



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



In the matter of: )  
)  
) ISCR Case No. 20-03194  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andre Gregorian, Esq., Department Counsel  
For Applicant: Brittany Forrester, Esq.

09/16/2022

**Decision**

HARVEY, Mark, Administrative Judge:

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

**Statement of the Case**

On December 5, 2019, Applicant completed and signed a Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On December 7, 2020, the Defense Counterintelligence and Security Agency (DCSA) 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 DCSA 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 December 17, 2020, Applicant responded to the SOR. (HE 3) On February 24, 2021, Department Counsel was ready to proceed. Processing of the case was delayed due to the COVID-19 pandemic. On May 3, 2022, the case was assigned to me. On June 11, 2022, DOHA issued a notice of hearing, setting the hearing for July 26, 2022. (HE 1) His hearing was held as scheduled using the DOD Microsoft Teams video teleconference system. (*Id.*)

During the hearing, Department Counsel offered 5 exhibits; Applicant offered 12 exhibits; and all exhibits were admitted without objection. (Tr. 14-20; GE 1-GE 5; Applicant Exhibit (AE) A-AE L) On August 4, 2022, DOHA received a transcript of the hearing. He provided six exhibits after the hearing, which were admitted without objection. (AE M-AE R) The record closed on August 26, 2022. (Tr. 82, 91)

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 through 1.d. (HE 3) He also provided mitigating information. His admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 74-year-old electronics engineer, who has worked for the same defense contractor since 1985. (Tr. 42) He has 37 years of experience as an electronics engineer. (Tr. 21-22; GE 1) He honorably served on active duty in the Army from 1969 to 1971, and in the Army Reserve from 1971 to 1975. (Tr. 21-22) He did not serve in a combat zone. (Tr. 86) When he left the Army he was a Specialist 5 (E-5). (Tr. 22) He received a bachelor's degree in 1972. (Tr. 39) He married the first time in 1969, and he divorced in 1984. (Tr. 39; GE 1) He married the second time in 1986, and he divorced in 2003. (Tr. 40; GE 1) He does not have any children. (Tr. 40) He has held a security clearance for 37 years as a contractor and during his time in the Army. (Tr. 22-23) There is no evidence of security violations. His resume provides additional details about his professional background. (AE G) He needs his security clearance to retain his current employment. (Tr. 71)

### **Financial Considerations**

Applicant's annual base pay is about \$200,000, and he sometimes receives a bonus of about \$12,000. (Tr. 36, 42) He also receives about \$45,000 annually from the Social Security Administration (SSA). (Tr. 43) He started receiving SSA payments when he reached age 70. (Tr. 44)

Applicant had a girlfriend, and her daughter was born in 1998. (Tr. 35, 40) His girlfriend was addicted to the use of illegal drugs. (Tr. 23, 47) Applicant provided money

to his girlfriend for living expenses, and she said she had to pay her drug dealer, who was threatening her life. (Tr. 24, 50, 53) She showed him a broken window and a bullet hole to convince him the threats were real. (Tr. 54) He did not indicate that he called the police or that he ensured his payments were not used to procure illegal drugs. In 2014 and 2015, he took extra funds out of his 401(k) account to assist his girlfriend. (Tr. 45-46; GE 5) He was unsure about how much he provided to her. (Tr. 52) He did not intend for her to use the money he gave her to purchase illegal drugs. (Tr. 53) He reduced his 401(k) account from about \$300,000 to about \$50,000. (Tr. 46) He temporarily stopped paying his debts and filing his federal income tax returns. (Tr. 35) He conceded, "when you're in love, you do stupid things, I guess." (Tr. 54) Applicant's girlfriend died of a heart attack shortly after leaving a drug-treatment program. (Tr. 40) He continues to provide financial support to his girlfriend's daughter, who is now 23 years old. (Tr. 40-41)

The debts in SOR ¶¶ 1.b (\$5,313), 1.d (\$13,983), 1.e (\$2,714), and 1.f (\$8,494) became delinquent in 2015 and 2016. (Tr. 66) In December 2019, Applicant paid a debt-settlement company (DSC) a \$1,500 retainer because he had difficulty determining which creditor held these four debts. (Tr. 35, 67; AE B) He asked DSC to attempt to reach settlement agreements for these four debts on his behalf. (Tr. 27) In December 2019, DSC sent letters to the four creditors indicating he had a significantly reduced income; he was considering filing for bankruptcy; and payment was "infeasible." (Tr. 69; AE C) Applicant did not review the letters DSC sent to his creditors before they were sent. (Tr. 76, 77-79) Applicant suggested the language of the letters to the creditors was DSC attempting to negotiate a favorable settlement. (Tr. 69) DSC offered to settle the debts for about 10 percent of the amount owed. (Tr. 67; AE C) In December 2019, he was concerned about losing his employment. (Tr. 68) The creditors did not reply to DSC's settlement offers. (Tr. 28, 30-32) DSC said the debt might be collection barred due to the statute of limitations. (Tr. 30, 32) DSC changed the lawyer who was supposed to represent Applicant several times. (Tr. 75) Applicant contacted DSC the week before his hearing to check the status of the negotiations with his creditors, and DSC advised him that there were no responses. (Tr. 71. 76) DSC recommended that he not contact his creditors because if he "appeared too eager, they would not negotiate very well." (Tr. 71)

Applicant did not intend to directly contact the SOR creditors. (Tr. 77) If DSC was unable to make progress resolving his debts, he may consider hiring a different lawyer to assist him. (Tr. 77)

On April 24, 2020, Applicant told an Office of Personnel Management (OPM) investigator that he hoped to get a payment plan in place for each of his creditors, and he had sufficient income and an inheritance which would enable him to pay his debts. (Tr. 71; GE 5 at 10) At his hearing, he said he is willing to pay his debts, and he wanted to establish payment plans with his creditors. (Tr. 35) However, he did not want to excessively reduce his reserves. (Tr. 35) He intends to pay his debts. (Tr. 38) He has about \$125,000 available from an inheritance available to pay his debts. (Tr. 60)

SOR ¶ 1.a alleges Applicant failed to file his federal income tax returns for tax years (TY) 2014, 2015, 2016, and 2017. His adjusted gross income (AGI) for the following TYs were as follows (rounded to nearest \$1,000): TY 2014 (\$280,000); TY 2015

(\$293,000); TY 2016 (\$196,000); and 2017 (\$177,000). (Tr. 45; AE A1) He was out of town when his filing extension expired for TY 2014. (Tr. 56) Around 2019, Applicant received a letter from the IRS advising him that his tax returns were not filed. (Tr. 24; SOR response) Applicant hired an accountant who filed his tax returns form 2014, 2015, 2016, and 2017 in April 2019. (Tr. 25, 57; AE A1) He failed to timely file his federal income tax returns for those four TYs because of fear, uncertainty, procrastination, and laziness. (Tr. 56) He was concerned about the complication of computing IRS penalties and about the amount of additional taxes he might owe. (Tr. 56) Applicant used some of the \$200,000 he inherited from his mother to pay his \$75,000 federal income tax debt in July of 2019. (Tr. 25, 58-59; AE A1) He timely filed his federal income tax returns for TYs 2018, 2019, and 2020, and he filed his TY 2021 federal income tax return in June 2022. (Tr. 61) He does not owe any taxes to the IRS. (Tr. 62) His state does not have a state income tax.

SOR ¶ 1.b alleges a debt placed for collection for \$5,313. Applicant signed a lease on behalf of his girlfriend and her daughter. His girlfriend and her daughter damaged an apartment and failed to pay rent. (Tr. 27, 67) His girlfriend and her daughter were evicted. On August 2, 2022, DSC offered to pay the creditor \$221.40 monthly for 24 months to resolve the balance owed of \$5,314. (AE O) The first payment was due on August 15, 2021. (*Id.*) He provided a photocopy of the front of the first check to the creditor. (AE P)

SOR ¶ 1.c alleges a charged-off bank debt for \$33,956. He did not pay the creditor because “[i]t seemed pointless” because of the problems he was having with his girlfriend. (Tr. 65) In 2017, the bank sued Applicant, and in 2019, Applicant agreed to pay \$566 monthly for 58 months for a total of \$33,956. (Tr. 29, 64; AE D; AE L) Applicant is making the required payments, and the balance owed is down to \$12,400. (Tr. 29, 65; AE K) He intends to continue his payments until the debt is paid. (Tr. 66) The debt is scheduled to be paid in April 2024. (AE L)

SOR ¶¶ 1.d and 1.e allege two charged-off credit-card debts for \$13,983 and \$2,714 owed to the same creditor. Applicant did not make any payments before his hearing. (Tr. 30) On August 2, 2022, DSC advised the creditor that Applicant wanted to pay both accounts in full over the course of 24 months, and the creditor accepted this arrangement. Applicant agreed to make the first \$583 payment on August 15, 2022, and make monthly payments until \$13,983 is paid. (AE M) Similarly, he agreed to make 24 monthly payments of \$113 starting on August 15, 2022 to address the debt for \$2,714. (AE M) He provided photocopies of the front of first two checks to the creditor. (AE N)

SOR ¶ 1.f alleges an account that is past-due in the amount of \$1,662 with a total balance of \$8,494. On August 11, 2022, DSC advised the creditor that Applicant wanted to pay the accounts in full over the course of 24 months, and the creditor accepted this arrangement. Applicant agreed to make the first \$354 payment on August 15, 2022, and make monthly payments until \$8,494 is paid. (AE Q) He provided a photocopy of the front of the first check to the creditor. (AE R)

Applicant completed a one-day online financial counseling course. (Tr. 34, 74; AE A2) He understands how to budget his income and expenses. (Tr. 34) His financial

situation has improved because of receiving SSA, and he received an inheritance from his mother. (Tr. 55) He is rebuilding his 401(k) account. (Tr. 55)

## **Character Evidence**

Applicant's friend and former coworker, and his two sisters provided statements lauding his honesty and good character. (Tr. 32-33; AE F) His former coworker also emphasized his professionalism and contributions to his company. (AE F) Their statements support his continued access to classified information. He received excellent performance evaluations from his employer. (Tr. 34; AE E; AE J)

## **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: "(b) unwillingness to satisfy debts regardless of the ability to do so"; "(c) a history of not meeting financial obligations"; and "(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required." The record establishes AG ¶¶ 19(b), 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 a circumstance beyond his control which adversely affected his finances. His girlfriend was addicted to illegal drugs, and she said her drug dealer threatened to kill her unless she paid him. 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 the IRS and the majority of his SOR creditors from 2015 or 2016 to 2019. He did not indicate how much he paid his girlfriend. He did not describe precautions he took to ensure he was not providing funds used that she used to purchase illegal drugs.

Applicant failed to timely file his federal income tax returns for TYs 2014 through 2017 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 or supply information, 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 (9<sup>th</sup> Cir. 1973); *United States v. McCabe*, 416 F.2d 957 (7<sup>th</sup> Cir. 1969); *O'Brien v. United States*, 51 F.2d 193 (7<sup>th</sup> Cir. 1931). For purposes of this decision, I am not weighing Applicant's failure to timely file his federal income tax returns against him as a crime. In regard to the failure to timely file his federal income tax returns for TYs 2014 through 2017, 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.

In this instance, Applicant filed his overdue federal income tax returns and paid his federal income tax debt before he completed his SCA. SOR ¶ 1.a is mitigated. He established a payment plan in 2019 to address the debt in SOR ¶ 1.b, and this debt is mitigated.

The debts in SOR ¶¶ 1.b (\$5,313), 1.d (\$13,983), 1.e (\$2,714), and 1.f (\$8,494) became delinquent in 2015 and 2016. In December 2019, Applicant retained DSC to settle the debts. After December 2019, he failed to take reasonable and responsible actions to ensure DSC acted in good faith in the resolution of the four debts. The letters DSC sent to the four creditors about his being unable to pay the debts because of the lack of financial resources were misleading. Applicant and DSC waited until after his hearing to establish payment plans designed to resolve the four debts in two years. In light of his income and financial resources, his actions are insufficient to mitigate 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 a 74-year-old electronics engineer, who has worked for the same defense contractor since 1985. He has 37 years of experience as an electronics engineer. He honorably served on active duty in the Army from 1969 to 1971, and in the Army Reserve from 1971 to 1975. He received a bachelor's degree in 1972. He has held a security clearance for 37 years as a contractor and while he was in the Army. There is no

evidence of security violations. His resume provides additional details about his professional background.

Applicant's friend and former coworker, and his two sisters provided statements lauding his honesty and good character. His former coworker also emphasized his professionalism and contributions to his company. Their statements support his continued access to classified information. He received excellent performance evaluations from his employer.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

Applicant did not provide a good reason for his procrastination in failing to pay or establish payment plans for several years for the debts in SOR ¶¶ 1.b., 1.d, 1.e, and 1.f. His payment plans established in August 2022 to pay the four creditors, in light of his financial resources, is too little too late to mitigate security concerns.

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.

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 timely filing and paying his taxes, and a better record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d, 1.e, and 1.f:	Against 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.

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Mark Harvey  
Administrative Judge