



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 19-03115
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

05/28/2020

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant has mitigated the security concerns raised by his late income tax filings for tax years 2013, 2016, and 2017. His defaulted Federal student loans have been rehabilitated and are currently in deferment. Clearance eligibility is granted.

Statement of the Case

On January 3, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations. The SOR explained why the DCSA CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DCSA CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

On January 31, 2020, Applicant responded to the Guideline F allegations and requested a decision on the written record in lieu of a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. On March 5, 2020, the Government submitted a File of Relevant Material (FORM), including five enclosures consisting of its documentary evidence. The Defense Office of Hearings and Appeals (DOHA) forwarded a copy of the FORM to Applicant on March 6, 2020, and instructed him that any response was due within 30 days of receipt. Applicant received the FORM on March 16, 2020, and he submitted a timely response to the FORM that was received by DOHA on April 15, 2020. On April 21, 2020, the Government indicated it had no objection to his response.

On May 5, 2020, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file on May 8, 2020.

Evidentiary Rulings

Department Counsel submitted, as enclosure 3, a summary report of a triggered enhanced subject interview (TESI or personal subject interview (PSI)) of Applicant conducted on February 20, 2019. The summary report was included in the DOD Report of Investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personal background ROI may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The summary report did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 16-03126 decided on January 24, 2018, the DOHA Appeal Board held that it was not error for an administrative judge to admit and consider a summary of a PSI where the applicant was placed on notice of his or her opportunity to object to consideration of the summary; the applicant filed no objection to it; and there is no indication that the summary contained inaccurate information. In this case, Applicant was provided a copy of the FORM and advised of his opportunity to submit objections or material that he wanted the administrative judge to consider. In the FORM, Applicant was advised as follows:

Also, please note that the attached [summary] of your Triggered Enhanced Subject Interview (TESI) – labeled as Enclosure 3 – is being provided to the Administrative Judge as part of the record evidence in this case. In your response to the File of Relevant Material (FORM), you can comment on whether [the] PSI summary accurately reflects the information you provided to the authorized OPM investigator(s) and you can make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you can object on the ground that the report is unauthenticated by a Government witness. If no objections are raised in your response to the FORM, or if you do not respond to the FORM, the Administrative Judge may determine that you have waived any objections to the admissibility of the summary and may consider it as evidence in your case.

Applicant did mention the PSI when he responded to the FORM. Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded him if he was represented by legal counsel. He was advised in ¶ E3.1.4 of the Directive that he may request a hearing. In ¶ E3.1.15, he was advised that he is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by him or proven by Department Counsel and that he has the ultimate burden of persuasion as to obtaining a favorable clearance decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of his opportunity to object to the admissibility of the PSI, to comment on the PSI, and to make any corrections, deletions, or updates to the information in the PSI. Applicant is deemed to have waived any objections to the PSI. Accordingly, FORM enclosures 1 through 5 were accepted into the record as Government exhibits (GEs). Applicant's response to the FORM was admitted as Applicant exhibit (AE) A.

Findings of Fact

The SOR alleges under Guideline F that Applicant failed to timely file Federal (SOR ¶ 1.a) and state (SOR ¶ 1.b) income tax returns for tax years 2013, 2016, and 2017, and that, as of January 3, 2020, he owed \$67,869 in Federal student-loan debts in collection (SOR ¶¶ 1.c-1.o).

When Applicant answered the SOR allegations, he answered "I admit" to having failed to timely file Federal and state income tax returns for the years alleged. He asserted that his W-2 form arrived too late to timely file his income tax returns for 2013; that when he received the form, he informed a "tax agent," who told him to file the next tax year. He cited financial hardships that apparently led to his failure to timely file tax returns for 2016 and 2017. Applicant provided documentation of Federal and state income tax payments to show that he had resolved his tax liabilities. Applicant also admitted that he had defaulted on the Federal student loans. He explained that he could not keep up with the payments, which resulted in penalties and then a delinquency status where he was no longer allowed to make payments. He provided documentation of a loan-rehabilitation program, and indicated that, because he is in graduate school, he is not currently required to make payments. After considering the FORM, which includes Applicant's Answer to the SOR (GE 1), and AE A, I make the following findings of fact:

Applicant is a 53-year-old dual citizen of his native Mexico and the United States since his U.S. naturalization in March 2009. He began working as an engineer in the U.S. defense industry in December 2016, and in December 2018, he submitted a Questionnaire for National Security Positions (SF 86) seeking his first DOD clearance. (GE 2.)

Applicant immigrated to the United States at age 23 after a difficult childhood and years of personal hardship in Mexico. Applicant was mistreated by his mother, who blamed him for her divorce from his father. After he ran away from her home at age 13 or 14, he lived with his father and then an uncle for a few months until he was taken in by a family that owned a factory that manufactured handbags. He stayed with the family for three

years, and worked in their family business for over two years. In his late teens, he moved to Mexico City where he resumed his schooling at the junior high level, but he struggled to support himself and stayed only a year before returning to his previous locale. In September 1989, he married his first wife, a native of Mexico. After several years, his visa was approved to immigrate to the United States, and he lawfully emigrated in December 1989. He became a U.S. permanent resident in December 2000. (GE 1; AE A.)

Applicant's knowledge of English was limited when he came to the United States. He supported himself over the years through various employments, including as a baker, car washer, salesman, janitor, waiter, taco maker, and gardener (AE A), although the dates for each job were not provided. In June 2001, Applicant and his first wife separated, and they were divorced in May 2005. (GE 2.)

In approximately 2000, Applicant began studies at a community college toward an associate's degree in liberal arts. Applicant lacked any formal education and had to take remedial classes. He demonstrated an interest in and facility with mathematics. (GE 1.) He volunteered at the college's tutorial center where he became friendly with another student. In May 2003, Applicant began living with this student and his family, and their home served as Applicant's primary residence while in college. (GEs 1-2; AE A.) Applicant supported himself as a math tutor. In the spring of 2004, with the support and assistance of two professors, he started a Math Club on campus. In the summer of 2004, Applicant participated in a program at a nearby public university (university X), which introduced him to hands-on research in science and engineering. In November 2004, Applicant began a teaching internship in mathematics at a local high school under a program sponsored by university X. At age 38, in May 2005, he earned an associate's degree. At graduation, he was given an award for excellence in performance by a student. (AE A.)

In August 2005, Applicant began studies at university X toward his bachelor's degree in electrical engineering. (GE 1.) Between August 2005 and September 2008, Applicant obtained 13 Federal student loans totaling \$54,870 (SOR ¶¶ 1.c-1.o). (GEs 3-5.) He also took on three private student loans, of \$3,000 in March 2007, \$4,000 in July 2007, and \$2,444 in May 2008. (GE 3.) From February 2006 to June 2009, Applicant worked as a research intern. In approximately July 2009, Applicant earned his bachelor's degree. (GE 2.)

In December 2008, Applicant married his current wife in Mexico. He adopted her son, who was born in June 2003. (GE 2.) His spouse and son remained in Mexico while Applicant lived on campus during first three years in college and then with a friend in an apartment during the school weeks of his final year. (GEs 1-2.)

After he graduated from college, Applicant was unemployed until September 2009, when he began working under a staffing contract as a sustaining engineer for a commercial electronics company. In November 2011, he converted to a full-time employee. (GE 2.)

In June 2011, Applicant's spouse and son joined him in the United States. He rented an apartment for his family, and over the next few years, he furnished their home on credit.

He bought a leather sofa, flat televisions, and other items, including musical instruments. (GE 2.) Applicant paid his consumer credit-card and car-loan obligations according to their account terms. His Federal student loans were current through April 2012. (GE 4.) Applicant obtained car loans for \$21,505 in July 2012 and for \$32,269 in August 2012. (GE 1.)

Around 2013, Applicant began to struggle financially. He made minimum payments on some accounts and skipped payments on some accounts, which led to increased balances due to penalties. (GE 1.) Applicant was 120 days past due on his Federal student loans as of June 2013. (GE 4.)

After his Federal student loans (then totaling approximately \$75,361 due to interest and collection fees) were placed for collection, Applicant entered into a student-loan rehabilitation program in February 2015. His \$170 monthly payments were automatically deducted from his pay for eight months. He successfully completed the rehabilitation program, but then could not keep up with the payments and again defaulted. (GE 1.)

In approximately May 2016, Applicant was laid off when his division was closed down. (GE 1.) He found a job as a product development engineer for another commercial company but left that employment under mutual agreement in July 2016 over an issue involving certification of a unit's performance. (GE 2.)

Applicant was unemployed for the next four to five months except for part-time janitorial work. He primarily supported the family by running up debt on his credit cards. (GEs 2-3.) His and his spouse's rent at that time was \$1,365 per month. In December 2016, Applicant moved to a Midwestern state without his spouse and son for a job as an application engineer with a defense contractor. He continued to pay his spouse's rent while incurring his own expenses in his new locale. Applicant indicates that he paid rent and utilities for two apartments for about seven or eight months until the lease for his spouse's apartment ended and she and their son joined him in his new locale. Available lease documentation shows that their lease ran from November 1, 2015, through October 31, 2016, when it became a month-to-month tenancy. (GE 1.) Applicant has been living at his current address since February 2017. (GE 2.)

Applicant demonstrated an "extraordinary ability" to learn about new concepts and immediately apply it to his work. Before long, he outgrew his position for which he was hired and became a design engineer in an engineering services group. (GE 1.) In November 2017, Applicant began working for his current employer. The job promised more complexity and paid him 30% more than his salary with his previous employer. (GE 2.)

In June 2018, a collection entity billed him \$83,315 for his defaulted Federal student loans. Some \$16,309 of the debt was for collection fees. Applicant requested the opportunity to rehabilitate his student loans, but he objected to the repayment amount. He requested an alternative repayment based on reported joint income with his spouse of \$3,300 per month but \$3,305 in monthly expenses, which included \$900 in housing costs. (GE 2.)

In December 2018, Applicant was offered a position with a defense contractor that required him to obtain a security clearance. On December 17, 2018, Applicant completed and certified to the accuracy of an SF 86. Although a report of his February 2019 subject interview indicates that he was employed by the defense contractor sponsoring him for a security clearance, his W-2 form for 2019 and other evidence indicate that he still works for the company that hired him in November 2017. (GE 2; AE A.) On his SF 86, Applicant responded affirmatively to an inquiry into whether, in the last seven years, he had failed to file or pay Federal, state, or other taxes when required by law or ordinance. He indicated that he filed his returns, but with respect to tax year 2013, he filed his returns “very close” to the due date for that tax year, but that he received his W-2 form late from a part-time job. He indicated that he filed an update the following year. He reported that he had owed \$1,476 in Federal income taxes for 2013; \$4,012 in Federal and \$324 in state income taxes for 2016; and \$4,464 in Federal and \$594 state income taxes for 2017. He explained that his Federal and state tax delinquencies for 2016 resulted from his failure to timely pay income taxes on his part-time income from his janitorial business, and that he had failed to make timely payments on an installment agreement with the Internal Revenue Service (IRS). He cited the cost of maintaining separate residences for himself and his spouse while he was working in the Midwest as the reason for his tax delinquencies for tax year 2017. However, he explained that all of his delinquent income taxes had been paid by October 2018. (GE 1.)

Tax documents in the record show that Applicant entered into an installment agreement with the IRS in early 2016 to repay his tax liability for 2013. He made a \$180 payment on March 20, 2016, and a \$300 payment on June 6, 2016. On June 8, 2016, the IRS billed his installment of \$300 on a balance of \$1,562 for tax year 2013. Applicant defaulted on that agreement. In 2018, he entered into an installment agreement with the IRS to address his tax debt for tax year 2017 at \$150 a month. He provided evidence of Federal tax payments of \$150 on June 6, 2018, \$150 on September 15, 2018, and \$735 on September 25, 2018, under his installment agreement. On September 25, 2018, Applicant made separate lump-sum credit-card payments, inclusive of service fees, of \$1,505 for tax year 2013, \$4,091 for tax year 2016, and \$4,552 for tax year 2017, which resolved his Federal tax debts. (GE 1.)

Sometime before February 27, 2018, Applicant requested an installment agreement to repay his state income tax liabilities (tax year not specified) at \$100 a month. He submitted the paperwork on March 14, 2018, and he made a \$100 payment on June 20, 2018, although it is unclear whether he was under an established installment agreement. On September 25, 2018, he made lump-sum credit-card payments of \$330 for tax year 2016 and \$607 for 2017, which resolved his state tax debts. (GE 1.)

Applicant also responded affirmatively on his SF 86 to an inquiry concerning any current delinquency on a Federal debt, and he listed \$83,463 in student-loan debts that were in a loan-rehabilitation program that was close to being completed. He explained that he was responsible for the “bad organization” of his income between 2013 and 2017, but that after rehabilitating his student loans, he planned to pay off his accounts, reduce his family’s living expenses, and diligently manage his family’s budget. He added that he was

working hard toward possibly being promoted for the income that would bring to enable him to repay his student loans faster. He expressed his understanding that that his student-loan delinquencies could be seen as carelessness or a failure to commit to resolving them on his part. He requested the opportunity to solve the matter, and mentioned some of the hardships over the years that he endured to obtain his education. (GE 2.)

A check of Applicant's credit on January 17, 2019, revealed that Applicant was making timely payments on his three private student loans with balances totaling \$4,528, although the loans had been 90 days past due in April 2017. He was also making timely monthly payments of \$380 and \$591 respectively on two joint car loans obtained in May 2016 for \$21,738 (balance \$10,645) and \$33,850 (balance \$17,964). He had three active credit-card accounts with outstanding balances totaling \$2,442 that he was repaying on time. His Federal student loans were in collection status. (GE 3.)

On February 20, 2019, Applicant had a telephone interview with an authorized investigator for the Office of Personnel Management (OPM). The investigator's report of that interview indicates that Applicant responded affirmatively when asked whether, in the last seven years, he had failed to file Federal and state income tax returns, and that he stated he did not file his taxes in 2013, 2016, and 2017 because he was worried he was going to owe a big tax bill and would not have enough money to survive. However, he had paid all his tax bills in full as of October 25, 2018. He admitted owing student-loan debts, but indicated that he had started repaying them at \$500 [sic] per month in December 2018. He characterized his financial situation as "getting better." (GE 3.)

Applicant rehabilitated his student loans, and they were transferred to a Federal student-loan servicer in late January 2019. At that time, he owed principal balances totaling \$54,870 and \$13,068 in interest. In February 2019, he paid \$60 toward his Federal student loans. He made \$350 payments in March 2019, April 2019, May 2019, and July 2019. There is no evidence that he made a payment in June 2019. In August 2019, Applicant paid \$175, and in September 2019, he paid \$100 to bring his balance to \$67,954. Some \$1,735 of his payments went to interest in 2019. His student loans are currently deferred with a total balance of approximately \$69,402. (GE 1.)

In the summer of 2018, Applicant began graduate studies in electrical engineering to improve his earnings potential and to better contribute to the nation's technical advancement in communications. He was admitted to the program conditioned on him completing nine or more hours of graduate work with a cumulative grade point average of at least 3.0 on a 4.0 scale. He completed an independent study for two credit hours that summer. During the fall term 2018, he earned six hours credit. He took and passed four hours in the summer of 2019, so by the fall of 2019, he was considered to be in good standing. That fall, he enrolled in two graduate-level courses with two labs but withdrew from one of the courses and its associated lab because of his commitments at his full-time job. (GE 1; AE A.) For the spring semester 2020, he is presently taking one graduate level course, a related lab, and thesis work. He plans to resume his student-loan payments in September 2020 when he finishes graduate school, which is being paid for by his current employer. (GE 1.)

Applicant's April 2019 credit report shows that his Federal student loans are deferred until May 2022. He continued to make timely payments on his three open revolving charge accounts with balances totaling \$4,981; his three private student loans with balances totaling \$3,891; and his joint car loans with balances of \$5,902 and \$10,004. He had no new credit accounts. (GE 5.)

Applicant and his spouse filed their joint Federal income tax return on time for tax year 2019. Applicant's W-2 shows earned wages of \$83,451, but social security wages of \$86,600. He and his spouse's earned wages totaled \$105,749. They overpaid their Federal income taxes by approximately \$6,750. (GE 1.) There is no evidence of what they did with their refund. In April 2020, Applicant indicated that he and his spouse are taking steps to save money by cooking at home and purchasing only items they need. (AE A.)

A co-worker who has worked alongside Applicant on multiple projects over the last two years attests that Applicant has always been willing to go the extra mile to ensure successful outcomes at work. Applicant provides support to advance the technical understanding for manufacturing technicians as designs move into the manufacturing phase. This co-worker considers Applicant to be a crucial team member. As Applicant continues his engineering studies, he has shared his knowledge across their division. (GE 1.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or

mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are articulated in AG ¶ 18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

An applicant is not required to be debt free, but is required to manage his finances in a way as to exhibit sound judgment and responsibility. The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

The SOR alleges that Applicant **failed to timely file** Federal and state income tax returns for tax years 2013, 2016, and 2017. Guideline F security concerns are established when an individual fails to comply with his tax-filing or tax-payment obligations. The evidence shows that Applicant owed delinquent Federal income taxes for tax years 2013, 2016, and 2017, and state income taxes for tax years 2016 and 2017. However, there is conflicting evidence as to whether Applicant failed to file timely tax returns for those tax years. On his SF 86, Applicant checked off “Pay” in response to the question “Did you fail to file, pay as required, or both?” with respect to 2013, 2016, and 2017. He stated, “I have not failed to file for federal taxes,” but added that he had filed for tax year 2013 very close to the due date, which could be taken as an admission that he filed late. The OPM investigator’s summary of Applicant’s February 2019 PSI includes an admission by Applicant that he failed to timely file Federal and state taxes “in 2013, 2016, and 2017” for the stated reason that he was running low on money and did not file because he was worried he was going to owe a big tax bill. Applicant entered into an installment agreement with the IRS in June 2018 to repay his Federal income taxes for tax year 2017. His efforts to resolve his tax liabilities for 2013 and 2016 were not so timely. The timing of his payments and his admissions during his PSI and in response to the SOR to having failed to file timely Federal and state income tax returns support a finding that Applicant failed to timely file his tax returns for tax years 2013 and 2016, and likely also 2017. Disqualifying condition AG ¶ 19(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,” applies.

The evidence implicating AG ¶ 19(f) with respect to the failure to timely pay taxes is clearly documented and not subject to reasonable dispute. While the Government argued in the FORM that Applicant did not adequately explain his failure to pay his taxes on time, the failure to timely pay (as opposed to timely failure to file returns) was not alleged in the SOR, and thus it is not considered as a basis for disqualification purposes.

Applicant’s default of 13 Federal student loans with principal balances totaling \$54,870 establishes disqualifying conditions AGs ¶¶ 19(a), “inability to satisfy debts,” and 19(c), “a history of not meeting financial obligations.” The evidence shows that Applicant made no payments on his Federal student loans after April 2012, and they were referred for collection. He apparently made \$170 payments for nine months in 2015 to rehabilitate the loans only to again default, albeit he was unemployed during part of that time. As of June 2018, his Federal student loans were again in collection status.

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

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

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

As noted by the Government in the FORM, the Appeal Board has held that the failure to timely file tax returns suggests that an applicant has a problem with complying with well-established rules and regulations. This is so particularly when an individual repeatedly fails to fulfill his legal obligation. See ISCR 14-04437 (App. Bd. Apr. 2016). AG ¶ 20(a) does not apply because of the repetitive nature and recency of his tax problems and student-loan defaults.

AG ¶ 20(b) has some applicability in that Applicant's late tax filing for tax year 2013 was caused by his untimely receipt of his W-2 for part-time janitorial work, which was outside of his control. His late tax filings for 2016 and 2017 were due to the financial distress brought on by his unemployment for five months in 2016 and his relocation to the Midwest for employment in December 2016. In addition to moving costs, he incurred expenses for two households in 2017 for several months until his spouse and son joined him in his new locale. However, financial problems do not justify his failure to timely comply with his tax-filing obligations, which exist independent of whether he could pay the taxes owed. Concerning his student loans, he initially defaulted in 2012, which predated his unemployment and relocation in 2016. He gave priority to decorating his house with "nice furniture, such as [a] leather couch, flat TVs, and other items including musical instruments," and to buying a nice car. His credit report shows that he obtained car loans for \$21,505 in July 2012 and for \$32,269 in August 2012 while his student loans went unpaid. After he rehabilitated his Federal student loans in 2015, he and his spouse took on new car loans of \$21,738 and \$33,850 in May 2016. With car payments totaling \$971 each month and his unemployment in the fall of 2016, it is perhaps not surprising that he could

not afford his student-loan payments. For full mitigation under AG ¶ 20(b), Applicant is required to demonstrate that he acted responsibly under the circumstances, and in that regard his evidence falls short.

AG ¶¶ 20(c), 20(d), and 20(g) are established in whole or in part with respect to resolution of his tax issues. Applicant did not provide the dates for when his returns were filed, but payment records show that he made efforts to pay his tax liabilities starting in 2016 when he entered into an installment agreement with the IRS for his 2013 taxes. While some concern arises because of his failure to make consistent payments toward his tax debts, he resolved all of his past-due taxes in late September 2018, before he applied for a security clearance in December 2018 and well before the SOR was issued in January 2020. His Federal income tax return for tax year 2019 was prepared by a tax service in January 2020, so his late tax filings, while not condoned, appear to have been situational and not reflective of an unwillingness to comply with that important obligation. He is likely to file his tax returns on time in the future.

As to whether AG ¶¶ 20(c) and 20(d) are satisfied with respect to his student loans, Applicant's disregard of the loans from April 2012 until February 2015 weighs against him. While his rehabilitation of his student loans in 2015 is viewed favorably, his case for mitigation under AG ¶ 20(d) is undermined somewhat because he allowed the loans to go into collection status before taking action in 2015 and because he defaulted on the loans after they had been rehabilitated. He has a stronger case under AG ¶ 20(c). He followed through with a second opportunity at rehabilitating the loans by making the payments required between June 2018 and January 2019, and then making \$350 monthly payments on his rehabilitated loans from March 2019 through May 2019 and in July 2019. He provided no explanation for why he did not make a payment in June 2019, but his credit report shows that the loans are currently deferred until May 2022. Applicant explained that after being told that had a grace period on his loans because of his graduate studies, he made some payments on his loan through the year. His graduate school transcript shows that he returned to school in the summer of 2019 after taking off the spring semester of 2019, so the loans were likely deferred around that time. A recent credit report of March 2020 shows that his Federal student loans totaling \$69,396 are rated as current.

The salient issue going forward is whether Applicant can be counted on to make his student-loan payments in the future. His Federal student-loan indebtedness is substantial in relation to his household income of \$105,749, but when he was making payments, he did not fall behind on his other financial obligations, including his joint car loans and credit cards. He now manages his day-to-day financial obligations responsibly. He credibly expressed an intent to resume repaying his student loans as soon as he finishes his master's program in September 2020. His March 2020 credit report and the evidence submitted in response to the SOR show that he has his financial issues under control.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d):

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

In many ways, Applicant is an American success story. As detailed in his response to the FORM and in letters from former professors, he endured several hardships over the years. While they reflect strength of character and certainly a willingness to work hard to achieve his goals, they do not excuse or extenuate a failure to meet tax deadlines or default of Federal debts. Even in instances where an applicant has corrected his tax and financial issues and is now motivated to prevent such problems in the future, I have to consider an applicant's trustworthiness in light of his prior behavior evidencing irresponsibility. See *e.g.*, ISCR Case No. 14-00221 (App. Bd. June 29, 2016) citing ISCR Case No. 14-01894 (App. Bd. Aug. 18, 2015). Applicant raised considerable security concerns by his failures to timely comply with his income tax and Federal student loan obligations.

That being said, Applicant has never denied his responsibility for "all of [his] failures." His candor and cooperation with the security clearance process, coupled with his steps to address his tax and student loan issues well before the SOR was issued, reflect positively on his security clearance eligibility. He has been a valuable contributor to his employer and is pursuing his master's degree to better contribute to the nation's technical advancements in communications. He and his spouse have taken steps to improve their financial situation by monitoring their spending. After considering all of the evidence of record, I conclude that it is clearly consistent with the national interest to grant security clearance eligibility for Applicant.

Formal Findings

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a-1.o:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Eligibility for access to classified information is granted.

Elizabeth M. Matchinski
Administrative Judge