



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



In the matter of:)
)
) ISCR Case No. 20-01203
)
Applicant for Security Clearance)

Appearances

For Government: Jeffrey T. Kent, Esq., Department Counsel
For Applicant: *Pro se*

05/06/2022

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s handling of his finances resulted in unmitigated Guideline F (financial considerations) security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 3, 2011, and September 20, 2018, Applicant completed and signed Questionnaires for Investigations Processing or security clearance applications (SCA). (Government Exhibit (GE) 1; GE 2) On September 1, 2020, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F. (HE 2) Applicant provided an undated response to the SOR. (HE 3)

On February 17, 2021, Department Counsel was ready to proceed. On November 19, 2021, the case was assigned to me. On January 12, 2022, DOHA issued a notice of hearing, setting the hearing for February 18, 2022. (HE 1) His hearing was held as scheduled using the DOD Microsoft Teams video teleconference system. (*Id.*)

During the hearing, Department Counsel offered 10 exhibits; Applicant offered 3 exhibits; and all exhibits were admitted without objection. (Tr. 14-18; GE 1-GE 10; Applicant Exhibit (AE) A-AE C) On March 1, 2022, DOHA received a transcript of the hearing. Applicant provided six documents after his hearing, and they were admitted without objection. (AE D-AE I) The record closed on May 2, 2022. (Tr. 51, 54; AE I)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 1.a, 1.b, 1.c, 1.e, 1.k, 1.o, and 1.p, and he denied the other SOR allegations. (HE 3) He also provided mitigating information. His admissions are accepted as findings of fact. Additional findings follow.

Applicant is 51 years old, and he tests virtual reality software for a DOD contractor. (Tr. 6, 48; GE 2) In 1988, he graduated from high school. (Tr. 6) In 2005, he received an associate's degree in computer network technology. (Tr. 6-7) He served in the Navy from 1989 to 2009, and he honorably retired as a petty officer first class (E-6). (Tr. 8) His Navy rating was operations specialist. (Tr. 8) Applicant has a 70 percent disability rating from the Department of Veterans Affairs (VA). (Tr. 8-9)

In 2001, Applicant married, and his two children are ages 22 and 30. (Tr. 7) There is no evidence that Applicant uses illegal drugs, violated security, or has issues with excessive alcohol consumption. (GE 1; GE 2)

Financial Considerations

Applicant separated from his spouse in late 2015 or early 2016. (Tr. 20-21) In mid-2017, he moved back into his residence in an attempt to reconcile with his spouse. (Tr. 21) In mid-2018, he moved out again. (Tr. 21-22) He was unemployed from December 2017 to April 2018. (GE 2 at 13) In September 2021, he filed for divorce. (Tr. 14, 42)

On February 8, 2021, Applicant's lawyer wrote:

[Applicant] is under a *Pendente Lite* order of the court whereby he must pay a temporary order of support to his wife. He has complied with the temporary order to maintain the care for his spouse while they have been separated. I have no reason to believe the court ordered payments will not come to an end in the next several months as [Applicant] has given his wife ample time to become financially independent.

Unfortunately, Covid-19 caused many civil matters to be continued to allow the Court to clear its criminal docket. I humbly submit to you that if you allowed him to maintain his clearance, any financial or credit matters resulting from this divorce proceeding would be resolved once we have a final order of the court relieving him of his current temporary spousal support payment to his wife. I have been practicing family law for over 12 years . . . and I have no reason to believe that [Applicant] will remain in this temporary circumstance for any long duration of time in the foreseeable future. (AE A)

Applicant expects his divorce to be final at the end of March 2022. (Tr. 46) His spouse is employed outside her home. (Tr. 43) He provides \$1,500 to \$1,700 monthly to his spouse for support. (Tr. 43; AE I) Applicant's personal financial statement (PFS) indicates his monthly gross income is \$8,442, and his net monthly income is \$7,802. (Tr. 44, 49; AE F) His PFS net monthly remainder is \$1,613. (Tr. 45; AE F) However, he included his rent (\$1,300) in the PFS debt section and in his PFS expense section, which resulted in a double deduction from his net income. (AE F) He did not include his monthly spousal support (\$1,500) as an expense. (*Id.*) He included his spouse's income (\$2,692) in the PFS gross monthly income. (*Id.*) He did not show any payments to address his student loans on his PFS. (*Id.*) Consequently, his available monthly remainder is much less than the \$1,613 he indicated in his PFS.

SOR ¶ 1.a alleges Applicant failed to file his federal income tax return for tax year (TY) 2016, and SOR ¶ 1.b alleges he owed \$1,500 in federal income taxes for TY 2016. Applicant said his marital difficulties distracted him, and he forgot to file his federal income tax return for TY 2016. (Tr. 20) He never filed his federal income tax return for TY 2016. The Internal Revenue Service (IRS) filed a tax return for him and transferred about \$730 from his refund for TY 2017 or 2018 to pay his taxes for TY 2016. (Tr. 23-25) In 2017 or 2018, he filed his state income tax return for TY 2016. (Tr. 24) In regard to his federal and state income tax debts, stated, "the taxes were taken out of my check last year for all unpaid taxes." (AE B) He did not provide documentation showing his taxes were paid or when the IRS filed his tax return for TY 2016.

SOR ¶ 1.c alleges Applicant has student loans placed for collection for \$43,276. Applicant's October 10, 2018 credit report indicates that he has a past-due "Government Unsecured Guarantee Loan" for \$34,343. (GE 3 at 3) The last activity on this account was in May 2017. (*Id.*) The debt is in collection status. (*Id.*) Student loans for \$11,947 and \$8,285 were permanently assigned to the Federal Government. (*Id.* at 3-4) His December 3, 2019 credit report shows his student loan is in collection, and the balance is \$43,276. (GE 4 at 2) The record does not contain any credit reports that are more recent than his December 3, 2019 credit report.

In early 2017, Applicant stopped going to class, and he was supposed to start making \$330 monthly payments thereafter on his student loans. (Tr. 27, 50) He said in 2017, he made about four payments to address his student loans. (Tr. 50) He lacked the funds to continue to make payments. (Tr. 28) He did not provide documents proving he made the four payments.

In March 2020, as a result of the COVID-19 pandemic, the Department of Education placed federal student loans in forbearance. The Department of Education extended the student loan payment pause through August 2022. The pause includes the following relief measures for eligible loans: a suspension of loan payments; a 0% interest rate; and stopped collections on defaulted loans. See Federal Student Aid website, <https://studentaid.gov/announcements-events/covid-19>.

Applicant said he contacted the creditor, and he planned to start making payments in May 2022. (Tr. 26) A university-related creditor recently emailed Applicant that he had an outstanding tuition balance of \$10,794, and the creditor suggested settlement of the debt for a lesser amount or that he establish a payment plan. (AE G) Applicant did not show the \$10,794 balance was part of or encompassed the \$43,276 student loan debt in SOR ¶ 1.c.

SOR ¶ 1.d alleges Applicant has a delinquent debt for furniture with a balance amount of \$3,403 and a payment due of \$187. (GE 4 at 2) When Applicant moved out of an apartment, he called the furniture owner and told them to pick-up their furniture. (Tr. 29) The owner picked up the furniture, and Applicant said he paid \$185, which resolved the debt. (Tr. 29; AE D)

SOR ¶¶ 1.e and 1.k allege charged-off debts for \$1,879 and \$2,938. Applicant said the debts resulted from credit cards that he shared with his spouse. (Tr. 32, 34) The debts have been delinquent for two or three years. (Tr. 32, 34) He expects family court to allocate these debts to him or his spouse in the divorce. (Tr. 34)

SOR ¶¶ 1.f through 1.j, 1.l, and 1.n allege seven delinquent medical debts for \$160, \$95, \$92, \$62, \$48, \$1,378, and \$160. Applicant was unaware of the debts because he believed his medical insurance paid for his medical care. (Tr. 33) Applicant's pay was garnished on December 22, 2021, for \$533 and on January 7, 2022, for \$627, and he provided his pay statements showing the garnished payments. (Tr. 35; AE E) On March 2, 2022, a medical creditor wrote that Applicant paid \$800 toward a judgment of \$1,155. (AE E) He said all of the SOR medical debts were paid in full. (Tr. 32, 34, 37; AE B)

SOR ¶ 1.m alleges a telecommunications debt placed for collection for \$438. On March 2, 2021, Applicant paid this debt, and he provided a receipt showing payment. (Tr. 36; AE B)

SOR ¶ 1.o alleges in 2017 Applicant was evicted and owes his landlord \$2,700. On March 14, 2017, April 7, 2017, and May 10, 2017, his landlord obtained three default judgments against Applicant totaling about \$3,000. (GE 5) Applicant said about two years ago he discussed the debt with the creditor; however, he did not agree to the amount of the debt or make any payments. (Tr. 39) There is no evidence of subsequent communications between Applicant and this creditor.

SOR ¶ 1.p alleges in April 2004, Applicant filed for bankruptcy, and in July 2004, his nonpriority and unsecured debts were discharged under Chapter 7 of the Bankruptcy

Code. Applicant said he and his spouse had substantial debts, and they elected to seek resolution through bankruptcy. (Tr. 40)

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.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s 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.

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, these guidelines are applied 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, 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 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 “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 it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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.

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts”; “(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 record establishes AG ¶¶ 19(a), 19(c), and 19(f). Further discussion of the disqualifying conditions and the applicability of mitigating conditions is contained in the mitigation section, *infra*.

The financial considerations mitigating conditions under AG ¶ 20 are as follows:

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

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

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

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

(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;

(f) the affluence resulted from a legal source of income; 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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board explained an applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

Applicant indicated three circumstances beyond his control adversely affected his finances: (1) unemployment; (2) separation; and (3) pending divorce. However, “[e]ven if [an applicant’s] financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the [administrative judge] could still consider whether [the applicant] has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current. Applicant did not provide supporting documentary evidence that he maintained contact with several creditors. He did not provide documentary evidence of settlements or written offers to settle with several of his creditors.

Applicant failed to timely file his federal income tax return for TY 2016 and to timely pay any taxes due. A willful failure to timely make (means complete and file with the IRS) a federal income tax return is a misdemeanor-level federal criminal offense. Title 26 U.S.C. § 7203, willful failure to file return, supply information, or pay tax, reads:

Any person . . . required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to . . . make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor

A willful failure to make return, keep records, or supply information when required, is a misdemeanor without regard to the existence of any tax liability. *Spies v. United States*, 317 U.S. 492 (1943); *United States v. Walker*, 479 F.2d 407 (9th Cir. 1973); *United States v. McCabe*, 416 F.2d 957 (7th Cir. 1969); *O’Brien v. United States*, 51 F.2d 193 (7th Cir. 1931). For purposes of this decision, I am not weighing Applicant’s failure to timely file his federal income tax return for TY 2016 against him as a crime. In regard to the failure to timely file this federal income tax return, the DOHA Appeal Board has commented:

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) (emphasis in original). See ISCR Case No. 15-01031 at 4 (App. Bd. June 15, 2016) (citations omitted); 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 “[a]pplicant has purportedly corrected [his or her] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant’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 & n.3 (App. Bd. June 15, 2016) (characterizing “no harm, no foul” approach to an applicant’s course of conduct and employing 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).

In ISCR Case No. 15-01031 (App. Bd. June 15, 2016), the Appeal Board explained that in some situations, even if no taxes are owed when tax returns are not timely filed, grant of access to classified information is inappropriate. In ISCR Case No. 15-1031 (App. Bd. June 15, 2016) the applicant filed his 2011 federal income tax return in December 2013, his 2012 federal tax return in September 2014, and his 2013 federal tax return in October 2015. He received federal tax refunds of at least \$1,000 for each year. Nevertheless, the Appeal Board reversed the administrative judge’s decision to grant access to classified information.

In ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017) the Appeal Board reversed the grant of a security clearance, discussed how AG ¶ 20(g) applied, and noted:

The timing of the resolution of financial problems is an important factor in evaluating an applicant’s case for mitigation because an applicant who begins to resolve financial problems only after being placed on notice that his clearance was in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his own interests. In this case, applicant’s filing of his Federal income tax returns for 2009-2014 after submitting his SCA, undergoing his background interview, or receiving the SOR undercuts the weight such remedial action might otherwise merit.

Applicant provided some important evidence of mitigation in this case. I have credited him with mitigating of the following SOR debts: the furniture debt in ¶ 1.d by paying \$187; the medical debts in ¶¶ 1.f through 1.j, 1.l, and 1.n because of his payments; the telecommunications debt in ¶ 1.m for \$438, which he paid; and the credit card debts in ¶¶ 1.e for \$1,879 and SOR ¶ 1.k for \$2,938, which are pending allocation in family court. He is credited with mitigation of his bankruptcy in 2004 (SOR ¶ 1.p) because it is not recent.

Applicant did not provide any evidence of payments to address his student loan debt alleged in SOR ¶ 1.c for \$43,276. His reliance on the COVID-19 pandemic-based student loans deferment to establish mitigation for security clearance purposes is

misplaced. His student loans were delinquent after he became employed in 2018 and continuing until 2020 when the federal government's deferral became effective. See ISCR Case No. 20-03208 at 2 (App. Bd. July 6, 2021); ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021). He did not establish he was unable to establish a payment plan and make some payments in 2018, 2019, or early 2020.

Applicant did not mitigate the \$2,700 debt in SOR ¶ 1.o related to his 2017 eviction. The creditor obtained judgments against Applicant, and he has not taken any recent action to resolve this debt. He did not prove that he was unable to make greater progress sooner filing his federal income tax return for TY 2016 and paying his tax debt for that year. He failed to establish mitigation of financial considerations security concerns.

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 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.

Under AG ¶ 2(c), "[t]he 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. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is 51 years old, and he tests virtual reality software for a DOD contractor. In 2005, he received an associate's degree in computer network technology. He served in the Navy from 1989 to 2009, and he honorably retired as a petty officer first class. He has a 70 percent VA disability rating. There is no evidence that Applicant uses illegal drugs, violated security, or has issues with excessive alcohol consumption.

Applicant did not prove he lacked sufficient financial resources to pay his debts, including his taxes. The only areas of recent financial irresponsibility are his history of failing to timely file his federal income tax return and timely pay any taxes when due for TY 2016, his failure to establish a payment plan to address his student loans from 2018 to early 2020, and his failure to pay a debt owed to his landlord. His other SOR debts and his bankruptcy in 2004 are mitigated.

The Appeal Board's emphasis on security concerns arising from tax cases is instructive and binding on administrative judges. See ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016) (reversing grant of security clearance and stating, "His delay in taking action to resolve his tax deficiency for years and then taking action only after his security clearance was in jeopardy undercuts a determination that Applicant has rehabilitated"). See also ISCR Case No. 14-03358 at 3, 5 (App. Bd. Oct. 9, 2015) (reversing grant of a security clearance, and stating "A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly, failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information.").

In ISCR Case No. 15-03481 at 3 (App. Bd. Sept. 27, 2016), the Appeal Board reversed the favorable decision of the administrative judge in a case where the applicant filed his 2009, 2010, and 2011 tax returns in February 2014 and his 2012 tax return in August 2015 all before the SOR was issued. The applicant in that case owed less than \$1,800 in federal income taxes for those four TYs at the time of the decision. *Id.* The Appeal Board found the timing of the filing of his tax returns to be an important factor stating:

Applicant did not resolve his tax filing delinquencies until after submission of his security clearance application and after undergoing his background interview. Taking action to resolve the delinquent tax filings well after the initiation of the security clearance process undercuts a determination that those actions constitute a good-faith effort to resolve the delinquencies. *Id.* at 5.

Applicant may not have fully understood or appreciated the importance of the requirement to timely file his federal income tax return for TY 2016, to timely pay his taxes, student loans, and other debts in the context of his eligibility for access to classified information. However, like the applicant in ISCR Case No. 15-03481, he did not establish he was unable to make greater progress sooner in the resolution of his financial issues. His actions under the Appeal Board jurisprudence are too little, too late to fully mitigate security concerns. See ISCR Case No. 15-03481 at 5 (App. Bd. Sept. 27, 2016).

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Applicant's evidence did not overcome the *Dorfmont* presumption.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Unmitigated financial considerations security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a, 1.b, and 1.c:	Against Applicant
Subparagraph 1.d through 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant

Conclusion

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

Mark Harvey
Administrative Judge