicate that he or anyone on his behalf had contacted the IRS to establish an installment agreement. The delinquencies remain unresolved.

SOR ¶ 1.c. refers to an unspecified type of bank account with an unpaid balance of \$219 that was placed for collection in 2017, and eventually purchased by another lender. (Item 6, at 7) During his OPM interview, Applicant denied any knowledge of the account, but stated that he would make payment arrangements if he determines that he owes the debt. (Item 7, at 8) He took no action until after the SOR was issued, but finally paid the creditor an unspecified amount to reduce the balance to zero. (Letter, dated October 24, 2019, attached to the Response to the FORM) The account has been resolved.

SOR ¶ 1.d. is a medical account from an ambulance company for one of his children with an unpaid balance of \$1,344 that was placed for collection in 2016. (Item 6, at 5) During his OPM interview, Applicant denied any knowledge of the account, but stated that he would make payment arrangements if he determines that he owes the debt. (Item 7, at 9) In his Answer to the SOR, he acknowledged that the bill was associated with one of his children, and he stated that he would address the issue. (Item 2) As of the date the record closed, he did not assert that any payments had already been made by him. The account remains unresolved.

SOR ¶ 1.e. refers to an unspecified type of account with an unpaid balance of \$232 that was placed for collection in 2017. (Item 6, at 5) During his OPM interview, Applicant denied any knowledge of the account, but stated that he would make payment arrangements if he determines that he owes the debt. (Item 7, at 9) In his Answer to the SOR, he acknowledged that the bill was associated with his failure to return a device to the creditor, and he stated that he would pay it. (Item 2) As of the date the record closed, he did not assert that any payments had already been made by him. The account remains unresolved.

SOR ¶ 1.f. refers to an Internet or cable television account with an unpaid balance of \$505 that was placed for collection in 2017. (Item 6, at 7) During his OPM interview, Applicant denied any knowledge of the account, but stated that he would make payment arrangements if he determines that he owes the debt. (Item 7, at 8) In his Answer to the SOR, he denied that he owed any money on the account and contended that he was a current customer and he was current on his bill. He did not assert that any payments had already been made by him. (Item 2) He failed to submit any documents associated with the account, such as a monthly statement, receipts, cancelled checks, bank statements, or credit card statements to support his contentions. In the absence of such documentation, it is impossible to determine if the account has been resolved. The account remains unresolved.

SOR ¶ 1.g. refers to a charge account with an unpaid balance of \$2,890 that was placed for collection in 2010 and eventually charged off. (Item 6, at 8) During his OPM interview, Applicant denied any knowledge of the account, but stated that he would make payment arrangements if he determines that he owes the debt. (Item 7, at 8) In his

Answer, Applicant admitted the allegation, offering no excuse, but added that he was working on payments. (Item 2) As of the date the record closed, he did not assert that any payments had already been made by him. The account remains unresolved.

SOR ¶ 1.h. refers to an automobile loan with an unpaid balance of \$1,227 that was placed for collection in 2013 and eventually charged off. (Item 6, at 8) During his OPM interview, Applicant acknowledged that he had borrowed \$6,500 and paid the balance down to about \$1,200 when he began experiencing financial hardships. He did nothing until 2014 when he claimed he approached the creditor to make payments, but when he was informed that the account had been charged off, he took no further action until 2017 when he received a telephone call from a collection agent. (Item 7, at 8) He paid the charged-off account in full on December 7, 2017, over a year and one-half before the SOR was issued. (Letter, dated October 4, 2019, attached to the Response to the FORM) The account has been resolved.

It is not known what Applicant's current financial resources may be because he did not report his current net monthly income; monthly expenses; and any monthly remainder that might be available for discretionary spending or savings. There is no evidence of a budget. There is no evidence of financial counseling. In the absence of additional financial information, it remains difficult to determine if Applicant is currently in a better position financially than he had been.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)) As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.)

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

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

reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

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

The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. 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 federal income tax returns for 2014, 2015, 2017, and 2018, and he had seven delinquent accounts totaling approximately \$21,417. He claimed that his failure to timely file the federal income tax returns was because he didn't have the necessary documents to enable him to do so, and he had insufficient funds to maintain his accounts in a current status. As of the date the SOR was issued, he had resolved only two of those delinquent accounts, with one of those resolutions occurring nearly two months after the SOR was issued. He failed to provide documentary proof regarding the dates he finally filed his federal income tax returns, but it is clear that he did not do so until after the SOR was issued. 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;

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

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

AG ¶ 20(b) 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 federal income tax returns for four different tax years, cause me to conclude that his financial problems were not infrequent and they are likely to continue in the future. He attributed his financial difficulties to contractors who were not paying him in a timely manner to enable him to maintain his accounts in a current status; he was too busy to file his income tax returns; and his inability to obtain necessary tax information to enable him to file his income tax returns.

As noted above, the first document-supported activity between Applicant and a creditor took place on or about December 7, 2017, over a year and one-half before the SOR was issued. The only other document-supported payment to a creditor occurred on October 24, 2019, nearly two months after the SOR was issued. As of the date the record closed, he did not assert that other payments had already been made by him to any other creditor. He did claim that he had finally filed his delinquent federal income tax returns just weeks before that date. 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 most recent SF 86 in December 2016; underwent his OPM interview in November 2017; completed his answers to the interrogatories in May 2019; and the SOR was issued in August 2019. Each step of the security clearance review process placed him on notice of the significance of the financial

issues confronting him. With the one exception related to his resolution of a debt for \$1,227 well before the SOR was issued – a fact that should have been caught by a more thorough OPM investigation and a credit report more recent than 2017 – 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 2014, 2015, 2017, and 2018 federal income tax returns, there is no evidence that Applicant took any action to contact the IRS until well after those tax returns were 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, with that one noted exception, there is no evidence, supported by documentation, that Applicant took any good-faith corrective actions with respect to his delinquent debts, including his delinquent federal income taxes, before the SOR was issued. There are some unverified comments by Applicant that he started to resolve some delinquent accounts after 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. He is reported to be a 41-year-old employee of a defense contractor, but in February 2020, he self-reported that he is a full-time employee with a locks and locksmith security company. He has also been self-employed as the owner of a technical company where he has worked part-time since March 2013. With the exception of one relatively brief period of unemployment from October 2011, when he was terminated from a position, until January 2012, he served in a variety of full-time positions with various other companies since April 2006. He attended a community college for two years, and he earned some college credits, but no degree. He was granted eligibility for either a security clearance or a position of public trust in August 2013. He addressed one of his creditors well before the SOR was issued, resolved another minimal account (for \$219) after the SOR was issued, and finally filed his delinquent multi-year federal income tax returns in 2020.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. In addition to his failures to timely file his federal income tax returns for 2014, 2015, 2017, and 2018, Applicant had seven delinquent accounts, including unpaid federal income taxes, totaling approximately \$21,417, as alleged in the SOR. As of the date the record closed, he had resolved only two of those delinquent accounts, and he failed to provide documentary proof regarding the dates he finally filed his federal income tax returns, or if he had installment agreements with the IRS with respect to his unpaid federal income taxes.

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 failures to timely file his multi-year federal income tax returns, with the exception of two accounts – one in 2017 and one in 2019 – 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
Subparagraphs 1.a. and 1.b.:	Against Applicant
Subparagraph 1.c.:	For Applicant
Subparagraphs 1.d. through 1.g.:	Against Applicant
Subparagraph 1.h.:	For 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