672643 DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 19-03098
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Nicholas Temple, Esquire, Department Counsel
For Applicant: *Pro se*

11/18/2021

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Decision

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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 November 8, 2018, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On July 12, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued him a set of interrogatories. He responded to those interrogatories on August 13, 2019. On an unspecified date, the DOD CAF issued him another set of interrogatories. He responded to those interrogatories on August 30, 2019. On January 10, 2020, the Defense Counterintelligence and Security Agency (DCSA) CAF, the successor to 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* (December 10, 2016) (AG), effective June 8, 2017.

The SOR alleged security concerns under Guideline F (Financial Considerations) and detailed reasons why the DCSA 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.

On January 22, 2020, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on July 13, 2020. Because of protocols associated with the COVID-19 pandemic, no further action was taken to schedule a hearing until the following year. The case was assigned to me on April 14, 2021. A Notice of Hearing by way of a Defense Collaboration Services (DCS) video teleconference was issued on May 5, 2021, scheduling the hearing for May 12, 2021. I convened the hearing as scheduled.

During the hearing, Government Exhibits (GE) 1 through GE 4 and Applicant Exhibits (AE) A through AE H were admitted into evidence without objection. Applicant testified as reflected in a transcript (Tr.) received on May 26, 2021. Department Counsel moved to amend the SOR to conform to the evidence presented during the hearing. The amendment addressed changes to SOR ¶¶ 1.a. through 1.c., as well as the addition of SOR ¶ 1.d. In the absence of any objection, the motion was granted. I kept the record open until June 9, 2021, to enable Applicant to supplement it. He timely submitted a substantial number of documents, to which there were no objections, and I marked and admitted them as AE I through AE X. In addition, Department Counsel submitted one additional document, to which there was no objection, and I marked and admitted it as GE 5. Two Administrative Exhibits (ADME), including the Amended SOR, were also marked and made part of the record as ADME I and II. The record closed on June 9, 2021.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with brief comments, all of the SOR allegations (SOR ¶¶ 1.a. through 1.c.). Although he was repeatedly advised to submit answers to the Amended SOR using the words “admit” or “deny,” he failed to do so. Accordingly, his silence in this regard has resulted in denials to be reflected for all of the allegations in the Amended SOR. His comments with respect to both his admissions and his denials are incorporated herein. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Background

Applicant is a 68-year-old employee of a defense contractor. He has been serving as a data analyst/scientist with his current employer since 2018. He previously served as a self-employed (subcontractor) system engineer from 2003 until 2018. A 1971 high school graduate, he received a bachelor’s degree in 1978. He enlisted in the U.S. Air Force in 1971, and he served on active duty until he was honorably discharged in 1975. In 1978, he returned to active duty as an officer, and he remained on active duty until he was honorably separated in 1994. He previously held a variety of security clearances,

including secret, and top-secret/sensitive compartmented information (SCI). He was married in 1973 and divorced in 1991; and remarried in 1991 and divorced in 2007. He remarried in 2012.

Military Awards and Decorations

During his military service, Applicant was awarded the Meritorious Service Medal, the Air Medal, the Air Force Commendation Medal (with two clusters), the Armed Forces Expeditionary Medal, the Air Force Longevity Service Medal (with one device), the Air Force Overseas Service Long Tour Ribbon, the Air Force Overseas Short Tour Ribbon (with one device), the Air Force Outstanding Unit Award Ribbon (with two clusters and one V for valor), the Air Force Training Ribbon, and the Air Force Outstanding Unit Ribbon (with two clusters and one V for valor). (AE H)

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1 (SF 86); GE 2 (enhanced subject interview, dated May 7, 2019); GE 3 (responses to interrogatories, containing various account transcripts; state and federal income tax returns; and correspondence); GE 4 (responses to interrogatories, containing a personal financial statement and pay stubs); GE 5 (state liens); AE I –T (Applicant's payments to U.S. Treasury 2007 – 2018); and AE U (federal and state notices of levy).

Applicant was not an effective or accurate historian of his financial facts as evidenced by his inconsistent recollections of when certain activities took place. He acknowledged that he was experiencing financial issues as far back as 2004 when a state tax lien was filed against him. He admitted that he failed to timely file his state and federal income tax returns for the tax years 2012 through 2016, and acknowledged that he failed to timely file his state and federal income tax returns for 2006 through 2011. He attributed his financial problems to several factors: he experienced marital problems associated with a separation and a contentious divorce; he was immature and procrastinated in filing and paying his taxes from 2012 until 2016; he did not obtain tax consulting help in 2007 or 2008; he was negligent; and he chose to avoid addressing another unpleasant event, not otherwise explained. (GE 2, at 4; Tr. at 29-31, 55) Substitute tax returns were prepared by the Internal Revenue Service (IRS) in February 2015 for the 2012 federal return: in July 2016 for the 2013 return; in August 2017 for the 2014 return; and August 2017 for the 2015 return. (GE 3, at 6-13, 119-120)

He obtained the professional services of a tax consulting service in 2018, and he eventually filed the delinquent federal income tax returns for the tax years 2012 through 2016 in August 2019. (GE 3, at 14-25, 34-45, 57-68, 79-90, 101-110) He also eventually filed the delinquent state income tax returns for those same tax years in August 2019. (GE 3, at 26-33, 46-56, 69-78, 91-100, 111-118)

With regard to the alleged untimely filings of the federal and state income tax returns for 2006 through 2011, despite Applicant's acknowledgements during the hearing

that he had not timely filed those returns (Tr. at 30-32), the Government offered no evidence – either documentary or testimonial – other than those unsubstantiated acknowledgments, that those filings were untimely. Moreover, Applicant's failure to formally answer the allegations in the Amended SOR means that he essentially denied the allegations. This is significant because facts must be established by "substantial evidence" of the alleged facts – more than a scintilla but less than a preponderance. Applicant's denials and the absence of independent evidence supporting the allegations, when contrasted with his acknowledgments, do not support a finding of substantial evidence. In other words, Applicant's acknowledgments regarding the issues of the income tax returns for 2006 through 2011 are unverified, and thus, unproven. Since the Government had the burden of producing evidence to establish controverted facts alleged in the SOR, in this instance, it failed to do so.

In August 2010, the IRS issued a Notice of Levy on Wages, Salary, and Other Income (Form 668-W9c) for the tax years 2004 through 2006, and as of September 16, 2010, his interest and late payment penalty due was $250,574.93. In August 2011, the IRS issued a Notice of Levy (Form 668-A(ICS)) for the tax years 2004 through 2006, and as of August 31, 2011, his interest and late penalty due was $257,023.89. for the same tax years, and as of August 31, 2011, his interest and late payment penalty due was $231,890.97. In September 2011, the IRS issued another Form 668-A(ICS) for the tax years 2004 through 2007, and as of October 21, 2011, his interest and late payment penalty due was $257,023.89. In September 2012, the IRS issued another Form 668-A(ICS) for the tax years 2005 through 2009, and as of October 12, 2012, his interest and late penalty due was $345,270.95. In May 2013, the IRS issued another Form 668-A(ICS) for the tax years 2006 through 2011, and as of June 14, 2013, his interest and late penalty due was $375,422.24. In May 2015, the IRS issued another Form 668-A(ICS) for the tax year 2010, and as of June 25, 2015, his interest and late penalty due was $47,329.65. In June 2016, the IRS issued another Form 668-A(ICS) for that tax years 2006 through 2011, and as of July 20, 2016, his interest and late penalty due was $345,208.57. (AE U, GE 5) As of August 26, 2019, he owed the IRS $692,930. (AE G)

While Applicant may have practiced procrastination, leading to chronic delinquency, in the filing of his income tax returns, as early as January 4, 2007, he started making what he characterized as withholding payments to the U.S. Treasury. In 2007, he paid $44,089.75 (AE I); in 2008, $53,002.75 (AE J); in 2009, $32,832 (AE K); in 2010, $41,134 (AE L); in 2011, $40,403 (AE M); in 2012, $31,230 (AE N); in 2013, $41,537 (AE O; in 2014, $41,728.25 (AE P); in 2015, $41,224.50 (AE Q); in 2016, $33,239 (AE R); in 2017, $42,312 (AE S); and in 2018, $9,535.25 (AE T).

In October 2006. the state Franchise Tax Board issued an Order to Withhold Personal Income Tax Effective for One year seeking $36,742.65 for tax years 2003 and 2004. In May 2010, another Order was issued seeking $118,731.08 for tax years 2003 through 2007. In March 2011, another Order was issued seeking $143,907.02 for tax years 2003 through 2008. In May 2011, another Order was issued seeking $144,882.43 for the same tax years. In March 2011, another ORDER was issued seeking $143,907.02 for the same tax years. In May 2011, another ORDER was issued seeking $144,882.43 for the same tax years. (AE W, GE 5)

Applicant contended that he was paying between 25 and 30 percent of his gross income in deductions directly to the IRS. (GE 4) Nevertheless, it remains unclear is whether these "withholding payments" were the result of the involuntary levies on wages or additional voluntary payments made by him to the IRS. Although his delinquent income taxes owed to the IRS eventually increased to an amount in excess of $698,098, because of a 10-year statute of limitations on collecting back taxes, the settlement that his tax consulting service worked out with the IRS was purportedly limited to approximately $138,360. (Tr. at 28) During the hearing, he submitted his Installment Agreement with the IRS, dated September 20, 2019, under which he agreed, that commencing in October 2019, he would pay the IRS $1,153 per month by direct debit from his bank account. (AE G) His bank statements from the first five months of 2021 confirm that the payments have been made. (AE V)

He also submitted an approval of an Installment Agreement from the state Franchise Tax Board, dated January 19, 2021, under which he agreed, that commencing in February 2021, he would pay the state $700 per month by direct debit from his bank account. (AE F; Tr. at 25, 29) The Installment Agreement with the state was purportedly for approximately $260,000. (Tr. at 29) His bank statements from a three-month period (February 18, 2021 through April 21, 2021) confirm that two payments had been made. (AE V)

In September 2019, Applicant estimated that his monthly net income was $6,584; his estimated monthly expenses were $4,100; and his debt payments, not counting income tax payments were $810, leaving him a remainder in the amount of $1,674 available for discretionary spending or savings. He claimed to have no assets such as real estate or bank savings. (GE 4, at 10) On May 5, 2021, he submitted a more recent Personal Financial Statement in which he reported that his net monthly income was $6,613; his monthly expenses were $3,900; and his debts, including both monthly income tax payments under his two Installment Agreements, were $2,153, leaving him a remainder in the amount of $560 available for discretionary spending or savings. He listed $1,000 in bank savings. (AE E)

There is no evidence that Applicant ever received financial counseling, or that he maintains a budget.

Character References

A Task Lead/Flight Test Engineer with the same employer as Applicant (and a Lieutenant Colonel in the U.S. Air Force Reserve), has known Applicant for seven years and they have worked together for approximately four years. He characterized Applicant as a reliable, dedicated, trustworthy, hard-working individual who is a selfless team player who goes beyond his normal job duties to train and mentor new employees. At the church they both attend, Applicant dedicates his time mentoring teens and helping the local community. He always portrays an unwavering professional image and steadfast display of character both on and off the job. (AE A)

A Flight Test Engineer with the same employer as Applicant (and a Lieutenant Colonel, U.S. Air Force, retired), has known Applicant for since 1985 when they were on active duty and currently as co-workers. He characterized Applicant's work ethics and reputation as beyond reproach, and considers him to be trustworthy. (AE C)

The Executive Director of a mentoring program commented on Applicant's exemplary service over a several-year period, ending in 2004. (AE D)

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.

The Amended SOR alleged that Applicant failed to timely file his federal and state income tax returns for the tax years 2006 through 2016. There is unverified information, unsupported by documentation, that the income tax returns for the tax years 2006 through 2011 were not filed until 2019. With regard to the federal and state income tax returns for the tax years 2012 through 2016, there is substantial evidence that they were not filed until August 2019. The Amended SOR also alleged that Applicant was delinquent in paying his federal income tax, amounting to approximately $698,000, including late payment penalty and interest and he was delinquent in paying his state income tax, amounting to approximately $260,000, including late payment penalty and interest. There is no evidence that Applicant was unable to pay his federal and state income taxes or that he refused to satisfy his delinquent income tax debts regardless of the ability to do so. AG ¶¶ 19(c) and 19(f) have been established, but AG ¶¶ 19(a) and 19(b) have 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; 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(g) applies, but neither of the other mitigating conditions apply. As noted above, Applicant attributed his financial problems to several factors: he experienced marital problems associated with a separation and a contentious divorce; he was

immature and procrastinated in filing and paying his taxes from 2012 until 2016; he did not obtain tax consulting help in 2007 or 2008; he was negligent; and he chose to avoid addressing another unpleasant event, not otherwise explained. None of those factors appear to have been largely beyond his control. Substitute tax returns were prepared by the IRS for the tax years 2012 through 2015. But no income tax returns were filed for those tax years until much later. In August 2019, he filed his federal and state income tax returns for the years 2012 through 2016. In October 2019, under an Installment Agreement, he agreed to start paying the IRS $1,153 per month by direct debit from his bank account. Also, in February 2021, under an Installment Agreement with the state Franchise Tax Board, he agreed to start paying the state $700 per month by direct debit from his bank account. He has been in compliance with those arrangements.

An applicant who begins to resolve his or her 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).

Although he obtained the professional services of a tax consulting service in 2018, there were still no income tax filings for his delinquent returns. In November 2018, he submitted his SF 86, the first step in his security clearance eligibility review. On August 13, 2019, he responded to a set of interrogatories – one day after he filed several of his income tax returns – and exactly one month after the initial set of interrogatories was issued. Each step of the security clearance review process placed him on notice of the significance of the financial issues confronting him. With respect to his unfiled federal and state income tax returns, there is no evidence that Applicant took any action to resolve any of those issues before the interrogatories were issued. By failing to do so, he did not demonstrate the high degree of good judgment and reliability required of those granted access to classified information.

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. June 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).

A debt, including unpaid income taxes, 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 federal and state income tax accounts, make it rather easy to conclude that it was not infrequent and it is likely to remain unchanged, much like it had been for several years.

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. June 4, 2001)

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. 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. In this instance, there was no actual resolution efforts over lengthy periods. Instead, the federal and state authorities had to file liens, levies, and withholding orders to gain his attention and obtain some of his delinquent income taxes.

Applicant's actions, or inaction, under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment. (*See* ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).)

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 2(d):

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

Under SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. *See U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); *see also* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

There is some evidence in favor of mitigating Applicant's financial concerns. Applicant is a 68-year-old employee of a defense contractor. He has been serving as a data analyst/scientist with his current employer since 2018. He previously served as a self-employed (subcontractor) system engineer from 2003 until 2018. A 1971 high school graduate, he received a bachelor's degree in 1978. He enlisted in the U.S. Air Force in 1971, and he served on active duty until he was honorably discharged in 1975. In 1978, he returned to active duty as an officer, and he remained on active duty until he was honorably separated in 1994. He previously held a variety of security clearances, including secret, and top-secret/SCI. In August 2019, he filed his federal and state income tax returns for the years 2012 through 2016. In October 2019, under an Installment Agreement, he agreed to start paying the IRS $1,153 per month by direct debit from his bank account. Also, in February 2021, under an Installment Agreement with the state Franchise Tax Board, he agreed to start paying the state $700 per month by direct debit from his bank account. He has been in compliance with those arrangements.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. Applicant failed to timely file his federal and state income tax returns for the tax years 2012 through 2016, and they were not filed until August 2019. He also failed to pay his federal and state income taxes for those tax years. Applicant was delinquent in paying his federal income tax, amounting to approximately $698,000, including late payment penalty and interest and he was delinquent in paying his state income tax, amounting to approximately $260,000, including late payment penalty and interest. Because of a 10-year statute of limitations on collecting back taxes, the settlement that his tax consulting service worked out with the IRS was purportedly limited to approximately $138,360.

Applicant's track record is extremely poor at best. He acknowledged inaction in contacting his two creditors – the IRS and the state Franchise Tax Board for several years after he failed to timely file his federal and state income tax returns. He failed to file those delinquent income tax returns until after he received interrogatories from the DOD CAF related to his income taxes. Liens and withholding orders were filed against him. Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations. *See* SEAD 4, App. A, ¶¶ 2(d) (1) through AG 2(d) (9)

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a. (2006 through 2011):	For Applicant
Subparagraph 1.a. (2012 through 2016):	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ROBERT ROBINSON GALES
Administrative Judge