



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



In the matter of:)
)
) ISCR Case No. 20-01997
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

05/31/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated security concerns under Guideline E, personal conduct, but failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On December 15, 2020, the Defense Counterintelligence and Security Agency issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

In an undated answer to the SOR, Applicant requested a hearing before an administrative judge. The case was assigned to me on February 18, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 15, 2022,

scheduling the hearing for April 11, 2022, by Microsoft Teams. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 8. Applicant objected to GE 1. His objection was overruled and GE 1 through 8 were admitted into evidence. Applicant testified and offered Applicant Exhibits (AE) A through M. There were no objections and they were admitted into evidence. The record remained opened until May 9, 2022, to permit Applicant to provide additional evidence. Applicant offered AE N through Z. There were no objections, and they were admitted into evidence. DOHA received the hearing transcript on April 20, 2022.

Findings of Fact

Applicant partially admitted the allegations in SOR ¶¶ 1.a through 1.g with explanations. He admitted SOR ¶¶ 1.h, 1.i, and 1.j. He denied SOR ¶¶ 1.k through 1.u and 2.a. His admissions are adopted as findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 50 years old. He graduated from high school in 1993 and married in 1994. He attended college for a short period, but did not earn a degree. He has three children, ages 23, 20 and 14. He is providing support for all three children. He began employment at his present job for a federal contractor in April 2021. Before then he worked for different federal contractors. From 2007 to 2014, he and his wife co-owned a business and had contracts with the federal government. They closed the business in August 2014 because they did not have a billable contract, and Applicant decided to accept an offer with another federal contractor. Applicant does not list any periods of unemployment in his July 2017 security clearance application (SCA). From 2019 to 2021 his salary was \$195,000. He changed jobs to relocate with his family and now earns \$175,000. His wife is employed and earns around \$50,000. (Tr. 23-36; GE1)

The SOR alleged the following tax issues for Applicant:

- Failed to timely file his 2010 federal income tax return (SOR ¶ 1.a). Carol, I think if you are going to use the dash first, you should indent. I would also put a space between the dash and the first letter.

- Failed to timely file his 2011 federal income tax return and was indebted to the federal government in the approximate amount of \$946 that remained unpaid until May 2016 (SOR ¶ 1.b).

- Failed to timely file his 2012 federal income tax return and was indebted to the federal government in the approximate amount of \$14,171 that remained unpaid until September 2020 (SOR ¶ 1.c).

- Failed to timely file his 2013 federal income tax return and was indebted to the federal government in the approximate amount of \$46,353 that remained unpaid as of the date of the SOR (SOR ¶ 1.d).

- Failed to timely file his 2014 federal income tax return (SOR ¶ 1.e).
- Failed to timely file his 2015 federal income tax return and was indebted to federal government in the approximate amount of \$1,157 that remained unpaid as of the date of the SOR (SOR ¶ 1.f).

- For tax year 2016 he was indebted to the federal government for delinquent taxes in the approximate amount of \$1,431 that remain unpaid as of the date of the SOR (SOR ¶ 1.g).

- The federal government filed a tax lien against Applicant in August 2017 in the amount of \$52,199 and it remain unpaid as of the date of the SOR (SOR ¶ 1.h).

- State A filed tax liens against Applicant in March 2013, April 2014, and May 2017, totaling \$7,257, which were released in July 2016, July 2015, and October 2017, respectively. (SOR ¶ 1.i).

Applicant disclosed in his 2017 SCA regarding his tax issues that he "had some past filings that were filed late, but everything should be filed properly now and we have and are negotiating payment options with the IRS." (GE 1) The only tax year he noted in the SCA was 2012. He further stated in the SCA:

There is (sic) currently some questions revolving around filing that are being reported as missing that we are in the process of investigating. It appears we had an issue with an accountant who said he filed but in reality didn't, or the IRS had a glitch. I have never purposely not filed or not paid taxes. My wife and I are currently cooperating with the IRS to get everything in compliance. As of today 4/4/2017 all filings should have been filed but even though we have sent in the reported missing 2013 and 2014 returns, we are being told it takes about 6-8 weeks for the returns to post on to our IRS account. So as of right now, they are appearing as unfiled. Additionally, we believe that there is an outstanding balance from the 2012 taxes that we are working to identify, validate and make payment arrangements for.

The IRS should have all filings now and we are currently and have been paying \$445 per month toward our tax debt while we negotiate additional tax payment terms with our IRS representative (GE 1).

In his SCA, Applicant estimated his tax debt to be \$40,000. (GE 1)

In October 2018, Applicant was interviewed by a government investigator. He told the investigator that he had an accountant who failed to file Applicant's 2012, 2013, and 2014 income tax returns. He did not realize it until an IRS agent came to his house in 2017 and told him. Applicant stated that when he looked at his tax returns he noticed the preparer's name was not on the documents. He believed his returns fell through the cracks. When he learned his returns were not filed he hired a tax defense network. He

stated to the investigator that he currently owed around \$52,000 and was waiting for an updated payment plan, presumably from the IRS. He said at that time he had been making \$445 payments per month since 2017. He said he and his wife realized they could not afford to make the \$445 monthly payments, and the IRS deferred payments until it finished its audit. Over the past year he had not made payments because they were filing IRS form 433A quarterly, which is used to obtain current financial information necessary for determining how a wage earner or self-employed individual can satisfy an outstanding liability. Applicant was expecting a new payment plan from the IRS. Post-hearing, Applicant provided documents to support he made payments of \$445 to the IRS from September 2014 to January 2016. (GE 2; AE N)

Applicant disclosed to the government investigator during his 2018 interview that he had a federal tax lien entered in August 2017 for \$52,000 and it was released in the beginning of 2018. At his hearing, Applicant submitted a Certificate of Release of Federal Tax Lien dated August 25, 2021. (GE 2; AE K)

Applicant told the investigator that he failed to pay his state taxes the same time as his federal taxes, but believed they had been paid. He was confronted with an unpaid 2013 state tax lien and he said he was unsure about it, but would look into it. His 2013 state tax lien was released in July 2016; his April 2014 state tax lien was released in July 2015; and his May 2017 state lien was released in October 2017. (GE 2, 4)

In September 2020, Applicant completed government interrogatories. He provided the dates he had filed tax returns each tax year and if anything was owed. He also provided IRS transcripts for tax years 2010 through 2020 that were obtained in August 2020. (GE 2, 3)

Tax year 2010-Applicant stated date filed was April 15, 2011. Transcript reflects extension granted to October 2011; inquiry for non-filing on May 2, 2012; notice issued on May 21, 2012; filed June 18, 2013. Balance owed is zero. (Balances reflected are as of date of transcript August 2020) (Tr. 59; GE 3)

Tax year 2011-Applicant stated date filed was December 30, 2013. Transcript reflects return received on July 19, 2013, and processed on December 30, 2013. An inquiry for non-filing was on May 8, 2013 and notice sent May 27, 2013. Installment agreement established July 24, 2014; payments began January 4, 2016, and made through April 2016; Applicant provided proof of payments. In April 2016, he was no longer in installment agreement. Balance owed is zero. (Tr. 51-52, 57,77; GE 3; AE N)

Tax year 2012-Applicant stated date filed was April 7, 2014. Transcript reflects return received on February 24, 2014, and was processed on April 7, 2014. Notice was issued on February 24, 2014, and installment agreement began on July 24, 2014. Payments made April 2016 to May 2017. In August 2017 a tax lien was placed on assets due to balance owed. The 2012 tax transcript does not report any withholdings for taxes. No longer in installment agreement in October 2017. New installment agreement

established April 2019. Payments began June 2019 (\$650) continued to August 2020. Balance owed is \$283 as of date of transcript. (Tr. 52-54, 91-92; GE 3)

Tax year 2013-Applicant stated date filed was May 22, 2017. Transcript reflects return received March 30, 2017, and processed May 22, 2017. Inquiry for non-filing tax return was October 30, 2014. Notice issued May 22, 2017. Installment agreement established April 2019. Balance owed is \$46,353 as of date of transcript. Applicant testified that in tax year 2013 he and his wife worked in real estate and their taxable income increased. He did not pay estimated tax or save money to pay his taxes at the end of the year. He did not attempt to rectify the tax situation created from 2012 when he did not pay estimated taxes in 2013 and had a tax debt. Federal government employees were furloughed during this period and government contracts were suspended, so he began working in real estate. (Tr. 54-55, 70-73, 79, 93-94, 100-101; GE 3)

Tax year 2014-Applicant stated date filed was April 15, 2015. Transcript reflects return received on March 28, 2017, and processed May 22, 2017. Notice issued May 22, 2017. Applicant was due a refund that was applied to his 2011 tax debt. -Balance owed is zero. (Tr. 78; GE 3)

Tax year 2015-Applicant stated date filed was April 15, 2016. Transcript reflects return received on March 2, 2017. Notice issued April 17, 2017. Installment agreement established April 2019. Balance owed is \$1,157 as of date of transcript. (GE 3)

Tax year 2016-Applicant stated date filed was April 15, 2017. Transcript reflects return received April 15, 2017. Payment of \$680 was received with the return. Balance owed is \$1,431. Installment agreement established April 2019. (GE 3)

Applicant timely filed his 2017, 2018, and 2019 federal income tax returns. He was due refunds of \$526, \$1,012 and \$4,131 that were applied to the balance owed for tax year 2012. (Tr. 78GE 3)

Applicant testified that in 2010 he began using a new accounting firm (AF) to handle his tax returns. He provided unsigned copies of Form 8879 IRS e-file Signature Authorization for years 2013, 2014, and 2015. IRS Form 8879 has a signature block for the filer and spouse to sign authorizing AF to generate a PIN to electronically file the tax return. AF completed each form for tax years 2013, 2014, and 2015 and included Applicant and his wife's name, Social Security numbers, gross income, taxable income, and whether they owed taxes or were due a refund. Attached to each years' IRS forms were cover letters from AF stating the due date was "as soon as possible" and for tax year 2013 Applicant was required to pay \$24,776; tax year 2014 authorized to receive a refund of \$1,935; and tax year 2015 authorized to receive a refund of \$4,786. The letter in bold states: "**Important-your return will not be filed with the IRS until the signed Form 8879 IRS e-file Signature Authorization has been received by this office.** Retain a copy of the signed dated form 8879 for your records." (AE O) The letter also clearly states that Applicant should initial the IRS 1040 and keep a copy for his records. The AF cover letter states for tax year 2013 that Applicant should make a check to the

U.S. Treasury for the amount owed and include it with the voucher, and he should write his Social Security number, tax year, and 1040 on the check. The forms for all three years provided by Applicant were unsigned. (Tr. 36; AE O)

Applicant testified that he signed the tax returns and was told they would be filed electronically. He remembered the accountant was going to file extensions for some years. Applicant testified that he could not find copies of his tax returns. He previously told the government investigator during his 2018 interview that he had reviewed his returns and noticed the preparer's name was missing from the returns. He did not provide evidence that he submitted payment for his 2013 taxes at the time it was due. The IRS transcripts corroborate 2013, 2014, and 2015 were not filed until 2017. He testified he did not know who filed these returns, whether it was AF or the tax network he more recently hired. (Tr. 36-45, 96; GE 2; AE O)

In Applicant's post-hearing statement and documents, he provided AE O and he stated it showed AF had a power of attorney to sign Applicant's tax returns. This document does not reflect AF had a power of attorney. Applicant's statement is contrary to the information provided in the document.

Applicant testified that he was unaware his tax returns had not been filed until an IRS agent came to his house in 2017 and told him he had unfiled tax returns and owed federal taxes. Applicant said he spoke with his accountant at the time his 2013 tax returns were prepared in 2014 and was aware he owed taxes. He said he and the accountant had an agreement that the accountant was to file the 2013 return and then set up a payment plan because Applicant could not pay what was owed at that time. He said he trusted the accountant to tell him what he needed to do. He testified that he was aware he did not timely file his 2010 to 2015 tax returns. In 2014 he had an installment plan to pay his tax debt. (Tr. 37-45, 61-64; AE C, D)

Applicant testified that he did not go back to AF to retrieve any of his documents or paperwork because he wanted to get his tax returns filed and arrange a payment plan. He said he could no longer trust him. He hired a different tax service to help him resolve his tax issues. He also stated that he thought AF was going to assist him in delaying payment of his taxes because Applicant had other expenses he needed to pay. He was aware taxes were owed for certain years and he was hopeful AF could get the payments deferred until he was able to get money to make the payments. He further stated that he consciously was not paying his taxes because he needed to get money together to pay them. He stated that he did not have instructions on how to pay the taxes because his wife usually handled the taxes. He assumed his wife was handling everything. Instructions for how to pay the taxes were provided on AF's cover sheet to IRS Form 8879. He testified that his wife was responsible for arranging a payment plan and he wrote the check. (Tr. 45-51, 61-66; AE O)

Applicant provided copies of email correspondence between him or his wife and DM who works at AF, and was the person who was to prepare Applicant's tax returns. In April 2017, Applicant reached out to DM after being contacted by the IRS about his failure to file multiple tax years' returns. Applicant specifically asked DM to explain why the IRS

told him his tax returns for multiple tax years were not filed when Applicant believed they were filed. DM stated he would look into it and then stated "You've filed all the required 1040s to date. Thus you are current, though there may be some short of tax." (AE D). DM does not say when they were filed, but only as of April 2017 they were filed. There is an email from DM to Applicant's wife dated October 15, 2015, indicating their 2014 tax returns had been submitted. (AE B, C, Q)

Another email provided states that DM was providing copies of the returns. Applicant testified he did not have copies or he could not find them. Applicant's wife questioned why DM was delaying sending them copies of the returns. In her email she stated that she believed it was because DM likely had not completed the returns. She asked DM to provide documentation that the returns were filed on time and told him she had asked him a number of times if the returns were submitted and he had assured her they were. The email correspondence did not provide an explanation or clarification regarding when the returns were filed, except as noted above for the 2014 return. DM only said he could probably get the penalty waived. (AE B, C)

Applicant testified that he is aware that mistakes were made regarding his taxes. He should have been more actively involved each year and made it a priority to timely file and pay or have a payment plan in place. He was aware that he should have set money aside to pay his taxes when he did not pay estimated taxes. He testified that he did not really pay attention, and relied on his accountant and his wife to handle the tax matters. He has learned from his mistake. He is now actively involved regarding his taxes. (TR. 73-74).

Applicant did not have an explanation for why his 2010, 2011 and 2012 tax returns were filed late and within several months of each other. He stated it was a decision made by AF and his wife. He stated he did not have any documentary proof to show he went to the AF's office before each year's taxes were due and signed his returns. (Tr. 82-85)

Applicant testified that he sold his house in July 2021 and paid \$52,199 to resolve his tax liabilities. His tax lien was released in August 2021. (AE K)

SOR ¶ 1.j alleged a judgment entered against Applicant in August 2013 (\$2,999), which was satisfied in February 2016. He stated this debt was for a golf club membership that he could no longer afford and was canceled. He had no explanation for why he failed to disclose it on his SCA. (Tr. 103-104; GE 4; AE E) SOR ¶ 1.k (\$535) alleged a judgment entered against Applicant in August 2011. In his SOR answer, he disputed the judgment and said the creditor had problems with their bookkeeping and then he was not able to locate a representative, and he believes the judgment is in error. He did not offer any documentary evidence to substantiate that the judgment is not valid. The account is for a social club that Applicant used to network with people of affluence. This judgment is not resolved. (Tr. 105-111; GE 4)

There are two judgments entered and two collection accounts against Applicant from the same collection creditor. SOR ¶ 1.l (\$1,262) is a judgment filed in December

2013. This judgment was satisfied in May 2018. Applicant testified that when he paid the judgment to the creditor it included all of his accounts owed to the creditor. I have no supporting documents for that position. He stated he did not disclose the judgment on his SCA because it had been paid. Applicant testified that he had no pending judgments. (Tr. 111-113, 115; GE 4; AE H)

SOR ¶ 1.m (\$945) is a judgment (same creditor) filed in February 2013 and recorded under its original creditors name. Applicant stated in his SOR answer that he disputed it. There is no indication he had the judgment overturned. It is not resolved. (Tr. 111-113; GE 4, 5)

The debt in SOR ¶ 1.q (\$1,670, same creditor) was disputed by Applicant. He stated in his SOR answer that he did have a delinquent account with this creditor in May 2018, and he paid the debt in full. He did not provide evidence of his payment. The last activity on this account was 2011. Based on the age of the debt, Applicant may have been referring to a different debt, and it likely has been removed from his credit report due to age. It may be a duplicate account. It is resolved. (Tr. 115-117; GE 5, 6, 7, 8)

The debt in SOR ¶ 1.n (\$2,432) was charged off and the last activity on the account was September 2011. (GE 5). Applicant stated in his SOR he had a credit card with the creditor 13 to 15 years ago, and he had not received any correspondence from the creditor for the past 7 to 10 years. He testified that he reached out to the creditor, but it could not find the account. He admitted the account could have been delinquent years ago. Due to the age of the account, it likely was removed from his recent credit reports. Post-hearing, Applicant stated that he was able to find the current collection company for the account, and he resolved the debt with a payment of \$1,362. It is resolved. (Tr. 121-125; GE 5, 6, 7, 8; AE V)

The debt in SOR ¶ 1.o (\$1,081) is a charged-off account. The last activity on the account was in May 2012. The debt in SOR ¶ 1.p (\$1,155) is a charged-off account. The last activity on the account was November 2013. Applicant denied these debts because he currently has other accounts with the creditors that are in good standing. He stated he may have had a couple late payments on these accounts in the past. Due to the age of these debts they are no longer on his recent credit report and were likely removed. (Tr. 125-133; GE 5, 6, 7, 8)

The debt in SOR ¶ 1.r (\$923) is a collection account. Applicant disputed this debt to the credit bureau in March 2017. His October 2017 credit report notes the dispute was resolved and that Applicant disagreed. The last activity on this debt was June 2011. It does not appear on subsequent credit reports, likely due to its age. (Tr. 134-136, 139; GE 5, 6, 7, 8; AE I)

The debt in SOR ¶ 1.s (\$908) is a collection account for a medical debt. Applicant did not believe he had an outstanding medical debt and indicated it was not reported on his credit reports. It was reported on his October 2017 credit report as a collection account

and the last activity was September 2015. It is not on subsequent credit reports. Applicant testified that he paid the debt. It is resolved. (Tr. 139-141; GE 5, 6, 7, 8)

SOR ¶ 1.t (\$744) was also disputed by Applicant. The account's last activity date is September 2011. This debt was listed on Applicant's October 2017 credit report. It does not appear on subsequent credit reports, which may be due to the age of the debt. (Tr. 144-145; GE 5, 6, 7, 8)

The debt is SOR ¶ 1.u (\$150) is a collection account for a lawn service that Applicant disputes. He admitted using the service for a short period, but was never contractually obligated. He disputed there was a balance owed. The debt is reflected on Applicant's October 2017 credit report as a collection account, but did not include a last activity date. It was assigned in December 2014. It is not on subsequent credit reports and was likely removed due to age. (Tr. 147; GE 5, 6, 7, 8)

Applicant did not disclose he had any delinquent judgments on his July 2017 SCA. When confronted by the government investigator regarding delinquent debts, he denied he was aware of the debts, disputed the debts, or said he paid the debts. In his answer to the SOR, Applicant misconstrues the allegation in SOR ¶ 2.a, believing it alleged that he failed to disclose his federal tax issues. That was not alleged.

The SOR alleged Applicant deliberately failed to disclose his state tax liens and four judgments alleged in SOR ¶¶ 1.i through 1.m. Evidence supports that the 2013 and 2014 state tax liens were paid before the SCA. The 2017 state tax lien was entered in May 2017 and paid in October 2017. Applicant testified that he did not know there were liens entered regarding the state taxes he owed when he completed the SCA. (Tr. 97)

In his answer to the SOR, Applicant admitted he owed the judgment against him in SOR ¶ 1.j and he satisfied it in 2016. He denied the judgment in SOR ¶ 1.k and denied he was aware of the judgments in SOR ¶¶ 1.l and 1.m. There is insufficient evidence that Applicant was aware of the specific judgments when he completed his SCA and deliberately failed to disclose them. I find in his favor on SOR ¶ 2.a. (GE 2; Answer to SOR)

Applicant provided copies of awards, recognitions, and performance evaluations. He also provided character letters that describe him as dedicated, dependable, honest, professional, and unselfish, and that he has impeccable character. The letters note that he has had a profound impact on the program he works on, is devoted to duty, and is committed to excellence. (AE S, X)

Post-hearing, Applicant provided information that he has enrolled in a nine-week financial management class or course that also deals with managing taxes. He watched some videos on financial planning. He testified that it is only in the last five years that he feels like his finances are under control. He said his wife was horrible at managing their finances. He also admitted they were living beyond their means. He and his family took cruises in 2013 and 2015. He admitted he used poor financial judgment. He stated that

he did not feel like he had a handle on their finances until after he sold their house and was able to pay their tax debt. He has taken over the finances. He said he now keeps a budget. (Tr. 136-138, 150-152; 156, 168; AE U)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an 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.

Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security 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 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 provides conditions that could raise security concerns. The following are potentially applicable:

- (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.

Applicant failed to timely file and pay his federal income taxes for multiple tax years. He had federal and state tax liens entered against him. He had multiple judgments entered against him and multiple delinquent debts beginning in 2011. Applicant has a long history of failing to pay his financial obligations. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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 or provides evidence of actions to resolve the issue; and

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

The evidence provided is somewhat confusing, in that Applicant claims he did not know his 2013, 2014, and 2015 income tax returns were not timely filed. The evidence supports that Applicant's tax issues began when he failed to timely file his 2010 federal income tax return. He was notified by the IRS in May 2012 when they sent an inquiry regarding his failure to file. This happened again for his 2011 tax return, when an inquiry

was sent in May 2013 regarding his failure to timely file and pay his taxes, which were eventually paid in 2016. He also failed to timely file his 2012 federal income tax return.

I find the IRS tax transcripts the most probative evidence. Applicant did not provide signed copies of IRS form 8879 showing that he authorized AF to file tax returns for 2013, 2014, and 2015. He told the government investigator that he reviewed his tax returns and noticed the preparer's signature was missing. At his hearing, he stated he did not have copies of those returns. In his answer to interrogatories, he provided the dates he filed his federal tax returns, some of which were contradicted by the tax transcripts. He also told the government investigator that his federal tax lien was paid in 2018. It was not paid and released until 2021. He testified that he was aware he had a large federal tax debt for 2013 and discussed with AF delaying the payment because he did not have the money. The IRS repeatedly sent notices to Applicant regarding his unfiled tax returns. There is evidence that DM confirmed to Applicant in an October 2015 email that the 2014 tax return was submitted. I have considered that Applicant believed AF had filed his 2013, 2014, and 2015 tax returns. Even if he believed that AF had timely filed his tax returns on his behalf, he was receiving notices from the IRS regarding the unfiled tax returns and should have taken action. He was also aware he owed taxes for 2013 and was attempting to delay payment.

The evidence also shows that Applicant had tax issues prior to the years he said AF failed to file his federal tax returns. The evidence shows he failed to timely file his 2010 federal tax return and failed to timely file and pay his 2011 and 2012 tax obligations. His 2011 taxes were paid in 2016. It appears the balance of his 2012 taxes were paid in 2021 after he sold his house and paid the entirety of the federal tax lien. I cannot find that Applicant's repeated failure to comply with tax requirements occurred under circumstances that are unlikely to recur. His conduct casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

The evidence supports that Applicant was working with the IRS and was arranging installment agreements for his 2011 and 2012 delinquent taxes. However, there is insufficient evidence to show his failures to pay his taxes were beyond his control for these and other tax years. Applicant testified he was aware of a large tax debt for 2013 that he was unable to pay on time. He failed to provide sufficient evidence and explain why he did not pay judgments and other debts that were in collection. I find AG ¶ 20(b) does not apply.

Post-hearing, Applicant provided information that he is currently enrolled in a financial management course. AG ¶ 20(c) has some application. Applicant has satisfied some judgments and paid some of his delinquent debts and AG ¶ 20(d) applies to them in that they are resolved. It does not apply to the unpaid judgments in SOR ¶¶ 1.k and 1.m. His failure to pay his debts until judgments were entered undermines that he made good-faith efforts to repay his overdue creditors.

Applicant disputed many of the alleged debts. His delinquent debts were on his earlier credit report and many of the debts he disputed very likely were removed due to

their age. I have resolved those debts that are no longer on Applicant's credit report in his favor, however, it does not negate that these debts were legitimate debts reflected on his 2017 credit report and remained unpaid for years. AG ¶ 20(e) has some application.

Applicant paid his federal tax lien in 2021 and paid his state tax liens. AG ¶ 20(g) applies to his delinquent tax filings and payments. Although, he has resolved his tax issues, it does not negate his years of failing to comply with tax rules and regulations.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concerns for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

I have considered all of the evidence and there is insufficient evidence to conclude that Applicant's omissions were deliberate. I find in his favor on this guideline.

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), 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant has a history of failing to timely file and pay his federal income taxes. Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. *See, e.g.*, ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as paying taxes when due, 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. 17-01382 at 4 (App. Bd. May 16, 2018). Applicant's history of non-compliance with a fundamental legal obligation to timely file and pay his federal income taxes and timely pay his state income taxes raises serious concerns.

Applicant also failed to timely pay debts until after judgments were entered. Many of his other debts dropped off his credit report due to age. Although his federal and state taxes are now paid and some of his judgments have been satisfied, he has not established a reliable financial track record. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations. There was insufficient evidence to conclude that Applicant deliberately failed to disclose his delinquent debts and I find for him under Guideline E, personal conduct.

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.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant

Subparagraphs 1.n-1.q:	For Applicant
Subparagraphs 1.r-1.u:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge