



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01136
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: Carl Marrone, Esq.

06/03/2024

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**Decision**

\_\_\_\_\_

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On October 4, 2022, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines, including Security Executive Agent Directive 4 (SEAD 4), effective June 8, 2017 (AG).

On April 24, 2023, Applicant, through counsel, answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on October 24, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice on

November 7, 2023, setting the hearing for December 18, 2023, which was later amended to December 19, 2023. The hearing was convened as scheduled. Due to the need to present additional evidence and testimony, the hearing was continued until January 18, 2024. Upon the resumption of the hearing, Department Counsel moved to amend the SOR to add another allegation under Guideline F (see discussion, *infra*). Applicant's counsel requested, and I granted a continuance to allow Applicant additional time to address the amended SOR allegation. A rescheduled hearing was held on February 5, 2024 by mutual agreement.

The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. The Government's exhibit list was marked as hearing exhibit (HE) I and its discovery letter sent to Applicant was marked as HE II. The SOR amendment reflected in Department Counsel's January 18, 2024 email was marked as HE III, and Applicant's response was marked as HE IV. The Government's January 26, 2024 email request for me to take administrative notice of DOHA hearing decision # 17-01960, dated December 3, 2018, which also involved this Applicant, was marked as HE V. This exhibit also included Applicant's August 4, 2017 SOR from that case.

Applicant testified and offered exhibits (AE) A-TT, which were admitted without objection. DOHA received the hearing transcripts as follows: December 19, 2023 transcript received January 4, 2024 (Tr1); January 18, 2024 transcript received January 25, 2024 (Tr2); and February 5, 2024 transcript received February 12, 2024 (Tr3).

### **Procedural and Evidentiary Issues**

As referenced above, on January 18, 2024, Department moved to amend the SOR to add an additional allegation under Guideline F. That allegation is noted as SOR ¶ 1.m and states: "You failed to timely file, as required, your federal and state income tax returns for tax year 2022." (HE III) I granted Department Counsel's motion to amend, but I also allowed Applicant a continuance to consider his response to the new allegation. The hearing was recessed until February 5, 2024. Applicant responded to SOR ¶ 1.m, in writing through counsel, on February 5, 2024, by admitting the allegation and stating that further mitigating evidence would be submitted during the hearing. (HE IV)

Department Counsel requested that I take administrative notice of Appellant's earlier DOHA case. This case is # 17-01960, in which a decision was issued by a different hearing judge granting Applicant's access to classified information on December 3, 2018. The SOR in that case was included in the request for administrative notice. That SOR included, *inter alia*, allegations involving delinquent student loans that are also alleged in this SOR. Appellant objected to my taking administrative notice based upon relevance. I overruled the objection and took notice of the previous decision and SOR because the decision and SOR were issued by a government agency and not subject to dispute. The relevance of the previous decision and SOR to this case is that the same student loans had gone back into a default status after Applicant stopped paying on a payment plan from April 2020 to March 2023, which was recognized in the

earlier decision. He admitted in his hearing testimony that these same student loans were in default status. (HE V; Tr1 at 151; Tr3 at 24; AE OO)

### **Findings of Fact**

Applicant admitted all of the SOR allegations (¶¶ 1.a-1.f, 1.h-1.j, and 1.m), except for ¶¶ 1.g, 1.k, and 1.l. His admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 40 years old. He has worked for his current employer, a defense contractor, since July 2021, as a senior systems engineer. His current annual gross salary is approximately \$150,000 per year. He has worked for government contractors since 2011, which is also when he first received a security clearance. He holds a bachelor's degree. He attended graduate school from 2009 to 2010, but he did not complete his master's degree. He married in 2010, and has three children, ages 12, 6, and 4. (Items 3-4).

The SOR alleged Applicant incurred nine delinquent debts, comprised of student loans (SOR ¶¶ 1.a-1.f), federal and state tax debts (SOR ¶¶ 1.k-1.l), and one consumer debt (SOR ¶ 1.g) totaling approximately \$121,307. Approximately \$116,000 of the total debt is derived from his student loans (SOR ¶¶ 1.a-1.f). The SOR also alleged that Applicant failed to timely file his 2016-2019 and 2022 federal income tax returns (SOR ¶¶ 1.h and 1.m); his State A income tax returns for tax years 2016 to 2018 (SOR ¶ 1.i); his State B income tax returns for tax years 2018 to 2019 (SOR ¶ 1.j); and his State C income tax return for tax year 2022 (SOR ¶ 1.m).

#### **Non-tax Debt (SOR ¶ 1.g):**

Applicant explained that this debt resulted when he switched telecommunication carriers and did not initially return equipment to the discontinued carrier. He was charged \$716 by the carrier. He returned the equipment on May 11, 2021, and provided a receipt showing the return. This debt is resolved. (Tr1 at 68; AE E)

#### **Student Loan Debts (SOR ¶¶ 1.a, 1.c-1.f; SOR ¶ 1.b):**

Applicant admitted that by the time he left graduate school he had incurred student-loan debt. He incurred two types of student loans. The first type were privately financed and represent the greater SOR balance and will be referred to hereinafter as private student loans (PSLs) (SOR ¶¶ 1.a, 1.c-1.f). Applicant believed these PSLs went into default status in 2012 or 2013. These loans were not covered by the CARES Act student loan forbearance and zero interest rate relief during the Covid pandemic from March 2020 to approximately October 2023. His second type of student loans were federally guaranteed and were serviced independently from the PSLs. These federal student loans will be referred to hereinafter as FSLs (SOR ¶ 1.b). These loans were covered by the CARES Act forbearance and interest relief features, but Applicant

admitted these loans were delinquent before the CARES Act relief was instituted. (Tr1 at 24, 65, 94-95, 101, 117-118, 151-152)

In order to understand when Applicant incurred his student loans and when they were defaulted, in relationship to other life events going on at the same time, I have set forth a timeline based on the evidence. That timeline is as follows:

**2006-2007:** Applicant testified that he made some payments on his student loans during this time between his graduation from undergraduate school and his entrance into graduate school. He did not indicate if these payments were toward PSLs or FSLs. A credit report shows five PSLs were assigned for collection in 2002, 2005, 2006, and two in 2007. (Tr1 at 96-98; GE 3)

**2009-2010:** Applicant's student loans were deferred while he attended graduate school. When he stopped going to grad school, his deferment ended, in approximately October 2010. He approximated his student loan total was \$145,000 at that time. He married in July 2010. He also received an engineering job offer with a government agency. This job offered necessitated that he and his wife move to another state. After moving, the job offer was rescinded because of a federal hiring freeze that occurred. He found several temporary jobs for about the next eight months in order to support his family. His wife was hired for a teaching position which paid about \$50,000 annually. (Tr1 at 24, 28-29, 32-34, 99, AE O)

**2011:** In April, Applicant was hired for a fulltime engineering position with a defense contractor. His starting annual salary was approximately \$56,000. At about the same time, his wife found out she was pregnant. This came as a surprise to them because previously, doctors told them there was only about a 10% chance she could ever become pregnant. Because of medical complications, doctors placed his wife on complete bed rest and she had to stop working in June or July 2011. In December, their first daughter was born. (Tr1 at 35-37, 39-43)

**2012:** Applicant's wife was able to go back to work in approximately October 2012. During this time Applicant was able to pay all his monthly debts except his student loans. (Tr1 at 43-45)

**2012-2013:** Sometime during this timeframe, and after a period of forbearance by the lenders, Applicant's student loans went into default status. He did not specify whether they were the PSLs, or the FSLs, or both. (Tr1 at 100-102)

**2014:** Applicant attempted to consolidate his student loans. (Tr1 at 48)

**2012-2015:** Between these years, Applicant's wages were garnished by the FSL servicer based upon the defaulted loans. The amount was \$1,000 monthly. Applicant admitted he was not proactive about setting up an alternative payment plan to the garnishment. He believed the garnishment served as a forced payment plan, so he left it in place. What he did not realize was that his defaulted FSLs continued to accrue daily

interest during the garnishment period. He estimated that before the garnishment began, he owed about \$50,000 toward his FSLs, he paid approximately \$25,000 by garnishment, but his remaining balance was approximately \$40,000. (Tr1 at 49-50, 106)

**2015-2017:** Sometime during this period, Applicant consulted a debt counseling service. (Tr1 at 51)

**2017:** Early in the year, Applicant's wife found out she was pregnant with their second child. She was ordered on bed rest for the entire pregnancy and stopped working again. In August 2017, Applicant's SOR from his first case was issued. Their second daughter was born in October. (Tr1 at 52-53; HE V)

**2017-2018:** Sometime during this period, Applicant made double monthly payments on his FSLs to have the garnishment removed. (Tr1 at 51)

**2018:** Applicant was hired by another defense contractor in a higher paying position. His wife was working as a consultant, which did not pay as well as her teaching position. On October 4<sup>th</sup>, Applicant had his DOHA hearing in his first case. The decision in that case, granting his clearance, was published on December 3<sup>rd</sup>. Applicant entered into a payment plan for his PSL on October 19<sup>th</sup>. His payments were \$250 monthly. He made his first payment in October 2018 and continued making monthly payments through March 20, 2020, when he stopped because he could no longer afford them and the PSLs went into default status again. (Tr1 at 54, 151; AE OO, SS; HE V)

**2019:** In the fall, Applicant's wife went back to teaching fulltime. Shortly thereafter, they found out she was pregnant with their third child. (Tr1 at 54)

**2020:** In January, Applicant's wife was ordered on bed rest and again had to stop working. In May their third daughter was born. Their daughter was born with health complications and required extensive medical services. As stated above, Applicant made no payments on his PSL payment plan from April 2020 until April 2023. His FSLs were in a default status before the CARES Act put them in forbearance. (Tr1 at 56-58, 151-152; AE OO)

**2022:** The SOR in this case was issued on October 4, 2022. (SOR)

**2021-2023:** Applicant testified that during this timeframe he received several pay raises, which increased his annual salary to about \$150,000. This was more than both he and his wife made previously. In March 2023, the servicer of his PSLs changed. In April 2023, he entered into a settlement agreement with the new servicer of his PSLs. Under the agreement, over \$161,000 of Applicant's PSLs would be settled for a total payment of approximately \$20,000, payable in 48 monthly payments of \$420, beginning April 18, 2023. He made the monthly payments starting in April 2023 through August 2023. In approximately September, the loan servicer experienced a problem with its automatic online payment system and Applicant's payments for September through December 2023 were not made. He claimed that he set aside money to make these uncollected

payments. In December 2023, Applicant's wife was hired for a teaching position with a gross annual salary of \$80,000. This put their combined gross annual salaries at \$230,000. (Tr1 at 23, 59, 62, 110-114, 151; AE C, OO, TT)

**2023:** On December 18, 2023, Applicant was approved for the Fresh Start Initiative for his defaulted FSLs. This process will allow him to rehabilitate his FSLs under a payment plan. He was awaiting further information from the servicing company concerning the details of his payment plan. He speculated that his monthly payments would be about \$650, which he believes he can make without a problem. (Tr1 at 66-67; AE KK)

**2024:** In January 2024, Applicant was told by the former servicer of his PSLs that he should begin making payment back to it because the payment system for the subsequent provider was still inoperable. Appellant documented making a payment to the former servicer by paper check on January 23<sup>rd</sup> for \$420. In February 2024, the servicer for Applicant's FSLs provided him a copy of an account summary, including a total amount owed of over \$35,000. While this summary did not include the monthly amount he would pay, Applicant was told by a representative the amount would be \$487. As of the last hearing date, February 5, 2024, he had not started making payments on his FSLs. (Tr3 at 16-17; AE NN-PP)

#### **Federal and State Tax issues:**

##### **2016-Federal Taxes Owed (\$2,716; SOR ¶ 1.k):**

Applicant initially thought that he did not owe federal taxes for tax year 2016, because he mistakenly believed he received a refund after 2016 and that would not have happened if he owed the IRS for past taxes. A 2016 federal return prepared by a tax service on April 26, 2021, showed that Applicant would owe \$2,716, for that year. The IRS denied receiving this return, as reflected by a September 2022 IRS account transcript. Applicant mailed a paper return for tax year 2016 on January 30, 2024. As of February 5, 2024, he could not confirm that the IRS received his 2016 federal income tax return. By his calculations, based on the paper return, he owed approximately \$700 for tax year 2016. This debt is unresolved. (Tr1 at 83; TR3 at 20, 30; GE 2 (2016 IRS account transcript showing no return filed); AE GG, MM)

##### **2016 and 2018 State A Taxes Owed (\$1,614; SOR ¶ 1.l)**

Applicant initially disputed owing this tax debt to State A. He then provided documentation showing he entered into a payment plan with State A in April 2023. That documentation shows a larger balance owed of \$4,457. The plan calls for him to make monthly payments of \$163 for 36 months. He documented making payments from May 2023 to November 2023. This debt is being resolved. (Tr1 at 83-85; AE J, EE)

##### **Federal Income Tax Return Filings (2016-2018, 2022; SOR ¶¶ 1.h, 1.m); State A Income Tax Return Filings (2016-2018; SOR ¶ 1.i); State B Income Tax Return**

**Filings (2018-2019; SOR ¶ 1.j); and State C Income Tax Return Filing (2022; SOR ¶ 1.m)**

Applicant admitted that he did not timely file his Federal, State A, State B, and State C income tax returns for the years indicated because he and his wife disagreed as to which of them should complete and file the returns. Consequently, neither took the responsibility to do so. For tax year 2016, Applicant wanted his wife to prepare the returns because he had done so for tax years 2014 and 2015 and those resulted in them having to pay additional taxes or their refund was significantly less than they were used to receiving. He believed he was doing some wrong which resulted in their increased taxes for those years. He wanted his wife to prepare these returns because she could get help from her father who is a certified public accountant (CPA). She refused to prepare the returns. This dispute about who should file the returns went on for several years without the returns being filed. Applicant was not too worried because he believed enough was being withheld so that no additional taxes would be owed. (Tr1 at 69-71)

In 2021, Applicant contacted a tax preparation service (Tax Service) to prepare and file his delinquent federal and state tax returns. He contacted them before the SOR was issued in this case, but after the SOR and decision in his first DOHA case. (Tr1 at 75, 120; HE V)

The result of the Tax Service work is as follows:

**Federal Returns:**

**Tax year 2016**—amount owed listed as \$2,716—signed by tax preparer on April 26, 2021— Supposedly faxed to an IRS number on April 30, 2021—no IRS confirmation of receipt. Applicant mailed a hard copy of his return to IRS on January 30, 2024—no evidence of IRS confirmation. (Tr1 at 76-77; Tr2 at 9, 16; Tr3 at 16, 20; GE 2 (2016 tax transcript); AE GG)

**Tax year 2017**—refund indicated of \$5,054—signed by tax preparer on April 12, 2021— Supposedly faxed to an IRS number on April 12, 2021—no IRS confirmation of receipt. Applicant mailed a hard copy of return to IRS on January 30, 2024—no evidence of IRS confirmation. (Tr1 at 76-77; Tr2 at 9, 16; Tr3 at 16, 20; GE 2 (2016 tax transcript); AE HH)

**Tax year 2018**—received electronically by IRS on April 12, 2021—tax refund of \$1,170 applied to tax year's 2012 tax debt; (GE 2 (2018 tax transcript); AE II)

**Tax year 2019**—received electronically by IRS on April 28, 2021—tax refund of \$3,902 applied to tax year's 2013 tax debt. (GE 2 (2019 tax transcript); AE II)

**Tax year 2022**—no return filed as of December 12, 2023—Applicant admitted not timely filing this return—2022 return prepared and sent electronically to IRS on

January 29, 2024—amount owed listed as \$8,041. (Tr1 at 132; Tr3 at 16; GE 2 (2022 tax transcript); AE LL)

**State A Returns:**

**Tax Year 2016**—return filed April 26, 2021; amount owed \$961;

**Tax Year 2017**—return filed April 12, 2021; refund \$1,085;

**Tax Year 2018**—return filed April 12, 2021; amount owed \$653 (SOR Answer; AE G).

**State B Returns:**

**Tax Year 2018**—return filed April 12, 2021; refund \$865;

**Tax Year 2019**—return filed April 26, 2021; refund \$761 (SOR Answer; AE H).

**State C Return:**

**Tax Year 2022**—e-filed January 29, 2024; accepted January 30, 2024; amount owed \$762 (SOR Answer; AE LL)

**Other Financial Information:**

Applicant's wife holds a both a bachelor's and a master's degree. She is now pursuing her Ph.D. She has incurred over \$100,000 worth of student loans financing her education and will incur more to finance her Ph.D. She has not yet begun paying back on those loans because of various deferments that applied. Any upcoming payments on these student loans are not reflected in their current joint budget. (Tr1 at 96; AE AA)

In October 2021, during his background investigation, Applicant told the interviewer that in the future he will file his taxes yearly. Applicant claims part of the reason his 2022 tax return was late was because when it was due his wife was not yet working and they could not afford to hire a tax preparer. He does not believe he will be in this situation in the future because both he and his wife have well-paying jobs and they will not have any more children because he recently underwent a vasectomy. He plans to either use a commercial tax software application to file his future taxes or a commercial preparation service, such as H & R Block. In April 2023, Applicant met with a financial counselor who helped him develop a financial action plan. He intends to set up a payment plan with the IRS to pay the approximately \$8,000 owed for his 2022 federal taxes. Applicant's most recent monthly financial statement shows an overall net income of \$13,352; net expenses and debt payments of \$9,746 (not including FSL payments or 2016 and 2022 federal tax payments). (Tr1 at 80, 87; Tr2 at 25; Tr3 at 18; GE 2 (October 2021 subject interview, p. 5); AE K, AA, RR)

I will not consider any derogatory conduct not specifically pled as an allegation for disqualifying purposes, but I may consider it for credibility, mitigation, and in applying the whole-person factors.



## **Character and Performance Evidence:**

Applicant called three character witnesses who testified for him. The first was the security manager at his current employer. She has known him for over two years. She has not seen anything to suggest he is living beyond his means. She related that he has brought security issues of concern to her attention in the past. She believes he has a strong work ethic. (Tr1 at 161-162, 164, 166)

Applicant's second witness is a personal friend who works for another government agency. She is the godmother to one of his daughters. She described him as a faithful church member. She also opined that he is trustworthy. She was unaware of his financial circumstances. (Tr1 at 168-170, 173)

Applicant's third witness has known him since they attended college together. He is the godfather to her children. She opined that he is trustworthy. (Tr1 at 176-178)

Applicant also offered seven character letters supporting him. The consensus of these letters is that he is honest, has integrity, and is trustworthy. He is described by one person as a man of great character. (AE S-Y)

Applicant also presented the following work-related information: his certification as a cost analyst; two performance evaluations (undated) rating him as an "excellent performer" and a "successful performer;" and the recipient of a BRAVO cash award presented by his employer in October 2022. (AE N, P-R)

Applicant's counsel also requested consideration of a waiver or granting of a conditional clearance, in the event Applicant's security clearance is denied. This request will be discussed in my Analysis section. (SOR Answer; AE Z)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 to obtain 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 about 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**

AG ¶ 18 expresses the security concerns for financial considerations:

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. I have considered all of them under AG ¶ 19 and the following potentially apply:

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

The evidence established that Applicant has delinquent student loans, failed to timely file federal and state income tax returns for the years indicated, failed to pay his federal taxes in 2016, and his State A taxes in 2016 and 2018. He resolved the sole consumer debt listed in SOR ¶ 1.g and that is concluded for him. I find the above disqualifying conditions are raised regarding the remaining SOR allegations.

Before addressing the applicability of any mitigating conditions, the nature of Applicant's tax issues and student loan defaults merit specific comment. Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018).

The Appeal Board has held that the while CARES Act provisions effectively places qualifying student loans in a deferment status, it does not excuse Applicant's past inactions in the context of security clearance eligibility. See ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021)

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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's student loans originated back in 2006 and are ongoing and remain unresolved. Both his PSLs and his FSLs have been in default status multiple times. Most recently he defaulted on his PSL payment plan from April 2020 to March 2023. This is the payment plan the administrative judge in Applicant's case # 17-01960 (December 3, 2018) partially relied upon to mitigate his delinquent student loans at that time. While he provided proof that he made a payment on his PSL plan in January 2024, he failed to show that he paid the current loan servicer for the uncollected payments of October through December 2023. His defaulted FSLs were recently turned over to a new servicer. He believes his monthly payments on his FSLs will be approximately \$487, but as of February 2024, he had not yet made any payments.

Over the years Applicant has had several events that affected his financial picture that were beyond his control. The most significant of which was his wife's unemployment during her three pregnancies due to medical necessity. However, overall, he has not acted responsibly with his student loans. An example of this is when he allowed his FSL to remain subject to a garnishment action rather than trying to work out a payment plan. He admitted he just looked at the garnishment as a forced payment plan. Payment of a debt through garnishment is not a good-faith effort to repay it. Another example is when he allowed his PSL to go back into default in 2020, after establishing a payment plan in 2018. Applicant has sought financial counseling, however, despite that counseling, his student loans are not yet under control. Applicant has an erratic student-loan payment history. He was also given an opportunity in his first DOHA case to rectify these defaulted student loans by adhering to his payment plan but failed to do so. These actions continue to put his reliability, trustworthiness, and judgment into question. AG ¶ 20(a) does not apply to SOR ¶¶ 1.a-1.f. AG ¶¶ 20(b)-20(d) have some application, but are not controlling for SOR ¶¶ 1.a-1.f.

Applicant admitted the reason he failed to timely file his federal and various state tax returns for the years indicated was because he and his wife argued over who would prepare and file these returns. When neither committed to preparing the returns, they went unfiled for several years. This is the height of irresponsibility and reflects

unreliability, untrustworthiness, and poor judgment. During his background investigation in 2021, he committed to timely filing his tax returns in the future. He finally sought professional tax preparer assistance and his unfiled returns were filed beginning in April 2021. However, the evidence shows that his 2016, 2017, and 2022 federal returns were not filed until January 2024, long past their filing due dates. As of February 5, 2024, there was no acknowledgement that the IRS received his 2016 or 2017 returns. AG ¶¶ 20(a) and 20(b) do not apply to SOR ¶¶ 1.h-1.j and 1.m. AG ¶¶ 20(c), 20(d) and 20(g) have some application, but are not controlling for SOR ¶¶ 1.h-1.j and 1.m.

Applicant failed to document payment for his 2016 federal taxes. He documented his payment plan to State A for his tax debt. AG ¶ 20(g) applies to SOR ¶ 1.l, but not to SOR ¶¶ 1.k and 1.m.

### **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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I considered Applicant's work as a contractor, his family's medical issues, his character testimony and letters, and his work accomplishments. I also considered his failure to resolve his student loans over the course of 18 years and his irresponsibility in refusing to timely file his state and federal tax returns as required as indicated by the evidence. I also note that Applicant was given a chance back in 2018 to right his financial ship when the judge in his prior DOHA case mitigated the financial concerns and granted his clearance. It seems he learned little from that experience. Applicant has not established a track record of financial responsibility.

Overall, the record evidence leaves me with 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.

**Waiver-Conditional Clearance (SEAD 4)**

Applicant’s long history of student loan defaults and intentionally failing to comply with his tax filing requirements do not support the application of issuing either a waiver or granting a conditional clearance. A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. The benefit of continued eligibility does not outweigh the existing 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-1.f, 1.h-1.k, 1.m:	Against Applicant
Subparagraphs 1.g, 1.l:	For Applicant

**Conclusion**

In light of all 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 E. Coacher  
Administrative Judge