



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



In the matter of:)
)
) ISCR Case No. 18-02928
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: James Rice, Esq.

07/13/2021

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant did not timely file his federal and state income tax returns for tax years 2007 through 2017, and he defaulted on his federal student loans, a credit card, and some cellphone and utility debts after a Chapter 7 bankruptcy discharge. He has paid his past-due state taxes and some other debts. He obtained a consolidation of his student loans and filed his delinquent income tax returns. Yet concerns persist about his financial judgment. The personal conduct security concerns raised by his deliberate concealment of his tax issues from his September 2017 security clearance application are also not adequately mitigated. Clearance eligibility is denied.

Statement of the Case

On June 7, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The SOR explained why the DCSA CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within*

Industry (February 20, 1960), as amended; 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.

Applicant initially submitted a detailed, undated response to the SOR, which was not considered sufficient because he did not admit or deny some of the allegations. On January 29, 2020, he submitted a notarized response to the SOR allegations, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Referral of the case to the Hearing Office was delayed because of the COVID pandemic. On February 17, 2021, Department Counsel indicated that the Government was ready to proceed to a hearing. On March 8, 2021, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national security interests of the United States to grant or continue a security clearance for Applicant. I received the case assignment and file on March 12, 2021. On March 15, 2021, and again on April 20, 2021, I informed Applicant of the possibility of an online video hearing. Applicant's counsel entered his appearance on April 21, 2021. Following a successful test of the Defense Collaboration Services (DCS) system on April 27, 2021, I issued a notice scheduling Applicant's DCS video teleconference hearing for May 25, 2021.

The online hearing was held as scheduled. Four Government exhibits (GEs 1-4) and six Applicant exhibits (AEs A-F), each containing several documents, were admitted into the record without any objections. Documents Applicant submitted with his SOR Answer were not offered by Applicant, and his attorney asked that I not consider them, so they were not reviewed for content. A March 11, 2021 letter forwarding discovery of the GEs to Applicant was accepted as a hearing exhibit (HE 1) in the record. Applicant testified, as reflected in a hearing transcript (Tr.) received on June 15, 2021.

Findings of Fact

The SOR alleges under Guideline F that Applicant filed a Chapter 7 bankruptcy that was discharged in January 2009 (SOR ¶ 1.a), and he failed to timely file his federal and state income tax returns for tax years 2007 through 2017 (SOR ¶ 1.b). Additionally, as of June 7, 2019, Applicant allegedly owed delinquent federal taxes of \$22,834 (SOR ¶ 1.c); state X taxes of at least \$2,629 (SOR ¶ 1.d); a credit-card collection debt of \$460 (SOR ¶ 1.e); \$103,715 on a bank loan (student loan) that was \$2,055 past due (SOR ¶ 1.f); federal student loans in collection for \$1,760 (SOR ¶ 1.g) and \$5,837 (SOR ¶ 1.h); \$28,350 on a federal tax lien from December 2009 (SOR ¶ 1.i); wireless phone debts in collection for \$725 (SOR ¶ 1.j) and \$928 (SOR ¶ 1.k); and a utility debt in collection for \$439 (SOR ¶ 1.l). Under Guideline E, Applicant is alleged to have deliberately falsified his September 27, 2017 Electronic Questionnaires for Investigations Processing (e-QIP) (hereafter SF 86) by falsely denying that he had failed to file federal or state tax returns or pay federal or state taxes when required by law in the preceding seven years (SOR ¶ 2.a) and by failing to

disclose that he had a federal lien against him for failing to pay taxes or other debts and by denying that he was currently delinquent on any federal debt (SOR ¶ 2.b).

When he responded to the SOR, Applicant admitted the bankruptcy discharge, the failure to file his income tax returns, the tax lien, the delinquent debts, and the deliberate omission of his tax issues from his SF 86. As for the debts, he stated that he had established payment plans for the following debts: the state-tax delinquency, which he indicated was currently \$1,826 (SOR ¶ 1.d); the credit-card debt (SOR ¶ 1.e); the educational loans (SOR ¶¶ 1.f-1.h), which he had consolidated and no longer considered in default; the federal taxes (SOR ¶ 1.i); and the debts in SOR ¶¶ 1.j-1.k, which he planned to repay pursuant to settlement agreements. He stated that he no longer owed the utility debt in SOR ¶ 1.l because it had been written off. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 49-year-old electrical draftsman and designer, who has worked for a defense contractor since December 2017. (GEs 1-2; Tr. 33.) He has never married and has no children. He has lived in a house owned by his mother, rent-free, since January 2008, except for a brief period from March 2013 to June 2013, when he rented in another state. (GE 1; AE A; Tr. 39.) His mother pays the taxes, homeowner's insurance, and utilities on the house. (Tr. 39.)

Applicant earned his bachelor's degree in architecture in June 2003. (GE 1; Tr. 34.) About six months later, he began working at a university. About two years later, he began working primarily in computer-aided design (CAD) in the architectural building industry, and he continued in this occupation until the economic downturn in 2008. He worked for smaller firms and went from job to job easily, trying to acquire the skills and experience needed to become a licensed architect. (Tr. 35-36.) He bought a two-family home in the spring of 2006, which he financed for \$240,000. (Tr. 36-37.) He struggled to pay his mortgage, especially after his renters moved out, and he eventually defaulted on his loan. He abandoned the property in about January 2008 and moved into a home owned by his mother. (Tr. 38-39.)

After the mortgage crisis hit, Applicant had only temporary jobs that lasted a few weeks to a few months between August 2008 and January 2013. He was not eligible for unemployment compensation because he had been a temporary (1099) employee. (GE 2; Tr. 37-39.) He largely spent his time watching his sister's children, and traveling, including to U.S. national parks. From February 2013 to August 2013, Applicant was employed by a two-person architectural firm with a small budget. After his projects were completed, he was unemployed from September 2013 to October 2015, except for a brief period from June to July 2015 when he was terminated for failing to meet the company's expectations (GE 2), and during this period, he also worked as a 1099 Uber driver. (Tr. 41.) Otherwise, during his lengthy unemployment, he took some classes at a community college to sharpen his AutoCAD drafting and information technology skills. His student loans were deferred. (Tr. 41.) From November 2015 to May 2016, Applicant had full-time work as a CAD drafter contracted by a temporary employment agency to work on electrical diagrams for a utility company. He then worked through a job placement agency at \$25 an hour for a small

company in the building industry from June 2016 to August 2017, when he was laid off. (GE 1; Tr. 43.)

Applicant completed an SF 86 on September 27, 2017, for his current employer. He disclosed a trip to Europe to visit friends in June 2013. He responded negatively to all of the financial record inquiries, including the following:

In the last seven (7) years have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?;

Other than previously listed, have any of the following happened to you?

In the last seven (7) years, you had a lien placed against your property or failing to pay taxes or other debts. (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor);

You are currently delinquent on any Federal debt. (Include financial obligations for which you are the sole debtor, as well as those for which you are a cosigner or guarantor). (GE 1.)

Applicant desperately wanted a full-time job with a good company so he could turn his life around. He found himself unable to compete with newer graduates in architecture, who had updated computer skills that he did not possess, and he wanted to buy another home. Having read and understood the penalties for making a false statement on the SF 86, he now admits that he deliberately falsified his responses to the federal tax and debt questions. He was filled with anxiety and desperate to get a job. He feared he would lose the job opportunity if he answered correctly. (Tr. 49-51, 64.) His financial situation at that time was not good. He was about to default on his student loans and owed the IRS a substantial sum. He had utility debts he could not pay. (Tr. 52.) He now regrets his lack of candor and asserts that it will not happen again. (Tr. 64.)

Applicant denied any current delinquencies when he completed his SF 86. (GE 1.) However, as of October 6, 2017, Applicant's credit report showed that he had filed a Chapter 7 bankruptcy petition in October 2008, and he was granted a bankruptcy discharge in January 2009 (SOR ¶ 1.a). A December 2009 federal tax lien for \$28,350 had not been released (SOR ¶ 1.i). Two federal student loans opened in January 2014 and March 2014 were in collection for \$2,957 (SOR ¶ 1.g) and \$10,459 (SOR ¶ 1.h), respectively. A credit-card account, opened in March 2010, was in collection for \$465 (SOR ¶ 1.e) due to inactivity since June 2015. Two educational loans (one subsidized and one unsubsidized) opened in June 2004 were in deferment with a consolidated \$94,699 balance (SOR ¶ 1.f). (GE 4.)

During a January 29, 2018 interview by an Office of Personnel Management (OPM) investigator, Applicant was asked whether he had any accounts in collection status. He admitted that he defaulted on his student loans, and a few other accounts, but he could

provide no details. When confronted with the adverse information on his credit record, Applicant stated that the tax lien was for owing taxes from 2002 to 2009. He then related that he had not filed tax returns for tax years 2015 and 2016, because he mistakenly had believed that he had filed for an extension of the filing deadline and when he realized he had not done so, it was “too late” to file. He admitted that he feared he might owe taxes that he could not pay. Applicant claimed that he did not think his failure to disclose his tax issues on his SF 86 would be critical to his background investigation. He stated that he was working with an accountant and that his tax returns for tax years 2002 through 2009 should be filed, but he did not know for certain. (GE 2.) He presently recalls having hired the accountant in 2018. (Tr. 53.) Applicant admitted when asked by the investigator that he had filed for bankruptcy in 2008 because he wanted to eliminate his debts, which he claimed consisted of about \$25,000 in credit-card debt and a \$240,000 mortgage loan in foreclosure. Applicant explained that he was currently attempting to repair his financial issues and that he planned on filing his tax returns for 2017 and making an offer-in-compromise with the IRS. Applicant expressed his belief that he was not at fault for his financial issues. He was unable to find a stable job due to “bad luck and the economy.” Applicant acknowledged that he had previously made no effort to address his bad debts but he was now motivated by his background investigation to begin repaying his debts. (GE 2.)

Applicant was re-interviewed by the OPM investigator on February 9, 2018, for information about his accounts in collections, his bankruptcy, and his tax issues. Applicant failed to provide information about many of the accounts. Information provided about his bankruptcy shows that he filed a Chapter 7 bankruptcy petition in October 2008 listing \$243,087 in secured debt; \$121,882 in unsecured priority debts, consisting of student loans, a state income tax liability of \$1,669 from 2007, and \$1,862 in property taxes); and \$58,054 in unsecured nonpriority debts. He was granted a discharge in January 2009. In his bankruptcy filing, Applicant reported no current income, but \$28,220 in gross self-employment income in 2008, and \$4,095 in monthly expenses. Applicant gave the OPM investigator letters showing he had rehabilitated two student loans with an aggregate balance of \$94,699 (SOR ¶ 1.f), and, as of February 8, 2018, Applicant was working with his accountant to file his income tax returns for tax years 2015 and 2016; he had filed through his accountant tax returns for “all other years;” and he was planning to make repayment arrangements through his accountant with the IRS to address past-due taxes totaling \$22,834 (\$6,600 for 2007, \$8,932 for 2008, \$6,655 for 2013, and \$584 for 2014) as of October 2017. (GE 2.) Applicant now asserts that his federal income tax liability for 2008 has been written off due to the statute of limitations. (AE E-1.)

In response to Interrogatories, Applicant indicated on January 5, 2019, that he had no record of whether he had filed his federal and state income tax returns for tax years 2007 and 2008, although he suspected that he filed returns. He admitted that he had filed late federal and state returns for tax years 2009 through 2017, and indicated that he owed past-due federal taxes, exclusive of penalties and interest, of \$22 for 2009, \$200 for 2011, \$227 for 2012, \$4,048 for 2013, \$323 for 2014, \$32 for 2015, \$4,789 for 2016, and \$3,000 for 2017. He reported that he owed back state taxes of \$819 for 2013, \$102 for 2016, and

\$39 for 2017, but did not specify which state was owed the taxes. He gave the following explanation for filing late and not paying his taxes:

The reason for filing late and not paying is entirely my fault. For most of those years I was paid on a 1099 status. I had little tax withheld from my W-2, which resulted in me owing taxes year after year. This was not intentional but due to the fact that I was not making enough money to pay all my living expenses and pay all my taxes. I put my head in the sand and avoided this issue for way to [sic] many years. I am now on a W-2 income status with [employer name] and will be paying all my taxes. . . . (GE 2.)

At his hearing, Applicant testified that he did not file timely tax returns for a couple of reasons. He thought that because he could not pay taxes owed, he could not file his returns, and he was “afraid to file taxes.” He acknowledged that it was “a mistake” to not file his tax returns when they were due. (Tr. 43.)

On April 16, 2020, Applicant’s accountant reported that, with his assistance, Applicant’s tax returns for tax years 2007 through 2017 were filed late; Applicant’s tax returns for tax year 2018 were filed; and his \$1,661 federal tax refund for 2018 was applied to his federal tax balance to bring his federal tax liability to about \$20,000. (AE A.) According to Applicant’s federal and state income tax returns, his tax returns for tax year 2015 through 2017 were completed in mid-November 2018. On federal adjusted gross income of \$9,593 for 2015, he overpaid his federal taxes by \$32 and his state income taxes by \$179 to state X, where he had earned income but does not reside. On federal adjusted gross income of \$36,755 for 2016, he underpaid his federal income taxes by \$4,789, but he expected a state refund of \$97 from state X for 2016. On federal adjusted gross income of \$36,706 for 2017, he underpaid his federal income taxes by \$3,000. He expected a refund of \$55 from his state of residency (state Y) and \$153 from state X. (AE B.)

An IRS account transcript for tax year 2018 shows that Applicant’s tax return was received on June 19, 2019. His income tax refund of \$1,661 on wage income of \$56,467 was intercepted by the IRS. He underpaid state income taxes by \$989 for tax year 2018 to state Z, the state where he is currently employed. (AE B.) According to his 2019 state income tax return, he paid those taxes with his 2018 return. (AE C.) He expected a tax refund of \$679 from state Y. (AE B.) His federal and state income tax returns for tax year 2019 were completed on October 8, 2020. (AE C.)

With his accountant’s help, Applicant advanced \$2,500 to the IRS on November 7, 2019, as a first step in obtaining an offer-in-compromise. (AEs A, AE E-1, E-7.) He made one \$300 payment on November 29, 2019, under an installment agreement covering the taxes owed for tax years 2008 and 2013, 2014, 2016, and 2017 totaling \$27,684, but then made no further payments on that agreement. (AE E-7; Tr. 54.) Applicant testified that he was told not to make any further payments while the IRS processed his offer-in-compromise, and he did not learn until early 2021 that the IRS rejected his offer-in-compromise because he had employment income with which to make payments. (Tr. 55-

56.) Applicant recently entered into a new installment agreement to repay \$200 monthly toward his federal tax liability for tax years 2013 through 2017. As of April 7, 2021, he owed a total of \$17,210 (inclusive of penalties and interest) for those tax years. (AE C; AE E-6; Tr. 56.) His tax refunds for 2018 and 2019 were intercepted and applied by the IRS to his tax liability. (Tr. 56.)

In February 2020, Applicant entered into an agreement with state X to resolve the \$1,745 balance of his tax delinquency (SOR ¶ 1.d) by monthly payments of at least \$150. Applicant did not make the payments, and the state issued him a notice of delinquency totaling \$1,800 as of September 2020. (AE E-8.) On October 27, 2020, Applicant paid \$1,806 to fully resolve the debt. (AE E-9.)

Applicant's federal and state income tax returns for tax year 2019 were completed by his accountant on October 8, 2020, and filed electronically. On adjusted gross income of \$56,399, Applicant overpaid his federal income taxes by \$1,082. He owed \$719 to state Z, apparently because of inadequate tax withholdings (Tr. 58), but \$707 in tax overpayment was refunded to him by state Y. (AE C.) Both states X and Z indicate Applicant is currently in compliance with his tax obligations. (AE E-10; AE F.)

As for his educational and consumer-credit delinquencies, as of May 15, 2019, Applicant had not paid the \$460 credit-card collection debt (SOR 1.e). He had not made his scheduled monthly payment of \$383 since December 2018 on the student loan in SOR ¶ 1.f, and his account was \$2,055 past due. His federal student loans (SOR ¶¶ 1.g-1.h) were in collections. He had resolved one collection debt of \$465 (not alleged) in July 2018. He had recently obtained a car loan for \$18,981 in March 2019, which he agreed to repay at \$384 monthly for 72 months. (GE 3.) His mother gave him approximately \$6,500 to enable him to purchase the vehicle. (AE A, AE E-12.) Applicant fell behind 30 days on his car loan in May 2020. He has otherwise been current on his payments. (AE D.) As of March 2021, the balance of the car loan was \$16,987. (AE E-11.)

In November 2019, Applicant consolidated his student loans (SOR ¶¶ 1.f-1.h) for a new loan of \$112,071. Applicant's wages were garnished over the course of two years in the amount of "nearly \$8,000" to bring his student loans out of default so that he could consolidate them. (Tr. 59.) As of March 31, 2021, the balance was \$113,715. (AE D; Tr. 59.) He had made one monthly payment of \$445 as of his hearing. He intends to apply for an income-based repayment plan, which he understands will reduce his monthly student-loan payment to about \$380 per month. (Tr. 83.)

Applicant settled the \$725 wireless phone debt in collections for \$471. He made his final payment, which was in the amount of \$157, to fully settle the debt on December 27, 2019. (AE E-3.) Applicant satisfied the credit-card collections debt in SOR ¶ 1.e by February 5, 2020. (AE E-2.) With a final payment of \$103 posted on February 3, 2020, Applicant settled the collection debt in SOR ¶ 1.k. (AE E-4.) On May 10, 2021, Applicant paid \$439 to resolve the balance owed the creditor in SOR ¶ 1.l (AE E-5), even though he asserts that the debt was discharged in his 2008 bankruptcy. (AE E.)

Applicant has continued to rely on credit. He obtained a \$5,000 line of credit in March 2020. He was 90 days late on that account in September 2020, “which was [his] mistake,” but he then made a \$5,452 payment on October 26, 2020, to pay off the debt. (AE E-9, E-11; Tr. 59, 61.) He withdrew \$23,000 from his 401(k) at work to obtain the funds to pay that debt, his state taxes to states Y and Z, and for repairs to his residence. (AE E; Tr. 60, 75-76.) He purchased new furniture, a new lawn mower, and a new window. He also had a high car insurance bill that he had to pay. (Tr. 76-77.) Some of the funds went to his model-train hobby. (Tr. 78.) He has no funds remaining from that withdrawal. (Tr. 77.)

In addition to the large 401(k) withdrawal to address the line-of-credit debt, Applicant has borrowed \$5,000 from his 401(k) at work twice in the last 18 to 24 months. (Tr. 80.) As of August 22, 2020, he was repaying those 401(k) loans at \$69 each directly from his weekly paycheck. (AE F.) They were on 18-month repayment plans. (Tr. 75.) He testified that the second of these loans will be paid off in July 2021, and the other loan is paid off. (Tr. 73-74.) Applicant used about \$3,000 of the loan monies to pay for a trip to Europe from December 2019 to January 2020 to visit longtime friends. (Tr. 78-80.) He testified that he works a lot and “like[s] to live a bit and see [his] friends in [Europe] and to fix up the house.” He expressed a goal to stop withdrawing or borrowing funds from his 401(k) once he turns 50 years old. (Tr. 79.) Six to eight weeks before his May 2021 hearing, he borrowed another \$600 from his 401(k). He is repaying the debt at \$13 per week from his paycheck. (Tr. 80-81.) He borrowed the money to fix up the house, and pay off the debt in SOR ¶ 1.1 to “make a good impression to the DOD that [he is] caught up on all [his] bills.” (Tr. 82.) He does not believe that his borrowing is a reflection of who he is. (Tr. 80.)

Applicant opened a credit-card account in February 2020 with a home-improvement retailer. The account had a \$500 credit limit and was current as of March 2021 with a \$476 balance. He opened a revolving charge account with a retailer in October 2019 with a \$150 credit limit. As of March 2021, that account was current with a \$91 balance. (AE D; AE E-11.) Applicant owes a couple of medical bills, \$300 for an eye examination and \$650 or \$700 for orthopedic x-rays, which he believes should be covered by his medical insurance. (Tr. 63, 68.)

Applicant’s take-home pay is about \$608 a week. (Tr. 65.) From that income, he has committed to paying \$445 per month on his student loan, \$385 per month on his auto loan, and \$200 per month to the IRS. He pays about \$250 a month for a trainer and nutritionist. Other monthly expenses include about \$400 for groceries; \$400 to \$450 for gasoline and other car expenses; \$85 for Internet service; \$50 for his cell-phone service; and \$18 for Netflix. (Tr. 66-67.) He has about \$331 in monthly discretionary income. (Tr. 67.)

Applicant’s mother has helped him financially since 2008. In addition to providing him with living quarters rent free, she gave him money many times between 2008 and 2017. She remains able and willing to assist Applicant financially in the future. (AE A.)

Applicant has received therapy for anxiety and depression from a psychiatric nurse affiliated with a psychiatry practice since 2009. (Tr. 42.) She indicates that his mental-health issues were exacerbated by the adverse employment events, but that his

employment with the defense contractor has led to a decrease in his symptoms. (AE B, AE E-13.) He currently has therapy once a week. (Tr. 42.) Because of the deductible on his health insurance, he had to pay her \$750 to \$800 for his sessions in 2021 as of late May 2021. (Tr. 72-73.)

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. . . .

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 allegations are amply established by the evidence of record. After obtaining a financial fresh start through a January 2009 Chapter 7 bankruptcy discharge of his nonpriority unsecured debts (SOR ¶ 1.a), Applicant defaulted on his student loans (SOR ¶¶ 1.f-1.h), which are priority debts, a credit-card account (SOR ¶ 1.e), two wireless-phone debts (SOR ¶¶ 1.j-1.k), and a utility debt (SOR ¶ 1.l). Additionally, Applicant did not file his federal and state income tax returns when they were due for tax years 2007 through 2017 (SOR ¶ 1.b). A federal tax lien for \$28,350 was filed against him in December 2009 (SOR ¶ 1.i). There is no evidence that lien has been released, but it is also not clear whether Applicant has any outstanding legal liability for any tax delinquencies for the tax years covered by the lien. The ten-year federal tax statute of limitations has some tolling provisions, although Applicant did not present any documentation showing evidence of its application to the tax debt in SOR ¶ 1.i. As of September 2020, Applicant owed \$26,330 for tax years 2008 and 2013 through 2017. As of April 7, 2021, the IRS reported an outstanding tax liability of \$17,210 for tax years 2013 through 2017 (SOR ¶ 1.c). Applicant had owed \$22,834 in delinquent federal income taxes as of October 2, 2017, before the

interception and application of tax refunds and a few payments. He also owed past-due taxes to state X of \$1,858 as of March 2020 (SOR ¶ 1.d). Guideline F security concerns are established when an individual fails to comply with his tax filing obligations, whether or not any taxes are owed. The following disqualifying conditions under AG ¶ 19 apply:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) 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 has the burden of establishing sufficient mitigation to overcome the financial concerns raised by his record of substantial delinquency and his noncompliance with such an important obligation of his U.S. citizenship as filing income-tax returns on time for about a decade. One or more of the following conditions under AG ¶ 20 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.

AG ¶ 20(a) has limited applicability in this case. Applicant's bankruptcy filing and discharge happened "so long ago" and is not a circumstance that is likely to recur. However, his consumer credit defaults, including of his student loans, and his tax issues are too recent, and in the case of his tax issues also too recidivist, to be mitigated by AG ¶ 20(a).

AG ¶ 20(b) does not apply to Applicant's failure to timely file income tax returns. Applicant was obligated to file returns independent of whether he owed taxes that he could not pay. AG ¶ 20(b) is established to the extent that the economic downturn of 2008 and his subsequently difficulty in finding stable, long-term employment were significant factors in him defaulting on his financial obligations. After he was laid off in August 2008, Applicant had only temporary jobs that lasted a few weeks to a few months. He was not eligible for unemployment compensation because he had been a temporary (1099) employee. From February 2013 to August 2013, Applicant was employed by a two-person architectural firm with a small budget. After his projects were completed, he was unemployed from September 2013 to October 2015, except for a brief period from June to July 2015 when he was terminated for failing to meet the company's expectations, and when he worked as a 1099 Uber driver.

Even when the financial distress is caused or contributed to by circumstances beyond one's control, the administrative judge has to consider whether the applicant has acted responsibly to address his debts and tax issues. Applicant had full-time work from November 2015 to August 2017 through a temporary employment agency. He was without income from August 2017 to December 2017, when he began working for his current employer. He began resolving his tax-filing issues in 2018, but in other aspects, he failed to show sound financial judgment once he had stable employment. He managed to rehabilitate the student loan in SOR ¶ 1.f by his OPM interview in February 2018 only to fall behind some \$2,055 on that loan by May 2019. His federal student loans in SOR ¶¶ 1.g and 1.h were in collection status. His wages were garnished for almost \$8,000 before he could consolidate his student loans in November 2019. In February 2020, he entered into an agreement with state X to repay his state tax delinquency but then failed to make the payments. He opened new credit accounts as his tax issues remained unresolved, such as the line-of-credit in March 2020. That account was 90 days past due when he paid it off in October 2020 with funds withdrawn from his 401(k) account.

AG ¶¶ 20(c), 20(d), and 20(g) are established with respect to rectifying his tax-filing issues. Applicant's accountant attests that, with his assistance, Applicant has filed his delinquent income tax returns for tax years 2007 through 2017. It is unclear when the tax returns for tax years 2007 through 2014 were prepared and filed. His income tax returns for tax years 2015 through 2017 were belatedly filed in November 2018. Applicant's tax returns for 2018 were filed in June 2019, and his returns for tax year 2019 were filed in October 2020, within the extended deadline. Even where tax problems have been corrected and an applicant is motivated to prevent such problems in the future, the administrative judge is not precluded from considering an applicant's trustworthiness in light of longstanding prior behavior evidencing irresponsibility. See *e.g.*, ISCR Case No. 14-01984 at 5 (App. Bd. Aug. 2015). The Appeal Board has long held that the failure to file tax

returns suggests a problem with complying with well-established government rules and systems. See e.g., ISCR Case No. 14-04437 (App. Bd. Apr. 15, 2016). That said, the timing of corrective action is an appropriate factor to consider in applying AG ¶ 20(g). See e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018) (citing ISCR Case No. 17-01807 at 3-4 (App. Bd. Mar. 7, 2018)). Applicant is credited with taking prompt action to address his tax filings once he began working for a defense contractor. While his decade-long disregard of his tax-filing obligations is not condoned, it is not likely to be repeated.

AG ¶¶ 20(c) and 20(d) are also partially established because Applicant had settled the collection debts in ¶¶ 1.e and 1.j-1.k between December 2019 and February 2020, albeit after the SOR was issued. The utility debt in SOR ¶ 1.l was not resolved until May 2021, but it is no longer a source of financial pressure for Applicant. His student loans are no longer considered in default. Yet, it took garnishment of his wages for him to be able to consolidate his student loans. He lacks a track record of timely student-loan payments, without which there is little basis on which to conclude that he can be counted on to make his present \$445 monthly payment. The loan was apparently deferred until recently, but one payment as of his May 2021 hearing is an insufficient guarantee that he will continue to make his payments according to the terms he described at his hearing. Neither AG ¶¶ 20(c) nor AG 20(d) fully mitigates the security concerns about his student-loan defaults.

With respect to his state tax debt in SOR ¶ 1.d, Applicant made a lump-sum payment of \$1,806 in late October 2020 to resolve the debt. While that debt is no longer of security concern, it is troubling that he failed to make the \$150 monthly payments that he established with the state in February 2020. His failure to comply with that repayment arrangement raises concerns about whether Applicant can be counted on to make his installment payments to the IRS to resolve the approximately \$17,210 owed in past-due federal income taxes. AG ¶¶ 20(c), 20(d), and 20(g) are not fully mitigating of his federal income tax delinquency. AG ¶ 20(e) applies only in that the evidence falls short of demonstrating that Applicant is currently liable for federal income taxes of \$28,350 from December 2009 (SOR ¶ 1.i) beyond the federal income taxes covered by SOR ¶ 1.c.

Applicant has not shown that he can manage his finances responsibly, even with his mother's financial assistance. Over the last 18 to 24 months, Applicant borrowed some \$10,600 from his 401(k) to pay some debts. He used the funds to pay bills but also to take a trip to Europe to visit friends. He also withdrew \$23,000 from his 401(k) that went partially to purchase furniture and model-train items. While he has a goal of no longer borrowing once he turns 50, a promise to change his financial habits is not a substitute for financially responsible behavior.

Guideline E: Personal Conduct

The security concerns about personal conduct are articulated in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or

sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Applicant responded negatively to all of the financial record inquiries on his September 2017 SF 86, including questions concerning whether, in the last seven years, he had failed to file returns or pay federal, state, or other taxes when required by law; whether he had a lien filed against him in the last seven years; and whether he was currently delinquent on any federal debt. The undisputed evidence shows that he had not timely filed federal or state income tax returns during the seven years preceding his SF 86; that he owed past-due taxes to the IRS; and that the IRS had issued a tax lien for \$28,350 against him in December 2009. While the tax lien was outside the seven-year scope of the SF 86 inquiry, Applicant knew that he owed past-due income taxes and that he had not filed his tax returns for the seven years preceding his SF 86. Applicant admits that, after reading the admonishments for making a false statement, he knowingly lied about his tax situation. While he may have been experiencing some anxiety about his employment situation, he knew that he made a false statement. He was desperate to land his job with a defense contractor. AG ¶ 16(a) applies.

AG ¶ 17 provides conditions that could mitigate security concerns in this case:

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

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

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

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

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

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

AG ¶ 17(a) and AG ¶ 17(e) have some applicability because the DOD through its investigation became aware that Applicant had not timely filed his income tax returns and owed past-due income taxes. However, AG ¶ 17(a) does not fully apply because, even though Applicant admitted that he had not filed his income tax returns for tax years 2015 and 2016 when he was interviewed by the OPM investigator, he did not volunteer the information before the investigator asked him about his financial issues. His admission to the tax problems was in response to being confronted about the December 2009 tax lien. Furthermore, when asked about the omission of his tax matters from his SF 86, Applicant was not fully candid with the investigator. He reportedly claimed that he forgot that he did not file tax returns for tax year 2012, and he did not think his failure to report the non-filing for tax years 2015 and 2016 would be critical to his investigation. While he now acknowledges that he acted out of desperation, he exhibits some minimization of responsibility to the extent that he claims he thought the omission was not critical to security concerns. None of the mitigating conditions fully apply in mitigation of his deliberate falsification.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of Applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). Those factors are:

(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.

The analyses under Guidelines F and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

The security clearance adjudication involves an evaluation of an applicant's judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). Applicant has dealt with some adverse employment circumstances not within his control. However, he exhibits little insight into the good judgment that must be demanded of persons who are granted security clearance eligibility. It is not enough evidence of reform to borrow money to pay off debts so that he can make a "good impression on the DOD." Spending \$3,000 for a trip to Europe to see friends may not seem extravagant to Applicant, but it is difficult to justify when he had to borrow for the trip, and owed past-due federal income taxes in excess of \$17,000. His attitude that he works all the time and just wanted to take a vacation creates

lingering doubt as to whether he can be counted on to fulfill the obligations of security clearance eligibility when it may be personally inconvenient or disadvantageous.

The Appeal Board has repeatedly held that the government need not wait until an applicant mishandles or fails to safeguard classified information before denying or revoking security clearance eligibility. See, e.g., ISCR Case No. 08-09918 (App. Bd. Oct. 29, 2009) (citing *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969)). It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). For the reasons discussed, I conclude it is not clearly consistent with the interests of national security to grant or continue security clearance eligibility for Applicant.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a:-1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d-1.e:	For Applicant
Subparagraphs 1.f-1.h:	Against Applicant
Subparagraphs 1.i-1.l:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge