



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



In the matter of:	)	
	)	
[Deleted]	)	ISCR Case No. 19-02672
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrea Corrales, Esq., Department Counsel  
For Applicant: Leon J. Schachter, Esq.

01/12/2021

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines J (Criminal Conduct) and F (Financial Considerations). Applicant has mitigated the security concerns raised by his repeated failures to file his federal and state income tax returns and pay the taxes due. However, he has not mitigated the security concerns raised by his record of criminal conduct. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on July 17, 2018. On December 11, 2019, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines J and F. The CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on January 7, 2020, and requested a decision on the written record without a hearing. Department Counsel converted the case to a hearing on February 7, 2020. On November 20, 2020, Department Counsel converted the case back to an administrative determination on the written record without a hearing.

Department Counsel submitted the Government's written case on December 7, 2020, and a complete copy of the file of relevant material (FORM), consisting of Government Exhibits (GX) 1 through 14, was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence.

In Department Counsel's written submission of the case, she withdrew the allegation in SOR ¶ 1.f and replaced it with a new SOR ¶ 1.f, alleging, "In September 2011, you were arrested and charged with felony nonsufficient funds/check." She further amended the SOR by adding SOR ¶ 2.d, alleging, "You failed to timely file, as required, your Federal income tax returns for tax years 2006, 2007, and 2008. As of the date of this Statement of Reasons, the returns remain unfiled."

Applicant received the FORM on December 7, 2020. Through counsel, he responded to the FORM on December 14, 2020, submitting a brief and 11 enclosures marked as Appellant's Exhibits (AX) A through K. The case was assigned to me on December 21, 2020.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a, 1.c-1.f, and 2.b. He denied the allegation in SOR ¶ 1.b. In his response to the FORM, he admitted the allegation in the additional SOR ¶ 2.d. He did not expressly admit or deny the allegation in the amended SOR 1.f. His admissions are incorporated in my findings of fact.

Applicant is a 53-year-old linguist employed by a defense contractor since June 2018. He was born in Afghanistan, fled to India during the Soviet occupation, and immigrated to the United States in November 1981. He became a U.S. citizen in 1986. He attended college in the United States and received a bachelor's degree in economics in June 1999. In November 1995, he moved to Russia to operate an import and export business. After six months, he moved to Dubai, United Arab Emirates (UAE), in order to export goods from the UAE to Russia. In November 1996, he returned to the United States. From 1996 to 2000, he made multiple month-long trips to Russia, UAE, Indonesia, China, and Taiwan to attend trade fairs and arrange shipments of goods to Russia. (GX 5 at 1-2.)

Applicant worked for a telecommunications company in the United States from March 2001 to December 2007, when he was laid off. He was unemployed from December 2007 until he was hired by his current employer. His SCA reflects that he was reemployed by his former employer from January to June 2018. (GX 3 at 13.) However,

during a personal subject interview (PSI) in August 2018, he told a security investigator that the information in the SCA was incorrect and that he was unemployed during that period. (GX 4 at 7.) He has never held a security clearance.

Applicant has lived with his wife since 1995, and he considers himself married under Islamic law, he but has never registered his marriage in the United States. He and his wife have a 22-year-old son.

From December 2007 to January 2010, Applicant and his wife supported themselves with their savings. Since January 2010, they have lived with his wife's family free of charge, taking care of his elderly father-in-law, who is an alcoholic and incapable of caring for himself. Applicant's mother-in-law is deployed overseas in support of U.S. forces as a linguist. During a counterintelligence screening interview in July 2018, Applicant explained that he was unemployed because he lost his certificate of naturalization in January 2010 while moving to another state, could not afford the fee to obtain a replacement copy, and was embarrassed to ask for money so that he could pay the fee for a replacement. He did not provide any evidence of the cost of a replacement certificate, but it would have been relatively expensive. The current fee for a replacement certificate is \$555. ([www.uscis.gov/forms/filing-fees](http://www.uscis.gov/forms/filing-fees).) In April 2018, a friend gave Applicant the money to replace the certificate of naturalization, enabling him to obtain his current job in June 2018. (GX 4 at 6; GX 5 at 3.)

Between March 2007 and September 2018, Applicant was involved in several incidents of criminal conduct, which are alleged in reverse chronological order in the SOR. The evidence concerning these incidents is summarized below.

**SOR ¶ 1.f:** In March 2007, Applicant uttered an insufficient-funds check, was charged with a felony bad-check offense, and a warrant was issued for his arrest. He has given several somewhat different explanations of the circumstances surrounding his uttering an insufficient-funds check. During the counterintelligence screening interview in July 2018, he stated that he cashed a \$1,200 check at a casino so that he could pay a utility bill. (GX 5 at 10.) In a personal subject interview (PSI) in August 2018, he told a security investigator that he gave the check to his wife for delivery to her father. (GX 4 at 12.) In his response to the FORM, he stated that he wrote the check to pay a utility bill, not realizing that he had insufficient funds to cover the check. (FORM Response at 7.)

Applicant agreed to repay the bad check over a six-month period, but failed to do so. (GX 5 at 10.) In September 2011, after he had moved to another state, he was stopped for a traffic violation, the outstanding warrant was discovered, and he was arrested. At his trial, adjudication was deferred, conditioned on restitution and good behavior. He completed paying the restitution in October 2014 and the charge was dismissed. (GX 11.)

**SOR ¶ 1.e:** In January 2011, Applicant was arrested and charged with burglary after stealing diabetic test strips from a retail store, intending to sell them because he needed money. He pleaded guilty to a lesser charge of shoplifting and was sentenced to confinement for 10 days, payment of fines and restitution totaling \$1,140, and ordered to

have no direct or indirect contact with the retail store. He spent five days in jail. The court records reflect that Applicant had made no payments on the fines or the restitution requirement as of February 7, 2020. (GX 12.)

**SOR ¶ 1.d:** In July 2012, Applicant was charged with felony possession of methamphetamine. He gave two explanations for this incident: (1) that he was alone and disposing of his wife's methamphetamine pipe after she had abstained for two years (FORM Response at 6; GX 4 at 13); and (2) that he was walking with his wife, they were stopped by a policeman for jaywalking, and he took the pipe from his wife to shield her from being charged (GX 5 at 9). He pleaded guilty to misdemeanor possession of drugs and was sentenced to imprisonment for three days, credited with time served, and required to attend drug-education classes. (GX 10.)

**SOR ¶ 1.c:** In July 2012, Applicant was charged with petit larceny for stealing diapers from a store. The purpose for stealing diapers is unclear, because his only child would have been 14 years old at the time. (GX 3 at 23.) He pleaded guilty and was ordered to attend drug counseling and to stay out of trouble for six months. (GX 9.)

**SOR ¶ 1.b:** In July 2013, Applicant was charged with domestic battery. His wife and intoxicated father-in-law were arguing, and his father-in-law was shouting and cursing. Applicant pushed his father-in-law while trying to keep his wife and his father-in-law separated, and his wife called the police. In his answer to the SOR, Applicant stated that that he declined to press charges against his father-in-law and that his father-in-law did not press charges against him. During the counterintelligence screening interview, he told the investigator that the charges were dismissed because his father-in-law was too drunk to appear in court. (GX 5 at 10.) However, the court records reflect that a criminal complaint was filed against Applicant, an arrest warrant was issued, he was taken into custody, and a public defender was appointed. On request of the defense, he was released on his own recognizance, on the condition that he could not live in the same house as his father-in-law. In August 2013, the charges were dismissed "per negotiations." (GX 8.)

**SOR ¶ 1.a:** In September 2018, after Applicant submitted his SCA and had undergone his counterintelligence screening and a PSI, he was charged with felony larceny, after stealing a music compact disc worth about \$25 from a store. In his answer to the SOR, he stated that he intended to give the compact disc to his wife as a birthday gift. In his response to the FORM, he stated that he tried to return the compact disc to the store for store credit so that he could buy personal necessities. He pleaded no contest to misdemeanor petit larceny and was sentenced to confinement for 60 days, suspended; fined \$500, satisfied by transfer of cash bail; and ordered to have no contact with the store. (GX 7; Response to FORM, AX D.)

The SOR also alleges that Applicant failed to timely file federal and state income tax returns and owes federal and state taxes. The evidence concerning each allegation is summarized below.

**SOR ¶¶ 2.a (federal tax debt) and 2.d (failure to timely file returns for 2006, 2007, and 2008).** When Applicant submitted his SCA in July 2018, he disclosed that he did not file any income tax returns after he was laid off in November 2007, and that he believed he owed about \$1,200 in state or federal income taxes. (GX 3 at 36-37.) During his counterintelligence screening interview, he stated that he visited an IRS office in February 2018 and was informed that his tax debts for 2006, 2007, and 2008 had been charged off as bad debts and were treated as income. (GX 5 at 16.) It is likely that Applicant misunderstood the IRS employee, because the IRS subsequently informed him that he owed \$49,637 for tax years 2006, 2007, and 2008.

On February 27, 2018, Applicant made an installment agreement with the IRS to resolve his tax debt by paying \$50 per month beginning in April 2018 (GX 4 at 18; GX 13; AX H.) In his answer to the SOR, he submitted an Annual Installment Agreement Statement from the IRS reflecting payments between July 2018 and July 2019, reflecting two payments of \$100 and \$350. (Answer at 6-8.) He also submitted copies of 14 money orders, two of which were illegible. They were issued between January 2018 and November 2019. All are for \$50, except one for \$82 that was issued in April 2018. The copies do not reflect the payee, except for the one dated June 23, 2019, on which he wrote "United States Treasury." (Answer at 9-11.) Finally, he submitted copies of his bank statements reflecting eight payments to the U.S. Treasury between April and December 2019, in amounts varying from \$20 to \$100. (Answer at 15-37.) In his response to the FORM, he submitted an e-file signature authorization (IRS Form 8879) dated June 1, 2020, for a 2019 federal tax return reflecting taxes of \$540 withheld and claiming a refund of \$540. (AX H.)

**SOR ¶¶ 2.b (failure to timely file state income tax return for 2006) and 2.c (state tax debt of \$2,595).** Applicant failed to timely file his state income tax return for 2006, incurring a delinquent tax debt of \$2,595. In January 2019, he submitted a request for an installment agreement providing for monthly payments of \$250. (GX 14.) In his answer to the SOR, he submitted copies of his bank statements reflecting six \$250 payments to the state tax authority between March and November 2019. (Answer at 15-36.) In his response to the FORM, he submitted evidence that he made \$250 payments in September 2020, October 2020, and December 2020. (AX G.) He also submitted photocopies of money orders for \$250 purchased in March, April, June, September, and October 2020, but the photocopies do not reflect the payees for those money orders. (AX H.)

In July 2020, Applicant completed a computer-based course of instruction on financial management developed by the Federal Deposit Insurance Corporation. (AX K.) In November 2020, he submitted a personal financial statement (PFS) dated November 20, 2020. It reflects net monthly income of \$5,100, debt payments of \$525 (\$250 to IRS, with a balance of \$49,000; \$250 to state tax authority, with a balance of \$14,000; and \$25 to a credit-card account with a balance of \$1,000). The PFS reflects monthly expenses of \$2,025 and a net monthly remainder of \$3,075. (AX J.) A November 2020 credit report from Experian reflects only two open accounts (one credit card reflected in the PFS and

another credit card with a zero balance), no adverse entries, and a FICO score of 789. (AX I.)

Applicant has served as a linguist in Afghanistan since February 2019. He received a certificate of appreciation for his expertise, professionalism, and dedication from June 2019 to June 2020. (AX A.) His linguistic services manager, a civilian, and military supervisor, an Army lieutenant colonel, submitted a joint letter attesting to Applicant's linguistic skills, cultural awareness, calm and focused demeanor, integrity, and professionalism. They strongly support his application for a security clearance. His two linguist supervisors, an Army major and an Army lieutenant colonel, also strongly recommend that Applicant receive a security clearance. (AX B.)...

A friend of Applicant, who has known him for 35 years, is now serving at the U.S. Embassy in Kabul, Afghanistan and holds a top secret clearance, submitted a letter strongly supporting Applicant's application for a clearance. He has reviewed the SOR and does not believe that the allegations are reflective of Applicant's character, patriotism, or willingness to protect classified information. To the contrary, he believes that Applicant is a hardworking, honest, and reliable person who should be granted a clearance. (AX C.) This friend is the person who gave Applicant the money to obtain a replacement for his lost naturalization certificate. (GX 5 at 3.)

### **Policies**

"[N]o 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants 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 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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 guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

## **Analysis**

### **Guideline J, Criminal Conduct**

The concern under this guideline is set out in AG ¶ 30: “Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.”

Applicant’s admissions and the evidence in the FORM are sufficient to raise the following disqualifying conditions under this guideline:

AG ¶ 31(a): a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual’s judgment, reliability, or trustworthiness; and

AG ¶ 31(b): evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

The following mitigating conditions are potentially relevant:

AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

AG ¶ 32(c): no reliable evidence to support that the individual committed the offense; and

AG ¶ 32(d): there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

AG ¶ 32(a) is not established. Applicant's criminal behavior began in March 2007, when he wrote a bad check for \$1,200. He promised to redeem the check but did not keep his promise until he was arrested and convicted in September 2011. His irresponsible behavior continued when he failed to file his federal income tax returns for 2007 and 2008. He was convicted of shoplifting in January 2011, drug possession in July 2012, and petit larceny in July 2012. He failed to timely file his 2012 federal tax return and took no action to resolve his federal and state tax debts until January 2018.

Applicant's criminal conduct in September 2018 occurred after he submitted his SCA and was interviewed by a security investigator and the counterintelligence agent. While there were significant temporal gaps between his bad-check offense in March 2007, his arrest in January 2011, and his arrest in September 2018, he continued to ignore his tax obligations during the periods between his arrests. His overall pattern of irresponsible conduct casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 32(c) is established for the charge of domestic battery in July 2013. The evidence reflects a domestic disturbance instigated by Applicant's alcoholic father-in-law, which Applicant was trying to quell. Once the facts were established, the charges were dismissed.

AG ¶ 32 (d) is not established. The evidence submitted by Applicant's supervisors in Afghanistan reflect that he has distinguished himself by his skill, work ethic, composure, and dedication. However, he has been working in a controlled military environment since February 2019, and insufficient time has passed to show that he will not revert to his previous pattern of irresponsible conduct when he returns from Afghanistan.

## Guideline F, Financial Considerations

The security concern under this guideline 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the evidence in the FORM establish the bad-check offense alleged in SOR ¶ 1.f, the failures to timely file federal and state income tax returns alleged in SOR ¶¶ 2.b and 2.d, and the federal and state tax debts alleged in SOR ¶¶ 2.a and 2.c. I conclude that the following disqualifying conditions under this guideline are established:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;

AG ¶ 19(c): a history of not meeting financial obligations; and

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.

AG ¶ 19(d) ("deceptive or illegal financial practices such as . . . check fraud") is not applicable because the bad check uttered in March 2007 was alleged only under Guideline J and not under Guideline F.

The following mitigating conditions are potentially applicable:

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;

AG ¶ 20(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;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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) is not established. Applicant's tax problems are long-standing, ongoing, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established. Applicant's financial problems began when he cashed an insufficient-funds check in March 2007, while he was still employed. He has not established that cashing the check, failure to redeem it, and his conviction in September 2011 were the result of conditions largely beyond his control.

Applicant's unemployment from December 2007 until he was hired by his current employer was a condition beyond his control. It was exacerbated by his loss of his certificate of naturalization in January 2010, which also was a condition beyond his control.

However, Applicant has not established that he acted responsibly. He has not submitted any evidence of efforts to obtain employment from December 2007 to January 2010, before he lost his certificate of naturalization. He is a well-educated adult with considerable business experience, and it is difficult to believe that he could not find any employment, even if it was a part-time or intermittent job or underemployment for which he was over qualified. He did not replace his certificate of naturalization until June 2018, a period of more than eight years, because he was too embarrassed to ask his family or friends for financial help in obtaining a replacement for his certificate of naturalization.

AG ¶ 20(c) is established. Applicant enrolled in and completed an online money-management course, and his federal and state tax problems appear to be under control.

AG ¶¶ 20(d) and 20(g) are established for Applicant's federal and state tax debts, on which he appears to be making regular payments. AG ¶ 20(g) is disjunctive: it can be established by making arrangements to file the past-due returns **or** paying the amount

owed. Applicant submitted no evidence that he has filed the past-due federal and state tax returns. However, the IRS and state tax authority would have generated substitute returns in order compute his tax debt, making it unnecessary for him to file returns. Although he was unemployed in 2008 and living off his savings, he apparently had sufficient income to incur a federal tax liability of \$6,748 for that tax year. (Answer at 8.) He has submitted evidence of installment payment agreements with both the IRS and the state tax authority, and he has made regular payments in compliance with those agreements. Although the money orders from March to October 2020 do not reflect the identity of the payee, the amounts and timing of the money orders strongly suggest that they were a continuation of the payments in September, October, and December 2020. The IRS Form 8879, IRS e-file Signature Authorization, submitted by Applicant in his response to the FORM, suggests that he probably filed his federal income tax return for 2019. (AG H at 9.)

Applicant's compliance with his federal and state installment agreements does not end the inquiry. "A person who begins to address concerns only after having been placed on notice that his or her access is in jeopardy may lack the willingness to follow rules and regulations when his or her personal interests are not at stake." ADP Case No. 15-03696 (App. Bd. Apr. 5, 2019, citing ISCR Case No. 17-01256 at 5 (App. Bd. Aug. 3, 2018)). However, in Applicant's case, he entered into an installment agreement with the state in January 2018 and with the IRS in February 2018, well before he was hired by his current employer in June 2018 or submitted his SCA on July 2018, and he is complying with those agreements.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at 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.

I have incorporated my comments under Guidelines J and F in my whole-person analysis and applied the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines J and F, and evaluating all the evidence in the

context of the whole person, I conclude Applicant has mitigated the security concerns raised by his failures to timely file federal and state tax returns and pay the taxes due, but he has not mitigated the security concerns raised by his criminal conduct.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline J (Criminal Conduct):                   AGAINST APPLICANT

    Subparagraphs 1.a and 1.c-1.f:                                   Against Applicant

    Subparagraph 1.b:   For Applicant

Paragraph 2, Guideline F (Financial Considerations)   FOR APPLICANT

    Subparagraphs 2.a-2.d:   For Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge