



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



In the matter of:)
)
) ISCR Case No. 22-01550
)
Applicant for Security Clearance)

Appearances

For Government: Patricia M. Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

11/15/2023

Decision

HARVEY, Mark, Administrative Judge:

Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On February 19, 2019, Applicant completed an Electronic Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On December 15, 2022, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to him under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (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 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) On

December 21, 2022, Applicant provided a response to the SOR, and he requested a hearing. (HE 3)

On March 20, 2023, Department Counsel was ready to proceed. On June 28, 2023, the case was assigned to me. On July 18, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice setting the hearing for August 22, 2023. (HE 1) The hearing was held as scheduled using the Microsoft Teams video teleconference system. (*Id.*)

During the hearing, Department Counsel offered four exhibits into evidence, and Applicant did not offer any documents into evidence. (Tr. 18-19; GE 1-GE 4) All proffered exhibits were admitted into evidence without objection. (Tr. 19; GE 1-GE 4) I have taken administrative notice of information that is widely known about federally funded student loans from the Department of Education (DoED) and White House websites. (HE 5-HE 10; see ISCR Case No. 22-01667 at 2 (App. Bd. May 16, 2023); ISCR Case No. 20-03688 at 2 (App. Bd. Mar. 2, 2023). On August 31, 2023, DOHA received a copy of the transcript. Applicant provided four post-hearing exhibits, which were admitted without objection. (Applicant Exhibit (AE) A-AE D) The record closed on September 22, 2023. (Tr. 78)

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 all SOR allegations. (HE 3) He also provided mitigating information. His admissions are accepted as findings of fact.

Applicant is a 56-year-old engineering communications specialist. (Tr. 6, 9-10) His primary responsibility is to install, integrate, and test engineering devices to ensure they are suitable for purchase. (Tr. 10) He has worked for his current employer since June of 2023. (Tr. 23) He was unemployed from February to June 2023. (Tr. 58) In 2004, he received a bachelor's degree in computer information science. (Tr. 6-7) From 2017 to present, he worked for seven different employers. (Tr. 23-25) He had several periods of unemployment. He provided a resume detailing his professional experience. (AE D) He honorably served in the Navy from 1987 to 1994. (Tr. 22-23) He was discharged from the Navy as a petty officer second class (E-5). (Tr. 23)

Applicant has been married three times (1989-1994; 1994-1999; 2000-2015); he has four children; and he has adopted his sister's two children. (Tr. 8, 20-21) He married the fourth time in 2015, and all of his children are older than 18 years old. (Tr. 8, 9, 21)

Financial Considerations

Applicant said his gross annual pay is \$135,000. (Tr. 56) His monthly net pay is about \$7,600. (Tr. 59) His monthly rent is \$2,500, and his total monthly payments on two vehicles are about \$1,300. (Tr. 60-61) His spouse does not work outside their home. (Tr. 57) His monthly remainder is about \$300. (Tr. 65) He has received financial counseling.

(Tr. 64) He has had a budget in the past; however, he is not currently using a budget. (Tr. 65) The SOR alleges the following financial concerns:

SOR ¶¶ 1.a and 1.b allege Applicant has two student-loan accounts placed for collection for \$29,748 and \$28,579. He attended a university from 2001 to 2004 and April to October 2017. (Tr. 22) His student loans were borrowed to fund his 2001 to 2004 university attendance. (Tr. 29) He made some payments on his student loans starting shortly after graduation until about 2013. (Tr. 30-31) He stopped making payments around 2013 when he was getting divorced and became unemployed. (Tr. 32, 42) Around 2013 or 2015, the creditor advised him that he could rehabilitate his student-loan debt if he made consistent payments for six months. (Tr. 33) In 2017, he made an effort to find out the creditor holding his student loans; however, he was unsuccessful. (Tr. 34) In 2019, he learned DoED held his student loans. (Tr. 35)

Applicant said he applied for the federal loan forgiveness program. (HE 3) In February 2020, his loans were placed into forbearance and interest on his loans was stopped. (*Id.*) In August 2022, he applied for the loan rehabilitation and consolidation program. (Tr. 37-38; HE 3) He believes he has been approved for the DoED income driven repayment plan. (Tr. 36, 38) He is waiting to learn what his payments will be. (Tr. 36; HE 3)

Applicant's October 28, 2022 credit bureau report shows DoED student-loan accounts with balances of \$29,748 and \$28,579 and two payments from 2018 to 2022 on the first account, and one payment from 2018 to 2022 on the second account was made on time. (HE 3 at pages 10-11 of 16) He admitted he had not made payments on his student loans for three or five years. (Tr. 66-67) He was unsure whether any payments were made after 2012. (Tr. 66) On May 8, 2023, DoED wrote Applicant and explained that three of his student loans of unspecified amounts were taken out of default status and designated to be in good standing. (AE B) DoED would contact Applicant in the future to establish a payment plan. (*Id.*) On August 23, 2023, DoED said they were providing a repayment schedule for his student loans. (AE B) Applicant's submission did not show the amounts owed on the loans or the amount of his monthly payments. (*Id.*) After his hearing, Applicant said, "After years of inaction, I have taken steps to enroll in a structured payment plan for my delinquent student loans. This decision reflects my genuine commitment to rectifying outstanding debts in a responsible and timely manner." (AE C) He did not submit any evidence of payments in 2023.

SOR ¶¶ 1.c and 1.e allege Applicant has two child-support debts placed for collection for \$21,665 and \$34,033. He had child-support debts from two different states. (Tr. 44) He said he currently has only one child-support debt because the larger debt was paid. (Tr. 44-45) The balance on the lesser debt at the time he responded to the SOR was \$19,691. (Tr. 42, 46; HE 3) His pay was garnished to pay his child-support debt. (Tr. 45-46) His monthly payments of \$302 are being automatically made from his monthly pay. (HE 3) His October 28, 2022 Equifax credit bureau report shows a closed child-support account with a balance of \$20,132, and a paid as agreed child-support account with a zero balance. (HE 3 at pages 7-8 of 16) On September 21, 2023, he owed \$17,786 to one child-support creditor. (AE A) He said "[I] acknowledge the child-support obligations

that are currently being addressed through wage garnishment. While I understand that this involuntary method carries less weight than voluntary payments made by debtors themselves, I accept the responsibilities it entails.” (AE C)

SOR ¶¶ 1.d and 1.f allege Applicant has two dental debts placed for collection for \$336 and \$115. (Tr. 71) His October 28, 2022 Equifax credit bureau report shows the \$336 account is paid, and the \$115 debt is not listed on the credit report. (HE 3 at pages 5, 12 of 16) He said he referred the debts to his dental insurance company, and he believes the two debts are resolved. (Tr. 71-72) Applicant is credited with mitigating these two debts.

SOR ¶ 1.g alleges Applicant has a debt placed for collection for \$7,172. He cosigned on a loan to purchase a vehicle. (Tr. 47) He returned the vehicle and contended he should not have to pay the loan because he did not have possession of the vehicle. (Tr. 47) He disputed the debt on his credit report, and it was removed. (Tr. 47-48) The last time he checked on the status of the debt before his hearing was in 2019. (Tr. 49) He provided the contact information to the creditor of the person who was primarily responsible for the debt. (Tr. 9) He was unable to obtain the original documents concerning the debt. (Tr. 49). After his hearing he did not provide any documentation concerning this account. He said:

Additionally, there is an ongoing issue with [this account], which has been sold to another debt collector. Despite my diligent efforts, I have been unable to secure any documents conclusively establishing my responsibility for this debt. I am actively working to resolve this discrepancy, but my progress has been hindered by the absence of supporting documentation from the debt collector. (AE C)

SOR ¶ 1.h alleges Applicant has a telecommunications debt placed for collection for \$4,317. He said the debt was his debt. (Tr. 50-51) He disputed the debt’s presence on his credit report. (Tr. 52) The debt does not appear on his current credit report. (Tr. 57) After his hearing, he said, “I would also like to clarify that the [account in SOR ¶ 1.h is] not in my name, and I have no legal or financial responsibility for [it].” (AE C) He did not provide supporting documentation showing he was not financially responsible for this debt.

Applicant has a delinquent federal tax debt of about \$5,000 from around tax years (TY) 2013 to 2015. (Tr. 53) He and his former spouse both took the deductions for their children, and the Internal Revenue Service (IRS) credited the deductions to his former spouse. (Tr. 53-54) The IRS contacted him around 2018 or 2019 about the additional taxes he owed. (Tr. 54) The IRS applied his refund for TY 2020 to his tax debt. (Tr. 55-56) He said he would provide a letter from the IRS indicating the IRS agreed to resolve the debt through future tax refunds; however, he did not provide the letter or agreement from the IRS. (Tr. 56) He said he would provide his IRS tax transcripts after his hearing; however, he did not provide them. (Tr. 68)

In his February 19, 2019 SCA, Applicant said the financial issue began for the debts in SOR ¶¶ 1.g and 1.h in 2013, and the debts were disputed. (GE 1 at 44-46) On

August 22, 2023, I emailed Applicant a blank personal financial statement to enable him to provide additional details about his budget; however, he did not complete and return it to me. (Tr. 69; HE 11)

On March 13, 2020, as a result of the COVID-19 pandemic, the President placed federal student loans in deferment, and the interest rate was zero during the deferment term. See DoED website, “COVID-19 Loan Payment Pause and 0% Interest,” available at <https://studentaid.gov/announcements-events/covid-19/payment-pause-zero-interest#in-school-zero-interest>. (HE 5)

On August 24, 2022, the White House announced a new plan to assist student-loan borrowers:

Make the student-loan system more manageable for current and future borrowers by:

Cutting monthly payments in half for undergraduate loans. The Department of Education is proposing a new income-driven repayment plan that protects more low-income borrowers from making any payments and caps monthly payments for undergraduate loans at 5% of a borrower’s discretionary income—half of the rate that borrowers must pay now under most existing plans. This means that the average annual student-loan payment will be lowered by more than \$1,000 for both current and future borrowers.

See “FACT SHEET: President Biden Announces Student Loan Relief for Borrowers Who Need It Most,” <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most/>. (HE 6)

The Public Service Loan Forgiveness (PSLF) program allows forgiveness of a federal student loan after 10 years of income-based payments; however, a debtor must have applied for the program before October 31, 2022. See The White House website, <https://www.whitehouse.gov/publicserviceloanforgiveness/>. (HE 7) However, the DoED announced the federal government is working on new plans to assist borrowers in resolving their student-loan debts.

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 [or her] 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: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations."

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

The financial considerations mitigating conditions under AG ¶ 20 which may be applicable in this case 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; and

(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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *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 provided some important mitigating information. He had periods of unemployment and three divorces, and he has made some progress addressing his debts. He has initiated a payment plan to address his student loans, and DoED moved them out of default into good standing status. He paid one child-support debt, and he is making payments to address the other child-support debt. His annual income is about \$135,000, and he has sufficient financial resources to address his debts and establish his financial responsibility. He has received financial counseling, and he is a mature and intelligent professional.

However, “[e]ven if [Applicant’s] financial difficulties initially arose, in whole or in part, due to circumstances outside his control, the [administrative judge] could still consider whether [he] 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 maintained contact with creditors and attempted to negotiate partial payments to keep debts current. Applicant provided limited supporting documentation that he initiated or maintained contact with several creditors.

A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant’s judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). Applicants are not required “to be debt-free in order to qualify for a security clearance. Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by ‘concomitant conduct’ that is, actions which evidence a serious intent t/o effectuate the plan.” ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017) (denial of security clearance remanded) (citing ISCR Case No.13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014)). There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant indicated several of his SOR debts were dropped from his credit report. “[T]hat some debts have dropped off his [or her] credit report is not meaningful evidence of debt resolution.” ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer. See Title 15 U.S.C. § 1681c. Debts may be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid, a creditor fails to timely respond to a credit reporting company’s request for information, or when the debt has been charged off.

Applicant’s child-support debts are being paid through garnishment. Applicant may not have understood the distinction between involuntary income withholding orders (IWO) and involuntary payments through garnishment. See ISCR Case No. 20-03457 at 3-4 (App. Bd. June 15, 2023). Payment of a debt “through garnishment rather than a voluntary effort diminishes its mitigating force.” *Compare* ISCR Case No. 08-06058 at 4 (App. Bd. Aug. 26, 2010) *with* ISCR Case No. 04-07360 at 2-3 (App. Bd. Sept. 26, 2006) (payment of two of four debts through garnishment did not bar mitigation of financial considerations concerns). See *also* ISCR Case No. 09-05700 at 4 (App. Bd. Feb. 24, 2011) (garnished payments towards delinquent tax debts are not mitigating information in light of other factors); ISCR Case No. 08-06058 at 6 (App. Bd. Sep. 21, 2009) (remanding the case to the administrative judge and stating when addressing an IRS garnishment, “On its face, satisfaction of a debt through the involuntary establishment of a creditor’s garnishment is not the same as, or similar to, a good-faith initiation of repayment by the debtor.”). I have credited Applicant with mitigation of the child-support debts in SOR ¶¶ 1.c and 1.e;

however, Applicant loses some mitigating credit because he did not clearly establish that he voluntarily repaid these debts.

Applicant's two student loans in SOR ¶¶ 1.a and 1.b for \$29,748 and \$28,579. are not mitigated. He failed for several years to take meaningful action to address these two debts. See ISCR Case No. 20-02219 at 3 (App. Bd. Oct. 28, 2021) (citing ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017) (even if an applicant paid a debt or is making payments on a debt, a Judge may still consider the circumstances underlying the debt as well as any previous actions or lapses to resolve the debt for what they reveal about the applicant's worthiness for a clearance)). Student loans that were delinquent before the presidential suspension are not necessarily mitigated due to the change in status because of the COVID 19 emergency. See ISCR Case No. 20-02219 at 3 (App. Bd. Oct. 28, 2021) (citing ISCR Case No. 20-01527 at 2 (App. Bd. Jun. 7, 2021); ISCR Case No. 20-03208 at 2 (App. Bd. July 6, 2021)).

Applicant admitted his legal responsibility for the debts in SOR ¶¶ 1.g (\$7,172) and 1.h (\$4,317). He said he disputed the debts on his credit report. AG 20(e) requires that an applicant "[provide] documented proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue." Applicant did not provide the documentation he sent to the credit reporting companies or the creditors, and it was not possible to assess whether his disputes were reasonable. He failed to meet his mitigation burden for these two debts.

Applicant's IRS debt of about \$5,000 was not alleged in the SOR. His federal income tax debt will not be considered for disqualification purposes; however, it will be considered: "(a) in assessing [his] credibility; (b) in evaluating [his] evidence of extenuation, mitigation, or changed circumstances; (c) in considering whether [he] has demonstrated successful rehabilitation; and (d) in applying the whole-person concept." ISCR Case No. 20-02787 at 4 (App. Bd. Mar. 9, 2022) (citing ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017)). He did not provide documentation from the IRS showing his tax debt was in an IRS approved payment plan.

In ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017) the Appeal Board reversed the grant of a security clearance 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 took some actions to bring his student loans to current status and start a payment plan in 2023 after the SOR was issued. He has been making

his child-support payments. However, the Appeal Board clarified that even in instances where an applicant has purportedly corrected his or her financial problem, and the fact that applicant is now motivated to prevent such problems in the future, does not preclude careful consideration of applicant's security worthiness in light of his longstanding prior behavior evidencing irresponsibility. 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).

Under all the circumstances, Applicant failed to present sufficient evidence to mitigate the debts in SOR ¶¶ 1.a, 1.b, 1.g, and 1.h. Financial considerations security concerns are not mitigated under AG ¶ 20.

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 common-sense 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 56-year-old engineering communications specialist. He has worked for his current employer since June of 2023. In 2004, he received a bachelor's degree in computer information science. From 2017 to present, he worked for seven different employers. He provided a resume detailing his professional experience. He honorably served in the Navy from 1987 to 1994. He was discharged from the Navy as a petty officer second class. He provided some important mitigating information, which is discussed in the financial considerations mitigation analysis section, *supra*.

The evidence against grant of a security clearance is more substantial at this time than the evidence of mitigation. Applicant did not establish that he was unable to establish a payment plan to address his federal income tax debt of about \$5,000 and his student

loan debts. He did not provide proof that he had a reasonable basis to dispute two large debts. His failure to take timely, prudent, responsible, good-faith financial actions on the debts in SOR ¶¶ 1.a, 1.b, 1.g, and 1.h, and his tax debt raise unmitigated questions about his reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

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. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

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 establishment of a track record of paying or resolving his debts, 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. Applicant failed to mitigate financial considerations security concerns.

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 and 1.b:	Against Applicant
Subparagraphs 1.c through 1.f:	For Applicant
Subparagraphs 1.g and 1.h:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's national security eligibility for access to classified information. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge