



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



In the matter of:)
)
) ISCR Case No. 22-02373
)
Applicant for Security Clearance)

Appearances

For Government: Mark Lawton, Esq., Department Counsel
For Applicant: *Pro Se*

12/21/2023

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On December 14, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on January 10, 2023, and he requested a hearing before an administrative judge. The case was assigned to me on September 15, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 29, 2023, scheduling the hearing for October 31, 2023. I convened the hearing

as scheduled. The Government offered exhibits (GE) 1 through 5. Applicant offered documents marked as Applicant Exhibits (AE) A through E. There were no objections to any exhibits, and they all were admitted in evidence. The record was held open until November 15, 2023, to permit Applicant an opportunity to provide additional documents he wanted considered. He submitted documents that were marked AE F through U, and they were admitted in evidence without objection, and the record closed. DOHA received the hearing transcript (Tr.) on November 9, 2023.

Procedural Matters

In accordance with DOD Directive 5220.6, Section E3.1.17, the Government moved to amend the SOR to render it in conformity with the evidence admitted. The record was held open to allow Applicant an opportunity to provide additional evidence. There was no objection to the motion, and it was granted. The SOR amendments are included in Hearing Exhibit I. (Tr. 157-158) The SOR was amended as follows:

1.m. You failed to file, as required, Federal income tax returns in a timely manner for tax years 2019, 2020, 2021 and 2022. As of the date of this Statement of Reasons, the tax returns remain unfiled.

1.n. You failed to file, as required, State of [X] income tax returns in a timely manner for tax years 2019, 2020, 2021, and 2022. As of the date of this Statement of Reasons, the tax returns remain unfiled.

1.o. You are indebted to the Federal Government for delinquent taxes in the approximate amount of \$37,646 for tax years 2019, 2020, and 2021. As of the date of this Statement of Reasons, the taxes remain unpaid.

1.p You are indebted to the State of [X] for delinquent taxes in an indeterminate amount for tax years 2019, 2020, and 2021. As of the date of this Statement of Reasons, the taxes remain unpaid.

Findings of Fact

Applicant admitted all of the allegations in SOR as amended. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 44 years old. He is a high school graduate and has completed various certifications. He was married from 2001 to 2005 and 2008 to 2015. He remarried in 2022 and has a four-year-old child with his current spouse. He also has two adult stepchildren. One stepdaughter, who has two children, lives with him and his wife. He provides her some financial support along with support she receives from the government. His mother also lives with them after she sold her house. She made a profit on the house. She does not contribute to the household expenses. (Tr. 18-23, 34-36; GE 1)

Applicant completed a security clearance application (SCA) in May 2022. He reported he was employed from 2006 to August 2021 with the same employer, Company C. He also reported that he was self-employed from 2016 to the present, owning his own business. He was laid off by Company C due to the pandemic and lack of work. He received a severance package of \$20,000 from Company C. He testified that he then devoted all his time to his private business for about three months. He did not actively look for a job. When his cash reserves began to run low, he secured a job with a federal contractor in November 2021. (Tr. 13, 23-28; GE 1)

Applicant's wife was employed steadily until October 2022 when she was laid off. He and his wife decided to invest in her private photography business after she lost her job. Beginning in 2020, he used his income from his job to fund her business while they were both working. Later, they used the \$20,000 of severance pay he received and about \$6,000 to \$7,000 they had in savings and invested in both of their businesses. She took classes and purchased equipment that were required for the business. They hired a mentor to help her so she would be able to pursue the business full time. They leased equipment until they could complete the payments and now own the equipment. When she would make a sale, they would use that money to pay the business expenses. He used the income from his paycheck to support his wife's business until it became profitable and then the business could support itself. In June 2023, his wife rented a building where she can run her business. All the business expenses are current. He estimated that her monthly expenses for the business, including personal loans she has taken are approximately \$10,900 a month. These expenses are being paid from the profits of the business. He is hopeful this business will be successful so eventually a salary can be generated. (Tr. 23-34, 120-121)

Applicant was asked at his hearing if he had any other private businesses or sources of income. He said he continues to build his wife's business, and he is also a co-owner of a software company which was initiated between June and August 2022. He invested \$5,000 in the business. He obtained a loan from his mother for the investment. There are two other business partners and a new chief executive officer who will participate full time but will be paid with equity in the company in lieu of salary. Applicant stated the business is profitable, but he cannot take a salary from it yet. (Tr. 121-123)

Applicant testified that it is the American dream to own your own company. His wife's business is now generating income to break even, and this is her sole source of income. He believes she can generate about \$200,000 in income annually and then they can eliminate their debts. He said he is no longer using his income to subsidize her business. He decided to take the gamble and believes once her business is profitable, they can resolve their debts. All her business expenses are being paid. His debts were put on the "back burner." (Tr. 126-131)

Applicant attributes his financial issues to a series of unfortunate events. In June 2023, his aunt passed away, and he purchased a plane ticket for his mother to attend the services. In August 2023, their vehicle was totaled in an accident. They have been using his mother's vehicle since then and it is unreliable, so he uses a ride share or occasionally

rents a car. They have not replaced the vehicle. If his transportation is work related, he is reimbursed. In September 2023, his wife's stepfather passed away. He contributed \$200 to \$300 for his funeral. A friend paid for his wife's plane ticket. About a week later her stepbrother passed away and shortly thereafter her stepsister passed away. He estimated that he spent several hundred dollars for food for his wife while she was with her family. He did not contribute to the funeral costs. (Tr. 37-43)

Applicant testified that he was paying all his bills on time and was not delinquent on any of his debts in 2020. He decided to file Chapter 13 bankruptcy in October 2020 because he had a lot of bills. He said he accumulated many of the bills during his second marriage and after his divorce. His monthly Chapter 13 bankruptcy payments were approximately \$400. He made the payments for five months. His payments were increased to approximately \$600 to \$700 a month. He explained that his mortgage was a secured loan and his attorney wanted him to sell his house. He did not want to sell it, so he withdrew from the bankruptcy. He testified that his attorney advised him that if he withdrew from the bankruptcy then his debts were no longer protected, and they would become due, and he would be responsible for paying them. He understood the consequences and withdrew from the bankruptcy in May 2021. He said he reached out to his creditors and proceeded to address those who were willing to accept his payment arrangements. Once he resolved one debt, he then would begin to resolve another. As part of his bankruptcy, he completed the mandatory one-hour online counseling. (Tr. 49-52, 56-58, 65-66; GE 3)

Applicant's current salary is approximately \$150,000. Before his wife was laid off her salary was approximately \$80,000 to \$90,000. There was no point in time when they were both unemployed. When Applicant applied for a job three months after he was laid off, he was able to secure one immediately. When he was laid off, he continued to work as a subcontractor for the employer but was earning less. He remained a subcontractor until June 2022. He stated that he was to receive \$10,000 to \$14,000 for work he had done, but the employer did not pay him. (Tr. 59-64)

Applicant testified that he hired a credit company in about August 2021 to help him negotiate reasonable payment plans with his creditors. He paid the company \$2,500. It appears the company attempted to dispute debts on Applicant's credit report. He admitted the debts were valid, and he legitimately owed them. He testified that he was to send to the credit company any notices he received from the creditors, which he said he did. He believes this company was a scam as they did not do what they promised. He was offered an opportunity to provide a copy of the contract he had with the credit company. He did not. (Tr. 74-84; GE 4)

In Applicant's post-hearing submission, he provided a contract executed on October 31, 2023, which showed he has hired a debt relief company (DRC) and enrolled in their credit counseling program to facilitate the repayment of his debts in the SOR. Tr. 147; AE J) He stated:

Subsequent to signing the agreement, I learned that payments to creditors would commence only in the seventh month after I submit payments to them. Seeking a more immediate solution, I directly contacted each company to explore potential payment plans. Fortunately, some have already sent me offer notes via email or fax. (AE G)

Applicant further stated he was seeking a second chance to rebuild his finances. He provided a copy of a spreadsheet with his creditors and status of each debt. (AE G, L)

Applicant's admissions in the SOR, testimony, post-hearing statement and documents, and credit reports from June 2022 and October 2023 corroborate the SOR allegations. (GE 1-5)

The debt in SOR ¶ 1.b (\$25,549) is a charged-off credit card debt. When Applicant filed bankruptcy, he stopped making payments. He said he was told by his attorney that once he withdrew from his bankruptcy his creditors would contact him. He testified that he reached out to this creditor after he withdrew from the bankruptcy to establish a payment plan. He said he was told they would contact him, and he would receive a packet in the mail. He did not and did not reach out to the creditor again until after he received the SOR in December 2022. He was unable to negotiate a payment plan. In a post-hearing statement, Applicant said he had reached a payment arrangement with the creditor to pay \$300 a month, and he was waiting for correspondence from the creditor. No payments have been made and the debt is unresolved. (Tr. 66-72; GE 2, 5; AE G)

The debt in SOR ¶ 1.c (\$13,097) is a charged-off credit card debt. After receiving the SOR, Applicant contacted the creditor and negotiated a payment plan to pay \$1,964 with the first payment of \$149 due in January 2023 and then monthly payments of \$165 until December 2023. Applicant has made consistent monthly payments. The debt is being resolved. (Tr. 48-56; AE A, L; Answer to SOR)

The debt in SOR ¶ 1.d (\$12,866) is a charged-off credit card debt. Applicant testified that he has been making payments of \$150 through an automatic payment since May 2021. He provided documents to show he made payments in October 2022 and December 2022 and his balance owed was \$10,466. He was unable to provide additional documentation, but the balance reduction is consistent with monthly payments. The debt is being resolved. (Tr. 43-49, 55-56; GE 2, 5; Answer to SOR; AE B, G)

The debt in SOR ¶ 1.e (\$8,778) is a charged-off unsecured loan that was opened in October 2019. Applicant believed he made his last payment in September or October 2020. He has not made another payment. In a post-hearing statement, Applicant said that he was waiting for an answer from the creditor to settle the debt or make a payment plan. The debt is unresolved. (Tr. 72-76, 84; GE 1, 5; AE G, L)

Applicant could not recall what type of debt is in SOR ¶ 1.f (\$6,772). He was contacted by the creditor after he withdrew from his bankruptcy, and they offered him a payment plan to pay \$400 a month. He could not afford to make the payment. He was

contacted again after he received the SOR, but he still could not afford the \$400. He told the creditor that when he has more money available, he will contact them again. He has not made a payment on this debt since 2020. In a post-hearing statement, Applicant said that he was waiting for an answer from the creditor to settle the debt or make a payment plan. The debt is unresolved. (Tr. 84-95; GE 2, 5AE G, L)

The debts in SOR ¶¶ 1.g (\$6,258) and 1.h (\$2,280) are owed to the same creditor for charged-off credit card accounts. Applicant testified that he contacted this creditor sometime between November 2022 and February 2023, but he could not remember. He was offered a payment plan if he could make three monthly payments to resolve the debts. He testified that he does not know if the offer is still good because he said he cannot begin to make payments until he completes the payment plan for the debt in SOR ¶ 1.c. He has not made any payments on these debts since 2020. In his post-hearing response, Applicant provided settlement offers from the creditor. For SOR ¶ 1.g the creditor agreed to accept a settlement of \$4,694 and for ¶ 1.h an amount of \$1,710. These payments must be received by the creditor within 90 days from the date of the agreement, which was November 13, 2023. Applicant did not provide evidence he has paid the settlements. These debts are unresolved. (Tr. 97-102, 105-106; GE 2, 5; AE G, H, I, L)

The debt in SOR ¶ 1.i (\$2,121) is for a delinquent unsecured loan. In his answer to the SOR, Applicant said he had ongoing conversations with the creditor to negotiate a settlement of the debt. Applicant testified that he is being sued by the creditor for the debt in SOR ¶ 1.i and two others that are not alleged in the SOR. One debt is for \$4,975 and he could not remember the amount of the third debt. Applicant testified that he has hired an attorney to address the lawsuit against him for this debt and two others from the same creditor. In a post-hearing statement, Applicant said that he was waiting for an answer from the creditor to settle the debt or make a payment plan. He did not mention if the lawsuit is pending or if his attorney is still involved. This debt is unresolved. (Tr. 88-93, 102, 106-109; GE 5; AE G, L)

The debt in SOR ¶ 1.j (\$1,156) is a charged-off credit card debt. Applicant's last payment was in October 2020. After receiving the SOR, he contacted the creditor. He said he made an offer, but a payment plan had not been accepted. He testified that he would follow up to see if he can get an offer in writing. In his post-hearing statement, he provided a document with a settlement offer for \$926 to be paid by December 1, 2023. No proof of payment was submitted. The debt is unresolved. (Tr. 109-112; GE 2, 5; AE G, N, L)

The debt in SOR ¶ 1.k (\$700) is a delinquent medical debt. Applicant could not recall when he incurred it. He admitted he did not pay the balance owed but has offered to make monthly payments of \$50. The creditor wanted an initial payment of \$300 and then \$100 payments. Applicant could not recall how old the debt is. In a post-hearing statement, Applicant said that he was waiting for an answer from the creditor to settle the debt or make a payment plan. He has not made payments on the debt, and it is unresolved. (Tr. 112-115; GE 2, 5; AE G, L)

The debt in SOR ¶ 1.I (\$249) is a credit-card debt in collection. Applicant testified that this debt has been sold a couple of times to different collection companies. In his SOR answer, he said he had made attempts to satisfy the debt and was waiting for a response from the creditor. He testified that he was waiting for something in the mail from the creditor, but he had not reached out to them to satisfy the debt. In a post-hearing statement, Applicant said that he was waiting for an answer from the creditor to settle the debt or make a payment plan. It remains unresolved. (Tr. 115-118; GE 2, 5; AE G)

Applicant was asked at his hearing the status of his tax returns. He testified that his 2021 federal income tax return was filed in September 2023. He said that he had not yet filed his 2022 federal income tax returns. He said he owed federal income taxes for tax year 2019 (\$10,132), 2020 (\$11,139) and 2021 (\$16,129). He did not know why he did not pay. He said he met with the IRS in person in October 2021 and was put on a suspended payment plan because the IRS determined he could not pay his taxes. (Tr. 131-147)

Applicant testified that the accounting service that was to complete his tax returns did them incorrectly, reporting he had more income than he earned. The record was held open for Applicant to provide any amended returns he may have filed to reduce his tax debt. He was also told he could provide copies of his tax transcripts to show when he filed and any other matters he wanted to present, including information from his new accountants and their actions. Applicant testified that he did not pay the taxes he owed because he did not have the money. He stated that he also did not file his state income tax returns for 2019 through 2022. He was to provide evidence that his state taxes were filed and if he owed any amount if he has paid it. (Tr. 131-147)

In Applicant's post-hearing submission, he stated that he engaged multiple tax preparers since 2020. They did not handle his tax returns accurately and he dismissed them. He then sought a more reputable tax professional who meticulously reviewed his previous tax filings, identified errors, and filed amended tax returns. He did not provide copies of his amended returns. To address his tax liabilities he stated, "I am entering into a payment arrangement with the IRS to expedite compliance." No documents were provided to show he has an installment agreement with the IRS. (AE G)

Applicant provided copies of IRS tax transcripts for tax years 2018 (balance owed-zero), 2019 (balance owed-\$10,192), 2020 (balance owed-\$11,503) and 2021 (balance owed-\$16,441). His 2018 tax return was timely filed; 2019 tax return was filed in January 2021; 2020 tax return was timely filed with an extension; and his 2021 return was filed in September 2023. He did not provide a tax transcript for 2022 or evidence that his tax return was filed for that year. (AE Q, R, S, T)

Regarding his state income tax returns and liabilities, Applicant stated in his post-hearing submission that he learned he owes his state \$2,117 and has established a payment plan. He provided a document to show he owed state taxes for 2021 and the payment balance was \$2,167 as of November 2023. He has agreed to make monthly payments of \$48.66 on the balance. He did not provide evidence of when he filed his

2019 through 2022 state tax returns. The document he provided from the state presumably includes all tax liabilities. (AE K, M, O, P)

Applicant testified that prior to his bankruptcy he paid his bills. He said he made difficult choices because he knew the negative implications. He said he needed some breathing room and that is why he chose to file bankruptcy. He did the best he could. He wants to and intends to pay his delinquent debts. He is trying to the best of his ability to resolve his financial issues. He does not have a written budget. (Tr. 148-154)

In his post-hearing submission, Applicant stated that his financial journey has profoundly affected him, highlighting his lack of complete control over his situation. He said he took full responsibility for his actions and apologized. He also provided an email addressed to me stating he decided he had two options regarding his finances. The first is to refinance his home and use the equity to satisfy all his debts in full. The second is to sell his house and use the profit from the sale to pay his debts. Until one of those options is completed, he will continue to make monthly payments on his debts. He hopes to complete whatever option he decides in 30 to 45 days. (AE F)

Three witnesses testified on Applicant's behalf. They were aware he went through some tough times after his divorce but were unaware of him defaulting on his debts. They were aware he filed bankruptcy but then withdrew from it. They believe he is financially responsible. They did not have anything negative to say about his character. (Tr. 169-182)

Character letters were admitted in evidence. In them, Applicant is described as professional, dedicated, trustworthy, diligent, and responsible. He is a person of integrity who abides by rules and regulations and has an impeccable work ethic. He respects the law and is committed to maintaining confidentiality. Applicant is dedicated to improving his financial situation. He has consistently worked hard to address his financial challenges and is highly recommended for security clearance. (AE C, D, E)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, 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. According to AG ¶ 2(c), 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.” 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security 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 that an 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.

Section 7 of EO 10865 provides that 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

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 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 provides conditions that could raise security concerns. The following is potentially applicable:

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

Applicant has numerous delinquent debts that have been unpaid for several years. He made choices to invest in his wife's business and his business instead of paying his creditors. He failed to timely file his 2019 and 2021 federal income tax returns. He testified he did not file his 2022 federal income tax return timely. He failed to provide a tax transcript for 2022 or evidence that he filed his federal income tax return for that year.

Applicant testified he did not timely file his state tax returns. I find the evidence supports that the state tax returns were likely filed with his federal tax returns. Hence, Applicant's 2019, 2021, and 2022 state tax returns were not timely filed. He did not provide evidence of when he filed these returns and if 2022 has been filed to date.

Applicant failed to timely pay his federal income taxes for tax years 2019, 2020, and 2021. It is unknown if he has a federal or state tax debt for 2022. His document from his state appears to show he only has a debt pending for 2021. I find he likely only owes

state taxes for 2021 and not earlier years. It is unknown if he owed state taxes for 2022 because he did not provide evidence that he filed his return for that year. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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
- (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.

Applicant voluntarily chose to withdraw from his Chapter 13 bankruptcy and was fully aware of the financial ramifications. He had money available to pay his creditors but chose to invest his severance pay of \$20,000 in his wife's business. He chose to pay all her business expenses and to pay the expenses he had for his business. He used his income beginning in approximately 2020 to pay these business expenses. He chose to put the payments owed to his creditors on the back burner. He has taken some action on some of his SOR debts with payments, but for most of them his actions are minimal. Most of the debts remain unpaid with promises to work out payment plans. Other debts that he has payment plans for he has not provided documents to support he has started to make payments or can afford to pay the settlements offered.

Applicant attributed his financial problems to caring for his mother who lives with them and paying for her to travel to attend a funeral. She was able to give him a loan. He also attributed it to deaths in his wife's family. He said he had to pay for his wife's food while she was away. Although this may have had some impact on his finances, these events took place in 2023. He stopped making payments on most of his debts in 2020.

He clearly decided to invest in his wife's and his businesses and not pay his creditors. I do not find his financial problems were beyond his control. Even if they were, he failed to act responsibly under the circumstances. AG ¶ 20(b) does not apply.

Applicant attributes his tax issues to his tax preparers, but he failed to provide substantial evidence to conclude his 2022 federal income tax return has been filed and if he has a tax debt for that year. He said he has a payment plan with the IRS but did not provide a copy or evidence that he has made any payments. It appears that Applicant has a payment plan for his state taxes for 2021. I do not have evidence that he has filed his 2022 state tax return. I have given him the benefit of the doubt that if he filed his federal tax returns for certain years, he likely also filed his state tax returns. AG ¶ 20(g) applies to Applicant's state tax debt, but not his 2022 tax return. It does not apply to Applicant's failure to file his 2022 federal tax return or his failure to pay his outstanding federal tax debts for 2019, 2020 and 2021.

Applicant's debts are frequent and ongoing. There is insufficient evidence to conclude that future financial issues are unlikely to recur. His behavior casts doubt on his reliability, judgment, and trustworthiness. AG ¶ 20(a) does not apply.

Applicant contracted with DRC, and he said he was participating in credit counseling. He noted that DRC would not begin to address settling his debts until after seven months of payments. Since he initiated this contract on the same day as his hearing, it is unlikely that any credit counseling has made an impact. Currently, there are no clear indications that his finances are under control. AG ¶ 20(c) does not apply.

Applicant settled and paid the debt in SOR ¶ 1.c after receiving the SOR. He has been offered some settlement agreements but has not made any of the proposed payments. I find Applicant's priorities are to maintain his wife's business, so that sometime in the future it is successful to the point she may earn a substantial salary. She is not at that point. In the meantime, his creditors will wait until he has the money to pay their settlements offers. This does not constitute a good-faith effort to pay his overdue creditors. AG ¶ 20(d) does not apply.

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), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that Guideline, but some warrant additional comment.

An applicant who waits until his clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018) 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. ISCR Case No. 15-00216 at 4 (App. Bd. Oct. 24, 2016), *citing Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961)

Applicant has not met his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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-1.c:	For Applicant
Subparagraphs: 1.d-1.l:	Against Applicant
Subparagraphs: 1.m-1.n:	Against Applicant (except tax year 2020)
Subparagraphs: 1.o-1.p:	Against 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge