



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



In the matter of: )  
)  
) ISCR Case No. 20-02466  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Brian Farrell, Esquire, Department Counsel  
For Applicant: *Pro se*

05/11/2022

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance is denied.

**Statement of the Case**

On July 13, 2016, and again on March 21, 2017, Applicant applied for a security clearance and submitted Questionnaires for National Security Positions (SF 86). On December 16, 2020, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), effective June 8, 2017.

The SOR alleged security concerns under Guideline F (financial considerations) and detailed reasons why the DCSA adjudicators were unable to find that it is clearly

consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a notarized statement, dated January 12, 2021, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on February 25, 2021. Because of health concerns associated with the COVID-19 pandemic and pandemic protocols, the case was not assigned to me until October 25, 2021. A Notice of Hearing was issued on January 24, 2022. I convened the hearing as scheduled on February 9, 2022.

During the hearing, Government exhibits (GE) 1 through GE 7, and Applicant exhibits (AE) A through AE K were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on February 16, 2022. I kept the record open to enable Applicant to supplement it with documentation that was identified during the hearing. He took advantage of that opportunity and timely submitted two documents which were marked and admitted as AE L and AE M without objection. The record closed on March 23, 2022.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted, with comments, nearly all of the factual allegations in the SOR (SOR ¶¶ 1.a. through 1.g., and 1.j.). His admissions and comments are incorporated herein. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

#### **Background**

Applicant is a 57-year-old employee of a defense contractor. He has been serving as a senior extract, transform, and load processes (ETL) developer with his current employer since about January 2022. He was previously employed by other employers in somewhat similar positions or as a business intelligence architect or project manager. He was also self-employed from September 2001 until December 2012, and from September 2013 until June 2016. He is a 1982 high school graduate, and he took some coursework online, but has not earned any degree. He has never served with the U.S. military. He was granted a security clearance in 2007 and 2016, and found eligible for a position of public trust in 2017. He was married in 1988, and divorced in 1997. He was remarried in 1999. He has no children.

#### **Financial Considerations**

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 3 (Answers and Attachments to Interrogatories, dated March 20, 2020); GE 4 (Equifax Credit Report, dated April 13, 2020); GE 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated April 20, 2017); GE 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated September 8,

2016); GE 7 (Enhanced Subject Interview, dated August 2, 2017); and Answer to the SOR, dated January 12, 2021).

Over the years, Applicant has financially supported various members of his extended family. During 2016 through 2018, he paid for one cousin's college expenses for two years – about \$400 a month out-of-pocket – until she earned her licensed practical nurse (LPN) degree; and starting in 2016, until an unspecified date, he paid approximately \$4,000 for another cousin's education until that individual could qualify for student loans. When Applicant's wife attended school to obtain her master's degree and her doctor of philosophy in education over an eight-year period ending in the Fall of 2021, he paid for her education costs both out-of-pocket and by obtaining student loans. (Tr. at 48-40)

Applicant also has a lengthy history of having federal or state tax liens filed against him as well as having delinquent federal taxes. In his 2016 SF 86, Applicant acknowledged being delinquent in the amount of an estimated \$25,000 for the sale of a residence that he mistakenly thought was covered by an unspecified policy related to Hurricane Katrina. (GE 1 at 46-47; Tr. at 63)

He was interviewed by an investigator from the U.S. Office of Personnel Management (OPM) on August 2, 2017. During that interview, he acknowledged two tax liens that were filed against him because he owed more taxes than he had expected. The first lien, in 2006, he estimated was for \$30,000. The second lien, in 2007, he estimated was also for \$30,000. He disputed those liens but lost. He said that he started making payments in 2013, and that by December 2016, the 2006 lien was paid off. He expected to pay off the 2007 lien by 2018. He claimed the outstanding balance was \$25,000, and that his monthly payments were \$1,036. He denied any additional liens or delinquent accounts. (GE 7 at 7) In fact, according to his installment agreement activity for the period July 2015 – July 2016, his beginning balance for 2006 was approximately \$15,129, and the beginning balance for 2007 was approximately \$35,510, totaling for those two years \$50,639. But, contrary to his claims, there were numerous other tax liens and delinquent accounts. Applicant's payments for 2006 were \$7,229, and his payments for 2007 was zero. (Installment Agreement Activity, undated, attached to GE 7)

The SOR alleged two federal tax liens that remain unpaid; one state tax lien, since released; and seven still-delinquent federal tax accounts totaling approximately \$198,373, as set forth below:

SOR ¶ 1.a. refers to a federal tax lien in the approximate amount of \$70,757, filed against him in 2008. It appears that the lien was for the 2006 and 2007 delinquent taxes, including interest and penalties. (GE 5 at 4; GE 6 at 5) Applicant contended that in about April 2009, he entered into an installment agreement with the Internal Revenue Service (IRS) under which he started making monthly \$800 payments that eventually increased to \$1,900. (Tr. at 44-45) His contentions are not verified or supported by any documentation. The verifiable evidence generated by the IRS reveals that for nine months during October 2016 through June 2017, Applicant made periodic monthly payments of \$1,100 to be applied to delinquent taxes for the tax years 2006 and 2007. (IRS Processed Payments, undated, attached to Answer to the SOR) He also claimed that on an

unspecified date he entered into an installment agreement with the IRS under which he was making monthly payments of \$1,920, and that he overpaid his 2020 taxes by \$20,000 to be applied to any outstanding liens. (Answer to the SOR) He offered no documentation to verify or support his claim. Applicant admitted that his last payment for any of his tax liens or delinquent taxes was made in May 2021. (Tr. at 58) While the lien may have been in the process of being resolved, that process stopped and was not resumed, and it is not yet resolved.

SOR ¶ 1.b. refers to a federal tax lien in the approximate amount of \$35,315, filed against him in 2013. (GE 5 at 5; GE 6 at 5) While Applicant claims that the lien was for unpaid taxes for 2012, it appears that the lien was also for the 2010 and 2011 delinquent taxes as well as any unpaid portions of his 2008 federal tax lien. According to the aforementioned installment agreement activity for the period July 2015 – July 2016, his beginning balance for 2010 was approximately \$28,315, the beginning balance for 2011 was approximately \$12,774, and the beginning balance for 2012 was \$84, totaling for those three years \$41,173. Applicant's total payments for those three years was only \$84. (Installment Agreement Activity, undated, attached to GE 7) He also referred to the installment agreement with the IRS under which he was making monthly payments of \$1,920, and that he overpaid his 2020 taxes by \$20,000 to be applied to any outstanding liens or delinquent taxes. (Answer to the SOR) Other than one IRS-verified scheduled payment of \$1,920 to be made on January 25, 2021, to be applied to his 2010 tax, he offered no documentation to verify or support his claim. (IRS Processed Payments, undated, attached to Answer to the SOR; AE M) Applicant admitted that his last payment for any of his tax liens or delinquent taxes was made in May 2021. (Tr. at 58) While the lien may have been in the process of being resolved, that process stopped and was not resumed, and it is not yet resolved.

SOR ¶ 1.c. refers to delinquent federal taxes in the approximate amount of \$34,425 for 2010. In 2010, Applicant had an adjusted gross income of \$219,325, and a taxable income of \$164,949. As of January 29, 2020, his delinquent balance plus accruals was approximately \$34,425. (Account Transcript, dated January 29, 2020, attached to GE 3 at 17) He referred to the same installment agreement with the IRS under which he claimed he was making monthly payments of \$1,920, and that he overpaid his 2020 taxes by \$20,000 to be applied to any outstanding liens. (Answer to the SOR) It should be noted that Applicant was scheduled to make the \$1,920 payment on January 25, 2021, but the IRS was actually unable to process that payment. (AE M) Other than the one IRS-verified scheduled payment of \$1,920 to be made on January 25, 2021 – one month after the SOR was issued – to be applied to his 2010 tax, he offered no documentation to verify or support his claim. (IRS Processed Payments, undated, attached to Answer to the SOR) Applicant admitted that his last payment for any of his tax liens or delinquent taxes was made in May 2021. (Tr. at 58) The tax delinquency has not been resolved.

SOR ¶ 1.d. refers to delinquent federal taxes in the approximate amount of \$15,328 for 2011. In 2011, Applicant had an adjusted gross income of \$140,754, and a taxable income of \$88,492. As of January 29, 2020, his delinquent balance plus accruals was approximately \$15,328. (Account Transcript, dated January 29, 2020, attached to GE 3 at 15) He referred to the same installment agreement, the monthly payments, and the

overpaid 2020 taxes to be applied to any outstanding liens and delinquent taxes. (Answer to the SOR) However, he offered no documentation to verify or support his claim that any payments had been made for his delinquent 2011 taxes. (IRS Processed Payments, undated, attached to Answer to the SOR) Applicant admitted that his last payment for any of his tax liens or delinquent taxes was made in May 2021. (Tr. at 58) The tax delinquency has not been resolved.

SOR ¶ 1.e. refers to delinquent federal taxes in the approximate amount of \$10,849 for 2014. In 2014, Applicant had an adjusted gross income of \$115,567, and a taxable income of \$67,991. As of January 29, 2020, his delinquent balance plus accruals was approximately \$15,328. (Account Transcript, dated January 29, 2020, attached to GE 3 at 13) He referred to the same installment agreement, the monthly payments, and the overpaid 2020 taxes to be applied to any outstanding liens and delinquent taxes. (Answer to the SOR) However, he offered no documentation to verify or support his claim that any payments had been made for his delinquent 2014 taxes. (IRS Processed Payments, undated, attached to Answer to the SOR) Applicant admitted that his last payment for any of his tax liens or delinquent taxes was made in May 2021. (Tr. at 58) The tax delinquency has not been resolved.

SOR ¶ 1.f. refers to delinquent federal taxes in the approximate amount of \$15,732 for 2015. In 2015, Applicant had an adjusted gross income of \$126,542, and a taxable income of \$78,596. As of January 29, 2020, his delinquent balance plus accruals was approximately \$15,733. (Account Transcript, dated January 29, 2020, attached to GE 3 at 11) He referred to the same installment agreement, the monthly payments, and the overpaid 2020 taxes to be applied to any outstanding liens and delinquent taxes. (Answer to the SOR) However, other than one IRS-verified payment of \$1,755 made on April 27, 2021 – over a year after the SOR was issued – he offered no documentation to verify or support his claim that any other payments had been made for his delinquent 2015 taxes. (IRS Processed Payments, undated, attached to Answer to the SOR; AE M) Applicant admitted that his last payment for any of his tax liens or delinquent taxes was made in May 2021. (Tr. at 58) The tax delinquency has not been resolved.

SOR ¶ 1.g. refers to delinquent federal taxes in the approximate amount of \$9,423 for 2016. In 2016, Applicant had an adjusted gross income of \$125,432, and a taxable income of \$76,620. As of January 29, 2020, his delinquent balance plus accruals was approximately \$9,423. (Account Transcript, dated January 29, 2020, attached to GE 3 at 9) He referred to the same installment agreement, the monthly payments, and the overpaid 2020 taxes to be applied to any outstanding liens and delinquent taxes. (Answer to the SOR) However, he offered no documentation to verify or support his claim that any payments had been made for his delinquent 2016 taxes. (IRS Processed Payments, undated, attached to Answer to the SOR; AE M) Applicant admitted that his last payment for any of his tax liens or delinquent taxes was made in May 2021. (Tr. at 58) The tax delinquency has not been resolved.

SOR ¶ 1.h. refers to delinquent federal taxes in the approximate amount of \$374 for 2017. In 2017, Applicant had an adjusted gross income of \$121,666, and a taxable income of \$71,162. As of January 29, 2020, his delinquent balance plus accruals was

approximately \$374. (Account Transcript, dated January 29, 2020, attached to GE 3 at 7) Applicant denied the allegation and contended that he had paid the IRS \$5,659.13, and that his delinquent 2017 taxes had been paid off. (Answer to the SOR) However, in fact, while the IRS acknowledged receipt of the payment, that payment merely reduced the delinquent balance, it did not eliminate it. On January 8, 2021 – more than three weeks after the SOR was issued – Applicant attempted to pay the IRS the remaining outstanding balance of \$387.45, but the IRS was unable to process the payment. The actual payment was processed on January 11, 2021. There is verified evidence that he also made one payment of approximately \$26 on September 29, 2021, to be applied to his delinquent 2017 tax. (IRS Direct Pay Confirmation, attached to Answer to the SOR; AE M) The tax delinquency has been resolved.

SOR ¶ 1.i. refers to delinquent federal taxes in the approximate amount of \$856 for 2018. In 2018, Applicant had an adjusted gross income of \$138,276, and a taxable income of \$83,412. As of January 29, 2020, his delinquent balance plus accruals was approximately \$856. (Account Transcript, dated January 29, 2020, attached to GE 3 at 8) Applicant denied the allegation and contended that he had paid the IRS and that his delinquent 2018 taxes had been paid off. (Answer to the SOR) However, in fact, while the IRS acknowledged receipt of the payment, that payment merely reduced the delinquent balance, it did not eliminate it. On December 28, 2020 – nearly two weeks after the SOR was issued – Applicant paid the IRS approximately \$954, and on March 1, 2021, he made a payment of \$1,980. (IRS Direct Pay Confirmation, attached to Answer to the SOR; AE M) The tax delinquency has been resolved.

SOR ¶ 1.j. refers to a state tax lien in the approximate amount of \$5,314, filed against him in 2014, that was eventually released. (GE 5 at 5) That matter has been resolved.

Applicant claims that his current annual salary is \$103,000. He also earns an unspecified income for performing consulting services 30 hours per week for another company. (Tr. at 26-28) He initially anticipated paying off all delinquent taxes – which he contended were \$90,000 – within two years from the date of his Answer to the SOR. (Answer to the SOR at 3; Tr. at 60) However, in March 2022, he stated his new pay-off goal is three and one-half years, because if his new installment agreement is approved, he will only owe approximately \$40,650. (AE L) While he furnished a portion of his annual income information, he failed to report his net monthly income, his monthly household expenses, or any monthly debt payments. In the absence of such verified information, I am unable to determine if he has any monthly remainder available for savings or spending. There is no evidence of any financial counseling. There remains a paucity of evidence to indicate that his financial problems are now under control, and it is difficult to determine if Applicant is currently in a better position financially than he had been.

### **Character References**

A Naturopathic Doctor (ND) and former 30-year U.S. Army career officer who retired as a lieutenant colonel has known Applicant for over 21 years. Based on her impressions that he has an outstanding sense of conscientiousness and empathy, she

chose him to be a mentor to her son who was accepted into three top-tier law schools with two substantial merit scholarships. She believes his industrious nature and loyal persistence have proven to be a bedrock foundation to his exceptional mentorship to her son and endeared friendship to her family. Applicant routinely displays a unique ability to balance his generous kindness with a sincere enthusiasm to provide others with an incredible amount of dedicated work. She has rarely met anyone who can match his well-balanced commitment to something without compromising his personal acumen. (AE G)

A former high school teacher and principal who later became the Director of Technology for a major city public school system has known Applicant for forty years, since he was Applicant's high school teacher and subsequently the principal. Throughout the ensuing years they became friends, and occasionally, he served as Applicant's advisor. He noted a consistent characterization throughout the years with Applicant demonstrating integrity and concern for others. He believes the world needs more people like Applicant. (AE E)

The president of a service-disabled veteran-owned small business previously served as the executive program director as senior vice president of operations with a defense contractor where Applicant was the project manager reporting directly to him. Applicant was responsible for project management with fiscal responsibility for the project budgets and deliverables. He managed several large teams of technology professionals and delivered all projects on-time and within budget. Applicant is extremely reliable and technically competent. He has excellent leadership, communication, and organization skills, and he is pleasant to work with. Applicant demonstrated the highest ethical standards. (AE H)

A colleague – a senior functional consultant – who has known Applicant since 2005, has worked with him on multiple occasions. She described him as a kind-hearted, intelligent, and hard-working individual, with a strong moral character, who always has time to mentor more junior resources. He is a trustworthy person, and displays integrity, caring character, and strong work ethic. (AE I)

A minister who has known Applicant for over 45 years, has watched him grow professionally and personally, and considers him to be an asset to the community and to the country. (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. The President has authorized the Secretary of Defense or his designee to grant an applicant 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 and modified.)

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.” “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)) “Substantial evidence” is “more than a scintilla but less than a preponderance.” (See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994))

The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.” (*Egan*, 484 U.S. at 531)

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 I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations;
- (f) failure to . . . pay annual Federal, state, or local income tax as required.

The SOR alleged two federal tax liens, one state tax lien, and seven still-delinquent accounts totaling approximately \$198,373. In August 2017, Applicant acknowledged two tax liens that were filed against him in 2006 and 2007 because he owed more taxes than he had expected. According to his installment agreement activity for the period July 2015 – July 2016, his beginning balance for those combined liens was approximately \$50,639. Contrary to his claims, there were numerous delinquent tax accounts.

During the seven-year period in issue between 2010 through 2018, Applicant's adjusted gross income was reported to be between \$115,567 and \$219,325, with six of those years reported to be in excess than \$120,000. He claims that his current annual salary is \$103,000. He also earns an unspecified income for performing consulting services 30 hours per week for another company. With the exception of some verified relatively minor payments over the early years, and several modest payments made after the SOR was issued, Applicant's focus on resolving his delinquent tax situation before the SOR was issued is essentially missing. He repeatedly referred to an installment agreement with the IRS under which he was making monthly payments of \$1,920, and that he overpaid his 2020 taxes by \$20,000 to be applied to any outstanding liens or delinquent taxes. Other than the one IRS-verified scheduled payment of \$1,920 to be made on January 25, 2021, he offered no documentation to verify or support his claim. In fact, that scheduled \$1,920 payment on January 25, 2021, was not made because the IRS was actually unable to process that payment. There was no verified proof of any such payments. Applicant admitted that his last payment for any of his tax liens or delinquent taxes was made in May 2021, but there is verified evidence that he also made one small payment of approximately \$26 on September 29, 2021, to be applied to his delinquent 2017 tax. The state tax lien was resolved before the SOR was issued. His income information and payment history raise questions as to both an inability to pay or an unwillingness to pay, and Applicant failed to fully address those issues. AG ¶¶ 19(a), 19(b), 19(c), and 19(f) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20:

- (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; and

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

None of the mitigating conditions apply. On several occasions, Applicant entered into installment agreements with the IRS, but payments under those agreements were periodic at best and there was essentially no compliance with those arrangements. The receipt of the SOR appears to have generated some interest on his part to start to addressing his delinquent tax issues. Although he repeatedly stated that he would address his federal tax liens and delinquent taxes over multiple-year period, there has been no consistency in his efforts, and with one small exception, they ceased in May 2021 – one year ago.

A debt that became delinquent several years ago is still considered recent because “an applicant’s ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions.” (ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016))).

Based on the evidence, it appears that Applicant actually ignored his delinquent taxes for a substantial multi-year period, preferring instead to give funds to family members for their education. Because of his failure to furnish more complete documentation regarding federal tax liens and delinquent federal taxes, the overwhelming evidence leads to the conclusion that his financial problems are not under control or that he is not truly interested in resolving them. Other than his limited payment activities, he has not acted responsibly by failing to more aggressively address his federal tax liens and delinquent taxes. The Appeal Board has previously commented on such a situation:

Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether 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. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

An applicant who begins to resolve his financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. (See, e.g., ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018) In this instance, Applicant has failed to furnish sufficient verifiable evidence that he actually began making such efforts before the SOR was issued in December 2020 – approximately one and one-half years ago.

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time. Mere promises to pay debts in the future, without further confirmed action, are insufficient. In this instance, Applicant offered specific statements regarding alleged payments, several of which were either unverified or proven to be false.

The nature, frequency, and continued recency of Applicant's financial difficulties, and his general failure to voluntarily and timely start to resolve them until after the SOR was issued, is sufficient to conclude that his financial difficulties were not infrequent. The timeliness and randomness of his efforts to resolve his delinquent federal tax debts is not good, and the delay in commencing to do so, is another negative factor.

The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation."

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

There is no evidence of financial counseling or a budget. Applicant's relative inaction, under the circumstances, casts doubt on his current reliability, trustworthiness, and good judgment. See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

### **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 SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the 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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); see also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

There is some evidence in favor of mitigating Applicant's financial considerations. Applicant is a 57-year-old employee of a defense contractor. He has been serving as a senior ETL developer with his current employer since about January 2022. He was previously employed by other employers in somewhat similar positions or as a business intelligence architect, architect, or project manager. He was also self-employed from September 2001 until December 2012, and from September 2013 until June 2016. He is a 1982 high school graduate, and he took some coursework online, but has not earned any degree. He was granted a security clearance in 2007 and 2016, and found eligible for a position of public trust in 2017. He has given financial assistance to family members seeking to obtain college degrees, and he is highly thought of by friends and colleagues.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. Applicant's federal tax liens and most of his delinquent federal taxes remain unresolved despite his claimed efforts to resolve them. He contended that he entered into installment agreements with the IRS under which he was making specific monthly payments, but the only verified evidence presented was for the period October 2016 through June 2017 reflecting periodic payments for the tax years 2006 and 2007. He referred to another installment agreement with the IRS under which he claimed he was making monthly payments of \$1,920, and that he overpaid his 2020 taxes by \$20,000 to be applied to any outstanding liens. But, the IRS was actually unable to process that payment, and Applicant failed to produce any verified documentation that the initial payments had been made in January 2021 or thereafter. While periodic and inconsistent payments have been made over various periods, those payments generally do not appear to be systematic or routinely scheduled. He failed to produce any IRS-verified documentation that his federal tax liens had been released. Although he repeatedly stated that he would address his delinquent tax issues over the past few years, as recently as March 2022, he claimed that his new pay-off goal is three and one-half years away.

The overwhelming evidence leads to the conclusion that Applicant's financial problems are not under control. He has not acted responsibly by failing to more timely and aggressively address his federal tax liens and delinquent federal taxes. There are lingering questions if Applicant is currently in a better position financially than he had been, as well as continuing doubt about his current reliability, trustworthiness, and good judgment.

In ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008), the Appeal Board addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that 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 [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has “. . . established a plan to resolve his [or her] 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 [or her] 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.

With the exception of his limited, delayed, periodic, and haphazard payment activities under various installment agreements, Applicant’s track record of minimal verifiable efforts to resolve the federal tax issues is negative and disappointing. Overall, the evidence leaves me with substantial questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations. See SEAD 4, App. A, ¶¶ 2(d) (1) through AG 2(d) (9).

### **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.g.:	Against Applicant
Subparagraphs 1.h. through 1.j.:	For Applicant

## **Conclusion**

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

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ROBERT ROBINSON GALES  
Administrative Judge