



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



In the matter of:)
)
) ISCR Case No. 19-03024
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: Lance Renfro, Esq.

August 26, 2022

Decision

TUIDER, Robert, Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (financial considerations). National security eligibility is denied.

Statement of the Case

On January 7, 2018, Applicant submitted a Questionnaire for National Security Positions (SF-86). On May 4, 2020, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The SOR detailed reasons why the DCSA CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On May 29, 2020, Applicant submitted her Answer to the SOR. On February 1, 2021, Applicant submitted a second Answer to the SOR. (SOR Answer) I have accepted her most recent SOR Answer as the most current and used it throughout this decision. On March 24, 2021, Department Counsel was ready to proceed.

On April 8, 2021, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. The same day, DOHA issued a notice of hearing scheduling the hearing for May 20, 2021. On May 13, 2021, DOHA issued a second notice of hearing scheduling the hearing to be held by DCS video teleconference on July 13, 2021.

The hearing commenced as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 8, which I admitted without objection. Applicant testified and offered Applicant Exhibits (AE) A through G, which I admitted without objection. I held the record open until August 13, 2021, to afford Applicant an opportunity to submit additional evidence. She timely submitted AE H through T, all of which were admitted without objection. On July 27, 2021, DOHA received the hearing transcript. (Tr.).

Findings of Fact

Background Information

Applicant is a 44-year-old senior supply chain planning specialist who has been employed by a defense contractor since September 2007. This is her first application for a security clearance, and she seeks a clearance to enhance her position within her company. (Tr. 11-13; GE 1)

Applicant graduated from high school in June 1996. She attended community college after high school for “about 18 months,” but did not earn a degree. Applicant later was awarded a bachelor of science degree in business accounting in May 2008 from an online university. She enrolled in a Master of Business Administration (MBA) program with the same university and is “two classes away from finishing.” Applicant wants to complete her MBA, but not with the same university. (Tr. 13-15; AE C)

Applicant married in May 1998. She has two adult daughters, both employed and currently living at home. Applicant provides for their room and board, but her daughters are responsible for other expenses. Applicant’s husband drives for a ride-sharing service and does some bartending “on the side.” (Tr. 16-18)

Financial Considerations

The SOR lists 20 allegations under this concern; SOR ¶ 1.a alleges Applicant failed to timely file her 2010, 2017, and 2018 Federal income tax returns; SOR ¶¶ 1.b, 1.c, and 1.d allege she owed income taxes to the Federal and state governments; and SOR ¶¶ 1.e through 1.t allege delinquent student loans and various other debts, all of which are discussed in further detail below. These allegations are established by her August 17, 2006, January 20, 2018, September 27, 2018, May 13, 2019, and March 24, 2021 credit reports; her January 9, 2018 DISS CATS Incident Report and employer pay record reflecting garnishment dated September 21, 2018; her December 17, 2019 (containing her September 26, 2018 Office of Personnel Management Personal Subject Interview (OPM PSI) and January 15, 2020 Responses to DOHA Interrogatories; her

January 7, 2018 SF-86; and her February 1, 2021 SOR Answers in part. (GE 1 – GE 8; SOR Answer)

In her September 2018 OPM PSI, Applicant attributed her failure to timely file her Federal and state income tax returns since 2011 due to “personal issues and trauma.” Her husband lost his job in 2011 at a major hotel chain and was unemployed for a year. When he did find a job, it paid less than half of his previous salary. In January 2018, Applicant hired an accountant to prepare and file all of her past-due Federal and state income tax returns. She told the investigator that her accountant filed all of her Federal income returns in late spring 2018 and informed her that she owed \$10,000 in back Federal taxes. The accountant had not filed Applicant’s state income tax returns because he needed more information regarding her spouse’s employment. In 2013 or 2014, the IRS began garnishing Applicant’s wages at \$266 per pay period. In that same OPM PSI, Applicant stated that it was her intention to pay all of her Federal and state income taxes owed. (September 2018 OPM PSI, GE 2; Tr.19-20)

Applicant added in her September 2018 OPM PSI that she fell behind on her student loans and other debts due to “various circumstances,” among them her husband’s unemployment and subsequent decline in income, as noted. Also, Applicant’s husband fathered a child out of wedlock ten years prior, and in 2013, he was required to pay \$280 in monthly child support in addition to providing food and clothing for the child. As of her hearing date, the child was 12 years old and, by an informal arrangement, child support had risen to \$600 a month. Applicant’s husband also incurred expenses as a result of sharing joint custody with the child’s mother. Lastly, Applicant claimed that she lost 25 family members in the last eight years and traveled to all of the funerals which were expenses she had not anticipated. (September 2018 OPM PSI, GE 2; Tr. 20-22, 41-43)

SOR ¶ 1.a: Failed to file timely Federal income tax returns for tax years 2010, 2017, and 2018.

Applicant admitted this allegation in her SOR Answer stating, “2010 has, since, been resolved/settled. 2017 and 2018 will be filed no later than 2/15/2021.” (SOR Answer) During her hearing testimony, she stated that she has been unable to file her 2010 Federal income return because, “because it’s too old now when I tried to file during the Statement of Reasons, but I will be getting into a payment plan.” (Tr. 24; SOR Answer) Applicant testified that she was unable to file her 2017 and 2018 Federal income tax returns because she was taking care of her maternal aunt who passed away in 2018. Also, her husband “lost another job at Christmas of 2017.” (Tr. 25) Applicant claimed those tax years were filed; however, the IRS returned her filings because she “missed a signature.” She added that she returned her completed returns to the IRS and as soon as the IRS has finished processing her returns, she will go on a payment plan. (Tr. 25-26)

During cross-examination, Applicant stated that she had not filed her 2019 and 2020 Federal income tax returns, but was going to file them within weeks of the hearing. She hopes that she does not owe any taxes for those years. (Tr. 46-48) In Applicant’s

January 15, 2020 Response to DOHA Interrogatories, she stated that her 2017 and 2018 Federal income tax returns were “pending preparation” and “will be complete by 1/30/2020.” See above regarding her comments on this topic in her SOR Answer. (Tr. 48-49) Applicant did not submit any record evidence to document that her 2010, 2017, and 2018 Federal income returns had been filed. (See AE A – G, and AE H – T)
ALLEGATION NOT RESOLVED.

SOR ¶¶ 1.b – 1.d: Delinquent Federal income tax debt of \$1,355, \$6,238, and \$2,480 (total of \$10,073) for tax years 2014, 2015, and 2016, respectively.

Applicant denied these allegations in her SOR Answer stating, “I dispute the total amount owed to the IRS due to my current mandated dependent status and previous funds paid; it is believed the amount shown as due exceeds the true balance owed. An official dispute will be filed no later than 2/28/2021; pending the processing of all final tax returns.” (SOR Answer) In her hearing testimony, Applicant stated the amounts alleged were not accurate. She stated that she did not believe these amounts were accurate because she could not dispute them formally until the other tax returns were processed. Once processed, she said will request the “IRS do a full account reconciliation and I should be coming out on the other side with a much smaller balance or zero . . . and if not . . ., I will go ahead and put myself on a payment plan.” Applicant did not submit any documentary evidence during her hearing regarding these allegations. (Tr. 26-28; SOR Answer)

During cross-examination, Applicant stated that her wages were being garnished by the Federal Government “for almost ten years so I can’t imagine that I owe the Government any money.” She explained that because her wages have been garnished for so long that she did not “think that I will end owing that \$10,000 total of B, C, and D.” (SOR ¶¶ 1.b – 1.d) Applicant believes that in the near future she will know for certain whether she owes additional money for taxes. (Tr. 49-51; GE 8)

Post-hearing, Applicant submitted an IRS receipt dated August 12, 2021, for tax year 2014 in the amount of \$353. The receipt does not indicate whether this amount is a partial payment or for the amount due. (AE H) Post-hearing, Applicant submitted an IRS tax transcript dated August 13, 2021, indicating that her 2015 Federal income tax return was received on December 10, 2018, and processed on January 14, 2019. The transcript reflects an account balance to include interest and penalties of \$6,610. (AE I) Post-hearing, Applicant submitted an IRS tax transcript dated August 13, 2021, indicating that her 2016 Federal income tax return was received on December 10, 2018 and processed on January 14, 2019. The transcript reflects an account balance to include interest and penalties of \$2,671. The post-hearing evidence does not adequately address the payment status of tax years 2014, 2015, and 2016. (AE J)
ALLEGATIONS NOT RESOLVED.

SOR ¶ 1.e: State income tax returns that are currently outstanding and her account is delinquent.

Applicant admitted this allegation in her SOR Answer stating, “there are two years that were not filed timely (2017 and 2018). All prior years will be filed no later than 2/15/2021.” (SOR Answer) During her hearing testimony, she stated that she filed her 2017 and 2018 state income tax returns, “2017 has been processed, but the state [of residence] was already garnishing my wages so I’ve called, but they said that acts as a payment plan for now and they can’t take me off the garnishment, so I will continue to pay that balance in that manner. I have already paid 1,000 dollars to date.” (Tr. 27) Applicant submitted a [state] garnishment with a start date of March 31, 2021 payable to her state tax authority for \$1,000 with a “goal amount” of \$4,939. Applicant stated this exhibit was for tax year 2017 and was submitted to show that her wages are being deducted at a rate of \$125 every pay period. Applicant stated that she does not owe any state taxes prior to 2017. (Tr. 27, 53; AE F)

During cross-examination, Applicant stated that the only state income tax returns that had not been filed were for tax years 2019 and 2020. She stated that she anticipated filing those returns with her Federal income tax returns, “the 2019 this week and the 2020 next week.” She stated that she was aware that she would owe a balance on the state income tax returns, but “[i]f it is, I’m sure it’s going to be a pretty small balance.” (Tr. 52)

Post-hearing, Applicant submitted a state writ of garnishment receipt with a start date of December 22, 2016, with a “goal amount” of \$10,601 indicating lien status was completed payable to a county sheriff’s department (not her county of residence). This post-hearing document was not accompanied by any explanation, and it is unclear what it pertains to. This document most likely deals with SOR ¶ 1.p, discussed below; however, the post-hearing exhibit cover sheet lists it as “Garnishment Completion Summary – [state of residence] State Taxes.” (AE K) **ALLEGATION NOT RESOLVED.**

SOR ¶¶ 1.f – 1.i, 1k; Department of Education (DoED) student loans in the amounts of \$13,087, \$8,847, \$8,670, \$8,502, and \$1,709, respectively.

Applicant denied these allegations in her SOR Answer stating, “I refinanced all loans with the Department of Education and make payments through a 3rd party. I have attempted to reconcile the discrepancy within the accounts which is causing the delinquent status. However, I have not been able to reach a favorable resolution with neither the 3rd party nor the [DoED]. I will continue to resolve the issue until all loans, properly, reflect as refinanced/under payment plan.” (SOR Answer)

During her hearing, Applicant submitted a copy of her Direct Consolidation Loan Application and Promissory Note dated July 7, 2021. Applicant stated that her DoED student loans were successfully consolidated “and as soon as everything picks back up after COVID, I will continue to pay that through my refinanced payment plan.” She stated that she had a total of seven loans with DOE and had been making payments on two of them and was in the process of consolidating the other five loans. She estimated

that after her seven loans were consolidated, she would owe \$113,000 and her monthly payments would be “between 264 and 299 [dollars]” beginning in November 2021. (Tr. 29-30, 32-34; AE G) Applicant stated that her application had not yet been approved as of her hearing date adding that DoED needed additional information. DoED had been garnishing her wages against her student loan balance “like it was about 10 years,” but suspended collection during COVID. (Tr. 54-56; GE 4) **ALLEGATIONS BEING RESOLVED.**

SOR ¶ 1.j: Collection account from apartment complex in the amount of \$6,283. Applicant denied this allegation in her SOR Answer stating, “this account was disputed and removed as a personal debt.” (SOR Answer) During her hearing testimony, she stated that she denied this allegation “because I believed that debt to be part of an issue with another apartment complex.” Applicant has since contacted this creditor and arranged a payment plan. The creditor informed the Applicant that they would settle for 30% of the amount due. Post-hearing, Applicant submitted an undated receipt from the creditor for \$168 documenting proof of partial payment. (Tr. 30-31, 56; AE M) **DEBT BEING RESOLVED.**

SOR ¶ 1.l: Charged-off account from an online university in the amount of \$626. Applicant denied this allegation in her SOR Answer stating, “this account was disputed and removed as a personal debt.” (SOR Answer) During her hearing testimony, she stated that the creditor university “has since written that debt off. This was for an online class that was not supposed to be charged in that manner.” However, post-hearing, Applicant submitted a receipt from the creditor dated July 30, 2021 in the amount \$313 apparently settling this debt for a lesser amount. (Tr. 30, 32, 57-58; GE 3; AE N) **DEBT RESOLVED.**

SOR ¶ 1.m: Collection account from a payday loan company in the amount of \$315. Applicant admitted this allegation in her SOR Answer stating, “this account will be paid off no later than 2/15/2021.” (SOR Answer) During her hearing testimony, she stated that she paid this account in full. She provided a receipt from the creditor dated July 7, 2021 reflecting a zero balance. (Tr. 31, 67; AE E) **DEBT RESOLVED.**

SOR ¶ 1.n: Collection account from a fitness company for exercise equipment in the amount of \$244. Applicant denied this allegation in her SOR Answer stating, “this account was disputed and removed as a personal debt.” (SOR Answer) During her hearing testimony, she stated that she did not order work out equipment and returned it. Applicant added, “I disputed that (debt) on my credit report through Equifax. They (creditor) never provided proof to Equifax so I won the dispute and that was removed. She did not submit any documentation during her hearing or post-hearing indicating that she successfully disputed this account. This debt remains on Applicant’s March 21, 2021 credit report. (Tr. 34-35, 57-58, 68; GE 3) **DEBT NOT RESOLVED.**

SOR ¶ 1.o: Charged-off account from a credit union for an overdraft fee in the amount \$182. Applicant admitted this allegation in her SOR Answer stating, “this account will be paid off no later than 2/28/2021.” During her hearing testimony, she stated that she had not yet paid this account, but hoped to pay this it off “within the next

week.” Post-hearing, Applicant submitted a receipt documenting payment. (Tr. 34-35, 58, 68-69; AE O) **DEBT RESOLVED.**

SOR ¶ 1.p: **Charged-off account for a voluntary vehicle repossession in the amount of \$15,995.** Applicant denied this allegation in her SOR Answer stating, “this account has been paid off in full and removed as a personal debt.” (SOR Answer) During her hearing testimony, she stated that “this was taken care of through another garnishment and was paid off. I can provide that garnishment and the payment to you. I’m sorry, I forgot to do that before.” Post-hearing, Applicant submitted her garnishment paperwork and related documents pertaining to this account that corroborated her testimony. (Tr. 35-36, 69-70; AE P) **DEBT RESOLVED.**

SOR ¶ 1.q: **Collection account for municipal parking ticket in the amount of \$40.** Applicant denied this allegation in her SOR Answer stating, “this account was disputed and removed as a personal debt.” (SOR Answer) During her hearing testimony, she stated that she would contact the municipality adding “I originally disputed this charge. I was not on the street that they said I parked on incorrectly. Never been on that street, so I’m going to continue to fight that and if I can’t, I’ll just pay the 40 dollars.” Post-hearing, Applicant submitted a receipt dated August 6, 2021 from the municipality indicating that she paid the \$40 ticket. (Tr. 36, 70; AE Q) **DEBT RESOLVED.**

SOR ¶ 1.r: **Collection account for a cable bill in the amount of \$526.** Applicant denied this allegation in her SOR Answer stating, “this account was settled/paid off and removed as a personal debt.” (SOR Answer) During her hearing testimony, she stated that she was currently disputing this debt with the cable company. She stated that it was for some equipment that the cable company claimed that she had not returned. Post-hearing, Applicant submitted a receipt dated July 23, 2021, from the creditor for \$526. (Tr. 37, 70; AE R) **DEBT RESOLVED.**

SOR ¶ 1.s: **Collection account for a cell phone in the amount of \$488.** Applicant denied this allegation in her SOR Answer stating, “this account was disputed and removed as a personal debt.” (SOR Answer) During her hearing testimony, she stated that she was currently disputing this debt with the cell phone company. She stated that she was awaiting a “validation letter” from the creditor, and if she did not receive the letter within a week, she would “go ahead and resolve this debt as well.” Post-hearing, Applicant submitted an “Accord/Satisfaction Agreement” dated August 6, 2021 from the creditor indicating that the creditor had agreed to accept the lesser amount of \$268 to settle this account. (Tr. 37, 70; AE S) **DEBT BEING RESOLVED.**

SOR ¶ 1.t: **Charged-off account for a voluntary 2010 Dodge Charger vehicle repossession in the amount of \$9,836.** Applicant denied this allegation in her SOR Answer stating, “this account has been paid off and removed as a personal debt.” (SOR Answer) During her hearing testimony, she stated she was unable to get any information on this debt in time for her hearing, but “will continue to work to get that.” Post-hearing, Applicant submitted an IRS FORM 1099-C, Cancellation of Debt, from the

creditor in the amount of \$9,836, dated December 31, 2015. (Tr. 37-38 58-59, 71; AE T)
DEBT RESOLVED.

To demonstrate that she was “making every effort to clear [her] credit,” Applicant submitted a credit repair service proposal contract dated July 2, 2021. She testified that she had executed the contract and paid a \$150 deposit to initiate the credit repair service to help her gain financial responsibility. (Tr. 38, 59-61; AE D) Applicant stated that her credit repair service provided financial counseling to increase her “financial education and literacy.” (Tr. 43, 61-62)

Applicant earns about \$121,000 a year. Her husband currently earns about \$2,000 a month. Her monthly rent for a two-bedroom apartment is \$2,000. Her monthly car payments for a recently purchased Toyota Avalon are \$633. Her husband does not have a car. Her monthly utilities are about \$120 a month. Applicant estimates that her net monthly remainder is about \$1,500 a month. She stated that she saves the remainder in cash and hopes to use those savings for a house down payment, and also to have on hand for unforeseen expenses. Between her husband and herself, they have about \$4,500 saved. (Tr. 71-76)

Applicant was alerted to the Government’s concerns regarding her failure to file her Federal and state income tax returns during her September 26, 2018 OPM PSI. She stated during that interview that she had retained an accountant in January 2018 to file all of her federal and states tax returns and that it was her “intention to pay all her federal and state taxes owed.” (GE 2) During that same interview, she was alerted to the Government’s concerns regarding her numerous delinquent accounts. (GE 2) Applicant was later advised of the Government’s concerns regarding her failure to file her Federal and state tax income tax returns and delinquent accounts when she received her May 4, 2020 SOR. Lastly, as explored during cross-examination, Applicant has had a history of financial issues as noted in her August 17, 2006 credit report. (Tr. 63-64; GE 7)

Character Evidence

Applicant submitted numerous awards and certificates of appreciation from her employer documenting her accomplishments and superior performance. (Tr. 40; AE B) Applicant’s manager also submitted a reference letter noting that she has known Applicant since 2020 and “watched her grow in knowledge, confidence, and abilities this past year and become a true leader for the team.” Her manager noted her dedication and value she adds in support of the company mission. She hopes Applicant receives a clearance “so she can continue to support the company and ultimately the military.” (Tr. 40; AE A)

Policies

This case is adjudicated under Executive Order (EO) 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), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

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 three 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 the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(f). Further inquiry is necessary about the potential application of any mitigation conditions.

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 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 [full cite here] *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's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and her financial problems are not isolated. Her debt, particularly as it pertains to her delinquent taxes, remains a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)).

AG ¶¶ 20(b) and 20(d) are partially applicable as it pertains to delinquent debts alleged under SOR ¶¶ 1.f through 1.m and 1.o through 1.t. The personal and family problems that Applicant described beginning around 2011 to include her husband losing his job, her husband's underemployment, expenses related to her husband's out of wedlock child, and deaths of 25 family members played a role in her ability to remain current on her financial obligations. However, Applicant does not receive full credit under either of these two mitigating conditions because of her failure to act responsibly under the circumstances and the time elapsed before addressing these obligations. AG ¶ 20(g) is partially applicable to SOR ¶ 1.b insofar as Applicant has made some progress towards her paying her 2014 delinquent taxes; however, her post-hearing documents are unclear insofar as the balance owed for 2014. Her post-hearing documents did not address her 2015 and 2016 delinquent taxes. AG ¶ 20(e) is applicable to the debts she successfully disputed. AG ¶ 20(f) is not applicable.

Of great concern is the fact that Applicant did not timely file her Federal income tax returns for tax years 2010, 2017, and 2018. Not alleged, it also appears that Applicant did not timely file her 2019 and 2020 Federal income tax returns. And, she is also indebted to the Federal Government for tax years 2014, 2015, and 2016 for \$10,073. Applicant disputes this amount, but did not submit any documentation to verify a lesser amount. She also acknowledged that her state income tax returns were not timely filed for tax years 2019 and 2020.

Applicant was alerted to the fact that her failure to file these returns and her debts were a concern to the Government during her September 2018 OPM PSI and later when she received her May 2020 SOR. These events apparently did not prompt Applicant to recognize the seriousness of her situation and take immediate corrective action. Documentation that her delinquent returns have been filed has not been received. Her explanation of being overwhelmed or distracted due to personal problems is not a convincing explanation given the time elapsed and taking into account Applicant's age, education, and experience. The evidence of record does not mitigate such a lapse in judgment. The evidence demonstrates that Applicant did not act responsibly with regard to timely filing her Federal and state income tax returns and paying or making payment arrangements for taxes owed.

In regard to the failure to file timely Federal income tax returns when due, the DOHA Appeal Board has commented in ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016):

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). (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). Applying the Appeal Board's jurisprudence, SOR ¶¶ 1.a and 1.b are not mitigated.

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.

The ultimate determination of whether to grant or continue national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Applicant is a 44-year-old senior supply chain specialist, who has been employed by a defense contractor since September 2007. She has spent a significant amount of her adult working life working for a defense contractor. She seeks to obtain a security clearance to enhance her position within her company. Her manager supports her in this endeavor. Based on her manager's recommendation as well as her numerous awards and certificates of appreciation from her employer, it is clear that she is highly regarded in her industry. Applicant is married and has two adult daughters. She has all the indicators of an upwardly mobile individual with a bright future ahead of her.

However, for at least 11 years, Applicant has failed to grasp the importance of one of the fundamental hallmarks of U.S. citizenship, which is the timely filing of her Federal and state income tax returns and paying taxes when due. This is especially crucial for an individual seeking to retain a security clearance and working for a defense

contractor advancing the national security of the United States. From the evidence presented, despite being made aware that the timely filing and payment of her Federal and state income tax returns was a security concern, Applicant failed to comply with this basic and fundamental security obligation. She is a bright and talented individual, who is more than capable of addressing her income tax problems in a responsible way. I gave mitigation credit to debts Applicant has resolved or is attempting to resolve where possible. She is to be commended for the progress she made in addressing those debts. However, more remains to be done before gaining financial responsibility, especially as it pertains to her taxes. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards establishing a track record of financial responsibility, and a better track record of behavior consistent with her obligations, she may well be able to demonstrate persuasive evidence of her security clearance worthiness.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

Formal Findings

The formal findings on the allegations set forth in the SOR are as follows:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.e:	Against Applicant
Subparagraphs 1.f – 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraphs 1.o – 1.t:	For Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant's security clearance. National security eligibility is denied.

ROBERT TUIDER
Administrative Judge