



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



In the matter of: )  
)  
) ISCR Case No. 19-03625  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

October 17, 2022

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**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 April 30, 2019, Applicant submitted a Questionnaire for National Security Positions (SF-86). On October 13, 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. In an undated response, Applicant submitted his Answer to the SOR. On June 17, 2021, Department Counsel was ready to proceed.

On June 25, 2021, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On July 15, 2021, DOHA issued a notice of hearing scheduling the hearing for September 8, 2021. The hearing commenced as scheduled. I

admitted Government Exhibits (GE) 1 and 2, and 4 through 6 without objection. Department Counsel did not offer GE 3. Applicant testified and did not call any witnesses to testify on his behalf. I admitted Applicant Exhibits (AE) A through AAA without objection. I held the record open until December 15, 2021, to afford Applicant an opportunity to submit additional evidence. (Tr. 118-121) He did not submit any post-hearing documents. On September 16, 2021, DOHA received the hearing transcript. (Tr.).

## **Findings of Fact**

### **Background Information**

Applicant is a 52-year-old database administrator, who has been employed by a defense contractor since April 2021. He seeks to retain his secret security clearance, which is a requirement of his continued employment. (Tr. 21-24; GE 1)

Applicant graduated from high school in June 1990. He was awarded a Bachelor of Science degree in technical management in June 2009, a Master's Degree in information systems management in June 2012, and a Master of Business Administration degree in June 2015. (Tr. 25-28; GE 1)

Applicant served in the U.S. Navy from August 1990 to July 2010 and retired with 20 years of honorable service as an operations specialist first class (pay grade E-6), surface warfare qualified. He made "about ten deployments" and served a one-year tour in Iraq "in 2008 or '09." (Tr. 28-31; AE AAA) Since retiring from the Navy, Applicant has worked for three defense contractors and has successfully held a clearance for the past 31 years. (Tr. 104-105) He has never married and has no dependents. (Tr. 31; GE 1)

### **Financial Considerations**

The SOR lists 26 allegations under this concern, the first two are for indebtedness to the Federal Government and his state government for delinquent taxes owed, and the remaining 24 allegations are for various delinquent accounts, all of which are discussed in further detail below. (SOR ¶¶ 1.a – 1.z) These allegations are established by his April 30, 2019 SF-86; his February 12, 2020 DOHA Response to Interrogatories, containing his Office of Personnel Management (OPM) Report of Investigation (ROI) conducted from June 5, 2019, to August 1, 2019, to include his summarized Personal Subject Interview (PSI) on June 13, 2019; his May 15, 2019, December 18, 2019, and June 17, 2021 credit reports; and his undated SOR Response. (GE 1, 2, 4 through 6; SOR Answer)

During Applicant's June 13, 2019 OPM PSI, he stated that "[h]e feels bad about his debt and all of his financial issues are due to circumstances that resulted in him losing income." In 2013, the defense contractor, who Applicant was working for changed, and the new defense contractor reduced Applicant's income. As a result of his reduced income, he was unable to remain current with his bills. In June 2014, he began working with a credit repair company (CRC) and was able to pay off nine accounts. He

became dissatisfied with CRC because they were not paying his creditors on time and he replaced CRC in June 2016 with a second credit repair company (CRC-2). He continued to use CRC-2 until 2018, but stopped using them to pay off some medical bills. In March 2019, he resumed using CRC-2 and continues to use them. Applicant pays CRC-2 \$500 per month to “pay off and negotiate and talk to them (creditors).” (Tr. 70, 112-113, 126; GE 2; AE AS)

During his testimony, Applicant reiterated what he stated in his June 13, 2019 OPM PSI adding that “in about roughly of 2013,” the defense contractor he was working for lost their contract and was replaced by a new defense contractor. In order to keep his job, he had to take a pay cut. His salary was reduced from about \$67,000 a year to about \$55,000 a year, which was approximately a \$12,000 annual pay cut. However, he regularly received pay increases every year with the new defense contractor. Applicant stated his financial problems “didn’t really start till 2014 when [he] saw the reduced pay cut that [he] was no longer able to pay [his] full bills, like [his] credit cards, gas cards.” (Tr. 32-33, 121-126)

Applicant then resorted to taking out high interest loans to pay his maxed-out credit cards. (Tr. 33-35, 103-104) He stated that he was using his credit cards to buy “[his] stuff besides food, like DVDs and movies and stuff and comic books and other stuff to stay in the lifestyle that [he] was living.” He was also using his credit cards “to do a cash advance to pay some of this other stuff off.” (Tr. 35) He stated that he never gambled and never will. (Tr. 36) His mother passed away in 2014, but he was not required to pay for her funeral expenses because those expenses were covered by her estate. (Tr. 37) A summary of Applicant’s SOR allegations follows.

**SOR ¶ 1.a: Indebted to the Federal Government for delinquent taxes in the amount of \$31,558 for tax years 2010, 2011, 2013, 2014, 2015, 2016, 2017, and 2018.** Applicant denied that he was indebted to the Federal Government for tax years 2010 and 2011, stating that those tax years were paid off. He admitted that he is indebted to the Federal Government for delinquent taxes for tax years 2013, 2014, 2016, 2017, and 2018. He had initiated an installment agreement with the IRS dated July 16, 2020, with monthly payments at \$300. As of the date he submitted his SOR Answer, he had an outstanding balance of \$21,453. (SOR Answer)

During his hearing, he stated that he has always filed his tax returns, and his tax preparer advised him to set up a payment plan with the IRS for any taxes owed. Applicant provided documentation that he had initiated an updated installment agreement with the IRS dated April 24, 2021, with monthly payments at \$691. His taxes for 2010 and 2011 are paid. However, as of his hearing, he owed the IRS \$19,369 for tax years 2013 through 2018. He did not know how much he owed the IRS for tax years 2019 and 2020 (not alleged). He claimed that he would be paying off the balance owed to the IRS “in the next three months” as he would be cashing out stock valued at \$34,758 from his former defense contractor. (Tr. 39-46, 112; AE A through G, AE AP, AE O, AE AR, AE AZ)

Applicant stated that he owes taxes every year “because they say [he] make(s) too much.” His tax preparer advised him to increase his withholding tax; however, Applicant stated that if he reduced his take-home pay he “couldn’t continue to settle the other debts.” With that said, he planned to increase his withholdings in October 2021. He stated that every time he has filed his tax returns, he had to reestablish a new payment plan with the IRS. He explained the nuances of his tax transcripts, established that his taxes are paid for 2010 and 2011, and reiterated that he has always filed his tax returns on time. He was unsure what he owes the IRS for tax years 2019 and 2020. (Tr. 49-57, 115) **ALLEGATION BEING RESOLVED.**

**SOR ¶ 1.b: Indebted to his state tax authority for delinquent taxes in the amount of \$4,493 for tax years 2016, 2017, and 2018.** Applicant denied that he was delinquent for state taxes owed for tax year 2016. He provided documentation that he paid off his 2016 state taxes through an installment plan on May 30, 2020. (SOR Answer) He admitted that he was indebted to his state tax authority for tax years 2017 and 2018. He provided documentation that he had initiated an installment plan, with monthly payments at \$250. As of the date he submitted his SOR Answer, he owed \$1,274 for tax year 2017 and \$1,735 for 2018. (SOR Answer)

During his hearing, Applicant stated that in addition to having paid off his indebtedness for tax year 2016, he had paid off his indebtedness for tax year 2017, and owed \$721 for tax year 2018, and provided documentation of same. He added that he was indebted to his state tax authority for tax years 2019 and 2020, and those years were included in his existing installment plan. He had increased his monthly installment payment to \$275 on July 12, 2021. He was unsure of the amounts he owed his state tax authority for tax years 2019 and 2020. (Tr. 57-61; AE J through L; AE AQ, AE AY) **ALLEGATION BEING RESOLVED.**

**SOR ¶ 1.c – Credit card collection account in the amount of \$725.** Applicant admitted this allegation. (SOR Answer) He used this credit card to pay daily expenses. He contacted the creditor and made payment arrangements. At the time of his hearing, he had one \$207 payment left to pay on September 13, 2021. (SOR Answer; Tr. 61-63; GE 5; AE V) **DEBT RESOLVED.**

**SOR ¶ 1.d – Credit card past-due account in the amount of \$40 on a balance of \$395.** Applicant admitted this allegation (SOR Answer) He used this credit card to pay daily expenses. He brought his payments up to date and account was current as of November 9, 2020. (SOR Answer; Tr. 63-66; GE 5; AE AK) **DEBT RESOLVED.**

**SOR ¶ 1.e – Collection installment account in the amount of \$2,475.** Applicant denied this allegation. (SOR Answer) This account was paid in full by CRC-2 on September 25, 2020. (SOR Answer; Tr. 66-68; GE 2; AE AA) **DEBT RESOLVED.**

**SOR ¶ 1.f – Collection credit card account in the amount of \$685.** Applicant denied this allegation. (SOR Answer) This was settled for the lesser amount of \$247 by CRC-2 on December 20, 2019. (SOR Answer; Tr. 68-69; GE 2, AE AA) **DEBT RESOLVED.**

SOR ¶ 1.g – **Charged-off furniture and electronics store account in the amount of \$15,197.** Applicant admitted this allegation. (SOR Answer) He opened this account when he was on active duty and it remains unpaid. He enrolled this debt with CRC-2 to be paid as funds become available. This debt is also a duplicate of the charged-off account in SOR ¶ 1.t. (Tr. 69-71; AE AX) **ALLEGATION BEING RESOLVED.**

SOR ¶ 1.h – **Charged-off installment loan account in the amount of \$629.** Applicant admitted this allegation. (SOR Answer) This account became delinquent in August 2018. He enrolled this debt with CRC-2 to be paid when funds become available. (Tr. 71-72; GE 5; AE AD) **ALLEGATION BEING RESOLVED.**

SOR ¶ 1.i – **Collection credit card account in the amount of \$1,795.** Applicant admitted this allegation. (SOR Answer) He contacted the creditor and they advised him that “they’re no longer going to keep the account . . . they’re going to get rid of it. It will clear off my credit report. But it’s a debt I still owe and it will remain with [CRC-2] until it’s paid.” He enrolled this debt with CRC-2 to be paid when funds become available. (Tr. 72-74) **ALLEGATION BEING RESOLVED.**

SOR ¶ 1.j – **Charged-off installment loan account in the amount of \$5,070.** Applicant admitted this allegation; however, he stated the balance is \$3,685 versus \$5,070. (SOR Answer) This account became delinquent in February 2014. He enrolled this debt with CRC-2 to be paid when funds become available. (Tr. 74-78, 111-112; GE 5; AE AT) **ALLEGATION BEING RESOLVED.**

SOR ¶ 1.k – **Charged-off credit card account in the amount of \$1,628.** Applicant admitted this allegation. He stated that this account was enrolled with CRC-2 and was in a settlement plan as of February 20, 2020, in which \$40 would be paid for 18 months. (SOR Answer) He enrolled this debt with CRC-2 and produced documentation that this debt had been satisfied on June 22, 2021. He had this credit card on active duty and later used it for living expenses. (Tr. 78; AE M) **ALLEGATION RESOLVED.**

SOR ¶ 1.l – **Charged-off credit card account in the amount of \$481.** Applicant admitted this allegation. (SOR Answer) He enrolled this debt with CRC-2 and produced documentation that this debt had been satisfied for the lesser amount of \$288 on July 13, 2021. (Tr. 78-79; AE O) **ALLEGATION RESOLVED.**

SOR ¶ 1.m – **Collection credit card account in the amount of \$9,987.** Applicant admitted this allegation. He stated that he initiated an allotment on April 10, 2017, to pay this creditor \$79 per month from his military retirement account. (SOR Answer) He was unsure what his current balance was, but stated that his allotments would continue until the account was paid off. His June 17, 2021 credit report showed that his balance owed on this account was \$10,879. (Tr. 79-82; GE 4; AE Y, AE AT) **ALLEGATION BEING RESOLVED.**

SOR ¶ 1.n – **Charged-off credit card account in the amount of \$513.** Applicant admitted this allegation. (SOR Answer) He enrolled this debt with CRC-2 to be

paid as funds become available. (Tr. 82-84; AE AD) **ALLEGATION BEING RESOLVED.**

SOR ¶ 1.o – **Charged-off credit card account in the amount of \$543.** Applicant admitted this allegation. (SOR Answer) He settled this account for the lesser amount of \$272 on July 13, 2021. (Tr. 84; AE P) **ALLEGATION RESOLVED.**

SOR ¶ 1.p – **Charged-off credit card account in the amount of \$903.** Applicant admitted this allegation. (SOR Answer) He enrolled this debt with CRC-2, who settled this account for the lesser amount of \$545 with the final payment paid on March 25, 2021. (Tr. 84-85; AE Q, AE R, AE AD) **ALLEGATION RESOLVED.**

SOR ¶ 1.q – **Charged-off credit card account in the amount of \$963.** Applicant admitted this allegation. (SOR Answer) He enrolled this debt with CRC-2 to be paid as funds become available. (Tr. 85; AE AD) **ALLEGATION BEING RESOLVED.**

SOR ¶ 1.r – **Charged-off credit card account in the amount of \$530.** Applicant admitted this allegation. (SOR Answer) Applicant enrolled this debt with CRC-2 to be paid as funds become available. (Tr. 85-86; AE AD) **ALLEGATION BEING RESOLVED.**

SOR ¶ 1.s – **Charged-off online retailer account in the amount of \$3,247.** Applicant denied this allegation. (SOR Answer) He paid this account in full on October 30, 2017. (Tr. 86; GE 2; AE AA) **ALLEGATION RESOLVED.**

SOR ¶ 1.t – **Charged-off furniture and electronics store account in the amount of \$8,181.** Applicant denied this allegation. (SOR Answer) He stated this is a duplicate of the debt alleged in SOR ¶ 1.g; however, the amount alleged in SOR ¶ 1.g of \$15,197 is the correct amount. He stated that he filed a dispute with the credit bureau and the duplicate account was deleted from his credit report. (Tr. 86-87; AE AX) **DUPLICATE ACCOUNT.**

SOR ¶ 1.u – **Charged-off credit card account in the amount of \$2,138.** Applicant denied this allegation. He settled this account for a lesser amount on November 5, 2020. (SOR Answer; Tr. 87-89; GE 2) **ALLEGATION RESOLVED.**

SOR ¶ 1.v – **Charged-off credit card account in the amount of \$915.** Applicant denied this allegation. He settled this account for a lesser amount on November 10, 2020. (SOR Answer; Tr. 89-90) **ALLEGATION RESOLVED.**

SOR ¶ 1.w - **Charged-off jewelry store retail credit card account in the amount \$2,469.** Applicant admitted this allegation. (SOR Answer) This account became delinquent in February 2014. Applicant enrolled this debt with CRC-2 to be paid as funds become available. (Tr. 90-92; AE AD) **ALLEGATION BEING RESOLVED.**

SOR ¶ 1.x – **Charged-off installment loan in the amount of \$2,510.** Applicant admitted this allegation. (SOR Answer) This account became delinquent in August

2018. Applicant enrolled this debt with CRC-2 to be paid as funds become available. (Tr. 92-93; AE AD) **ALLEGATION BEING RESOLVED.**

SOR ¶ 1.y – **Collection cell phone account in the amount of \$431.** Applicant admitted this allegation. (SOR Allegation) He paid this account in full on January 7, 2021. (Tr. 93; AE S) **ALLEGATION RESOLVED.**

SOR ¶ 1.z – **Collection pay day loan in the amount of \$315.** Applicant admitted this allegation. (SOR Answer) He paid this account in full on December 8, 2020. (Tr. 93-94; AE T) **ALLEGATION RESOLVED.**

Applicant submitted a detailed monthly budget that reflects a modest lifestyle. His sources of income include his defense contractor salary, Navy retirement, Veterans Affairs ten percent disability, and teaching salary. His total monthly income for June 2021 was \$8,044, with a net monthly remainder of \$1,273. He rents a one-bedroom apartment for \$1,200 a month, and drives a 2013 Hyundai. He uses his net monthly remainder to pay off debts. His cash assets include a 401k retirement account with approximately \$21,000, a savings account with approximately \$600, and a checking account with \$1,335. As noted, he has stock worth \$34,780 that he planned to liquidate to pay off his taxes. CRC-2 provides him with credit counseling that he uses on an ongoing basis. (Tr. 46-50, 95-103, 112, 115-116) He currently has three credit cards. (Tr. 114-115)

Throughout his hearing and at the conclusion of Applicant's hearing, I discussed his unresolved debts and my willingness to hold the record open to afford him an opportunity to submit additional mitigating evidence. In particular, I wanted to see further progress made with regard to paying off his tax debt he had incurred throughout the years. (Tr. 59-60, 62, 66, 81, 89, 94, 118-121, 124, 127-128) With regard to the tax debt, Applicant stated that he was "foreseeing by the end of the year or least sometime in December (2021) having the IRS taken care of." (Tr. 116-117)

## **Character Evidence**

Applicant submitted four reference letters: (1) a former coworker and friend, who has known Applicant for two and one-half years; (2) a former coworker and friend, who has known Applicant for 18 years; (3) a coworker, who has known Applicant for two years, and (4) a former shipmate still on active duty serving as a senior chief petty officer (pay grade E-8). These individuals describe Applicant as hard working, trustworthy, and recommend him for a clearance. They are aware of the security concerns facing Applicant as a result of these proceedings. They note that Applicant recognizes his past financial mistakes, but also note that Applicant is doing his level best to regain financial responsibility. (Tr. 105-108; AE E – AE I)

## **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 the following 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;" "(e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators;" 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), 19(e), and 19(f). Further inquiry is necessary about the potential application of any mitigating 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 *Dorffmont 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 his financial problems are not isolated. His debt 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), 20(c), 20(d), and 20(g) are partially applicable as it pertains to his delinquent debts. Applicant's 2013 \$12,000 reduction in income from \$67,000 to \$55,000 no doubt played a role in his ability to remain current on his established obligations at that time. However, such a loss of income does not correlate to the amount of debt he subsequently incurred. He does not receive full credit under these mitigating conditions because the debts he incurred were inconsistent with his ability to repay his creditors, his overall failure to act responsibly under the circumstances, especially with regard to his taxes, and the length of time that has elapsed since incurring these debts. AG ¶¶ 20(e) is not applicable.

Of significant concern is the fact that Applicant did not timely pay his Federal incomes taxes from 2010 to 2020, and did not timely pay his state income taxes from 2016 to 2020. As the record indicates, he never paid the required amount of the taxes due for the years indicated when they were due. He consistently failed to maintain sufficient Federal and state withholdings and/or maintain sufficient funds on hand to pay his Federal and state taxes. He explained that he did not increase his withholdings in order to repay his other creditors. At his hearing, he stated that he was going to liquidate company stock from a previous employer and use those funds to pay off his taxes. He did not produce any post-hearing evidence from the close of his hearing on September 8, 2021, until the record closed on December 15, 2021. Addressing his tax arrearage would have provided significant mitigating evidence.

Applicant was alerted to the fact that his failure to pay his taxes and his indebtedness were a concern to the Government during his June 13, 2010 OPM PSI and later when he received his October 13, 2020 SOR. He has been actively making efforts to resolve his debts, and deserves appropriate credit for that, particularly as he was proactive before his SOR was issued. He had retained the services of two credit counseling services and paid off some debts and paid down some debts.

On the other hand, Applicant claimed his current situation came about when his income dropped by approximately \$12,000, and yet somehow from a \$12,000 income loss, he incurred altogether almost \$100,000 in delinquent debt. He appears to have had some serious judgment lapses when it came to managing his finances. In addition to his long-standing Federal and state tax arrearages, ten SOR accounts remain unresolved. With so much outstanding debt, and absent additional post-hearing evidence, lingering doubts about Applicant's security eligibility remain.

While the following case is primarily directed to the timely filing of tax returns, the importance the Appeal Board places on fulfilling one's legal obligations is instructive. Such repeated failures to fulfill those obligations do not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. This is particularly pertinent as it pertains to tax matters. 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).

### **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.

To review, Applicant is a 52-year-old database administrator, who has been employed by a defense contractor since April 2021. He honorably served 20 years of active duty in the Navy, and has spent his post-Navy years working for defense contractors. He has successfully held a clearance for 31 years. He seeks to retain his

security clearance as a requirement of his continued employment. He is highly regarded and respected by his employer and peers.

However, for at least 12 years, he has failed to grasp the importance of one of the fundamental hallmarks of U.S. citizenship, which is timely paying his Federal and state income 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. Having successfully held a clearance for 31 years, the importance of timely paying his taxes and maintaining financial responsibility should have been well known to Applicant.

From the evidence presented, Applicant's history of continually accruing delinquent tax debt for years is particularly concerning. Accruing significant additional consumer debt is equally concerning. That said, Applicant appears to have seen the error of his ways and has taken significant corrective action. It is unknown what additional progress Applicant would have made had he submitted post-hearing evidence.

Applicant is a bright and talented individual, who is more than capable of addressing his income tax and indebtedness problems in a responsible way. 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 his obligations, he may well be able to demonstrate persuasive evidence of his 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.b:	Against Applicant
Subparagraphs 1.c – 1.f:	For Applicant
Subparagraphs 1.g – 1.j:	Against Applicant
Subparagraphs 1.k – 1.l:	For Applicant
Subparagraphs: 1.m – 1.n:	Against Applicant
Subparagraphs 1.o – 1.p:	For Applicant
Subparagraphs 1.q – 1.r:	Against Applicant
Subparagraphs 1.s – 1.v:	For Applicant
Subparagraphs 1.w – 1.x:	Against Applicant
Subparagraphs 1.y – 1.z:	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