



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



In the matter of:)
)
XXXXXXXXXXXXXXX) ISCR Case No. 22-00897
)
Applicant for Security Clearance)

Appearances

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

09/12/2024

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant has provided sufficient evidence to mitigate the national security concern arising from his financial considerations. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted his security clearance application (SCA) on February 8, 2021. On July 22, 2022, the Department of Defense (DOD) sent Applicant a Statement of Reasons (SOR) alleging that his circumstances raised security concerns under Guideline F (financial considerations). This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). The *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on June 8, 2017, apply here.

Applicant answered the SOR on September 22, 2022 (Answer) and requested a hearing before an administrative judge. Department Counsel was ready to proceed on

November 18, 2022. The case was assigned to me on June 2, 2023. On December 20, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted in person on February 22, 2024. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 5 were admitted without objection. Applicant and his spouse testified and submitted Applicant's Exhibits (AE) A through AE V, and AE AA and AE SS, which were admitted without objection. The Answer included nine documents that were marked for identification as Answer Exhibits (ANE) 1 through ANE 9 and admitted without objection. The record was left open until March 23, 2024, to allow Applicant to submit additional documents. He timely submitted documents that were marked for identification as Exhibits (EX) 1A through EX 1T and were admitted without objection. DOHA received the transcript (Tr.) on March 1, 2024. Post-hearing, I emailed the parties and opened the record *sua sponte* to amend the amount alleged in SOR ¶ 1.d from \$10,712 to \$19,844 to conform to the parties' evidence. (GE 4 and 5; AE V; Tr. 74-79.)

Findings of Fact

Applicant is 57 years old, married since 1992, has three adult sons, and one grandson. He graduated from a service academy in 1989 with a degree in computer science. He served on active duty in the U.S. military for 12 years and left active duty in 2001 with an honorable discharge. He worked for the predecessor of his current employer and his current employer for 22 years after leaving the U.S. military. Those companies were, and are, defense contractors. He is the principal engineer and subject matter expert on a defense system and has traveled extensively in the United States and overseas to support that system. He has had security clearances continuously since he was 18 years old. (Tr. 17-20; GE 1.) His spouse has a Master's Degree in Business Administration (MBA) and took accounting classes throughout that course of studies. She also was a manager of large projects that included budgets and accounting. (Tr. 142-144.)

The SOR alleged that Applicant has four delinquent credit card debts totaling \$58,541 and four delinquent federal income tax debts for tax years 2018 through 2021 totaling \$55,222. (SOR ¶¶ 1.a - 1.d and 1.e -1.h.) Applicant denied the first and last credit card debts and admitted the middle two such debts, stating that all four will be paid in full by automatic payroll deductions. (Answer ¶¶ 1.a - 1.d.) He admitted the first three tax allegations, denied the last one, and explained that he was in the process of entering a new installment agreement with the IRS. (Answer ¶¶ 1.e -1.h.) In the seven years before he completed the February 2021 SCA, he never had any failures to file returns or pay federal income taxes. (GE 1.)

Consumer Debts

Applicant has three sons, ages 35, 31, and 27. (GE 1.) The two younger sons live with him and his wife. He supports them. The youngest son does not work, and the middle son has a part-time job. One of them is a student. (Tr. unclear.) His oldest son, his wife, and their then new grandson lived with Applicant from 2016 to 2019. (Tr. 22-24.) To prepare for that period, Applicant began renovating his basement to convert it into an apartment. That project began in or before 2016 and continued through 2018. His son

and his family lived there while the son completed a technical certification pursuing a new career. Applicant and his family had lived in that home since 2002. As a result, the renovation costs were higher than he anticipated. He used the four SOR credit cards to help purchase the materials to complete the renovations. His son and his family moved out in 2019 and now have their own home. Those four credit cards went into collections in 2015, 2016, and 2020. Applicant's federal income tax troubles started in about 2019. (AE AA; Tr. 20-22, 44-45; GE 4 and 5.)

SOR ¶ 1.a This is a credit card account placed for collection in August 2020 for \$19,953. (GE 4 and 5.) Applicant did not recall "the exact things" he used it for. His financial issues (taxes and credit card debt) built up in about the middle or end of 2019. He then prioritized his debts, secured debt like the house and vehicles, and then taxes and credit card debt. This was one of the credit cards he used for his renovations. He was paying credit card accounts through garnishments of his pay. At one point, 25 percent of his take-home pay was being garnished, \$2,500 to \$3,000 per month. (Tr. 24- 36, 197-198; AE AA.)

As of Applicant's March 29, 2021 personal subject interview (PSI), he was paying this account monthly through garnishment. (GE 2 at 11.) At hearing, he testified that this account has been paid in full, referring to AE E and AE F. AE E shows that the original SOR creditor sold the debt to Bank A on August 20, 2020, and AE F shows that Bank A notified Applicant on January 13, 2023, that the judgment had been satisfied. (Tr. 37-38.) This debt has been resolved.

Applicant testified about his use of garnishments:

AJ: I think you testified that it was an involuntary garnishment.

App.: It was a garnishment as done by court order. So I guess, yes, sir, I guess you can call that an involuntary garnishment. It was the way we had decided to pay it off. The most direct way to pay off these debts was to make sure it came out of our pay.

And if we, since we had not been able to enter into an agreement to pay it off, and we got to the point where the court case had brought - - was brought forward, the garnishment did make it an involuntary payment, yes.

AJ: So you attempted with [Bank A] to negotiate a payment.

App.: I don't know, looking back or trying to remember at this time, if we had attempted to negotiate a payment or just decided that the garnishment was the best way to pay it off.

AJ: So you didn't oppose the garnishment.

App.: Did not, did not oppose. No, we - - so I was going to state there right now, we did not oppose any of these garnishments. So you'll see garnishments for the other credit card accounts. We did not oppose any one of them. (Tr. 38-39.)

SOR ¶ 1.b. This is a credit card account placed for collection in March 2015 for \$15,754. (GE 4 and 5.) Applicant used this credit card for remodeling the basement, so his oldest son and family could live there. He testified that on August 5, 2020, the creditor offered to settle the full amount of \$15,754 for \$5,513, being referred to AE K. He testified that the account has been paid in full, citing AE L, M, and N. AE L shows a beginning principal of \$15,754 on December 4, 2020, with biweekly payroll deductions of \$1,299 through June 2023, and a final payment of \$340 received on February 2, 2024. (AE M and N.) Final payment was confirmed by EX 1A. (Tr. 44 – 55.) This debt has been resolved.

Applicant testified about his response to the creditor's offer to settle for less than full value:

App.: We did not - - I did not want to have any of these unpaid. So rather than accept the offer for \$5500 to pay it off, we told them we wanted to pay off the entire amount.

D.C.: Okay, did you have a payment plan with them to pay off the entire amount?

App.: I don't remember. I don't know if there was a payment plan, or we just decided that the - - that paying it off through a garnishment was again the best way to ensure that we paid it. Again, didn't contest any of the garnishments. (Tr. 46-47.)

SOR ¶ 1.c. This is a credit card account in collection in April 2015 for \$12,122. (GE 4 and 5.) Applicant testified that he used this credit card for charges finishing the basement. He testified that the creditor offered \$4,242 to pay off the full amount, citing AE I, a September 22, 2020 letter from the creditor. He testified that: "Again, I did not want to pay anything less than was owed. So we declined this offer and began [payroll] payments again through the garnishment to pay this off." It was paid off on February 2, 2024. He actually overpaid by \$1,131 and was reimbursed. (AE J payroll deductions.) (Tr. 59-74.) This debt has been resolved.

Applicant explained why he did not accept the creditor's settlement offer:

App.: I wanted to pay off the amounts owed in full. I felt like if you owe money, you should pay it in full.

AJ: And so we'll get to the others but your goal was to pay the total amount owed.

App.: Yes, sir.

AJ: Rather than to settle for a lesser amount?

App.: That's correct.

AJ: So you elected to allow the garnishment to go through.

App.: Yes, sir.

AJ: Did you have any defenses to the garnishments?

App.: I don't understand your question.

AJ: Okay. Did you have any real basis to oppose the garnishments that you've talked about so far?

App.: I - - I probably - - as I recall, I didn't even think of opposing it, so I wouldn't even have thought of any kind of defense.

AJ: So you didn't - - consult an attorney?

App.: No, Not for - - no sir. (Tr. 72-73.)

SOR ¶ 1.d. This is a credit card account placed for collection in June 2016 for \$10,712. Applicant used this account for the same purposes as the other SOR credit card accounts. (Tr.76.) He agreed that according to AE V, he was delinquent as of August 9, 2020. The current status is it has been paid in full by wage garnishment. AE H shows a payment of \$1,419 on November 22, 2023 and a final payment of \$168 on December 8, 2023. AE G is a January 18, 2024 letter from the court confirming that he satisfied the judgment. He was hesitant to call it "involuntary," because "we never fought any of the garnishments . . . [w]e assumed that was the best way to make sure - - we paid all these amounts off." AE G shows this debt to have been satisfied on January 18, 2024. (Tr. 79-87, 93.) This debt has been resolved.

Federal Income Taxes

In AE AA, Applicant explained the genesis and progression of his federal income tax problems, which began after filing their 2018 taxes in 2019. He and his family had lived in the same home since 2002, had the same or higher salaries, took the same exemptions, dependents (home owned, children, etc.), and similar withholdings. But his federal tax bill went from \$11,422, for 2017 to \$31,681, for 2018. Even though he followed the IRS instructions for the amount of withholdings, the amount was not sufficient to cover the 2018 tax obligations. This was unexpected and contrary to 16 years of historical data.

In AE AA, Applicant stated that historically he had received a federal refund of \$5,000 to \$10,000 per year. Suddenly, he owed an additional \$15,549, above what had been withheld during 2018. He had just completed finishing his basement into an apartment for his oldest son and then newborn child at higher costs than expected. The anticipated refund was planned to help pay down this added debt.

Applicant thought this may have been a one-time issue, but research showed that 2018 federal tax law changed how state and local taxes impacted federal tax and eliminated deductions he had previously taken, such as student loan interest and college tuition for his wife and son. He hoped these changes would change with the next administration, but that did not occur. They would remain in place from 2018 to 2025. He decreased his exemptions to withhold more from his pay and entered into an installment agreement to pay \$300 per month for 2018 taxes. The lack of a 2018 refund, increased withholdings, and the added \$300 per month to IRS impacted his budget. They increased income and decreased expenses to stay on top of their budget through 2019. (AE AA.)

Applicant's federal income taxes remained an issue. When he filed 2019 taxes in 2020, he found that even with decreased exemptions he still owed a large amount, due to his overtime and his wife's increased income. The IRS included the added 2019 amount in his \$300 per month installment plan. He then decreased his exemptions again for 2020 and 2021, and at the end of 2021 taxes had been paid in full (but not 2018 yet). He eliminated exemptions completely which increased 2022 withholdings, and he overpaid by \$1,181 for 2022 (which was immediately applied to 2018 taxes still owed.). (AE AA.)

At the hearing, Applicant was asked the following questions:

D.C.: So your 2018, '19, '20, '21 taxes, when you realized in 2019 that the Tax Code had changed, then 2019 came along and you filed, is there a reason why you didn't take sufficient deductions out?

App.: The answer to that is tied to the Tax Code changes. We actually continued to maintain the exemptions as they were recommended by the IRS. So we did not change our exemptions between - - so if you look at the total taxes owed between 2017 and 2018, we did not change our exemptions between 2017 and 2018, but our withholdings dropped by \$6,000 even though our income went up . . . So we did not change our exemptions between 2018, but our withholdings actually went down by \$6,000 even though our income went up by \$56,000.

D.C.: At any time did you ever think to seek a tax professional?

App.: We didn't.

D.C.: [Y]ou suffered . . . some penalties in 2019, in 2020, is there a reason why you did not take additional deductions to ensure . . . ?

App.: In 2020, I believe we did decrease our exemptions so that our withholdings went up in 2020 and '21. We moved them up slowly thinking

that we would get back to where we supposed to be so that our withholdings would match our total tax liability, and obviously we didn't do enough.

Because it took - - again we were following the IRS guidelines for the number of exemptions . . . and each year it showed that the guideline did not work for us living in [state A].

In 2022 when we finally did get a refund, we had completely eliminated our exemptions. So the only way we finally got to a refund in 2022 was to completely ignore the IRS guidelines and have no exemptions at all, which is the same way we were for 2023.

D.C.: [D]id you think about . . . having more taxes taken out of your income so as to avoid owing the IRS at the end?

App.'s spouse answered: [W]e did change our deductions, our exemptions, which should have increased our withholding . . . I changed my W-4 at work to single, no exemptions . . . We changed [Applicant's] as well.

But we also started earning more income also. And I switched jobs , too. And we were adjusting our exemptions and withholdings. But our income was increasing as well, which was also impacting our tax deductions. And so it was just - - we were chasing the tax filing six months after the fact because, . . . we didn't realize the implications of our 2018 withholdings until April of 2019. So then we adjusted what we could while . . . not trying to get ourselves in even more debt . . . but we adjusted as we could.

But we didn't realize the implications of the adjustments until the next year. It wasn't immediately known - - because we adjusted. And it took a couple years to get to the balance point where we now are paying - - our withholdings are much higher than our tax obligation to where we got . . . our tax refund in 2022 and a refund for 2023 tax years.

So we did adjust, but it wasn't enough. And we didn't realize it wasn't enough until the next tax year. (Tr. 193-197.)

SOR ¶ 1.e. This is a debt for delinquent federal income taxes of \$10,597 for tax year 2018. This was the first tax year that reflected the significant changes to federal income tax laws. Applicant testified about GE 2B at 4-5, his IRS tax transcript for tax year 2018. For tax year 2018, he and his wife filed separately, although in the past they had filed jointly. They did that because it was more financially advantageous and legal. There was no refund. (Tr. 98-102,162.) On April 15, 2019, an installment plan (2019 Plan) was started with the first payment of \$269 on June 17, 2019. (Tr. 102-104.) Thereafter, the payments were \$300 per month. There were minor but immaterial variations in the amount. (Tr.104-105.) The payments continued until and including July 15, 2021. The

IRS ended the 2019 Plan on October 18, 2021. (Tr. 106-108; GE 2B.) Thereafter, the tax history becomes somewhat complicated.

The 2019 Plan ended on October 18, 2021, for two reasons, apparently unknown to Applicant or his spouse. First, Applicant and his spouse had filed 2018 and 2019 tax returns separately, but they filed the 2021 tax return jointly. The IRS did not allow a combined joint/separate amount owed in an installment plan. To remedy that incompatibility, he paid \$8,000 (\$7K + \$1K) on September 22, 2022 and had it applied to his 2021 taxes. Those payments were not made under any plan, but those payments removed the first impediment to a plan. (AE B; Tr. 124-131.)

The second reason IRS ended the 2019 Plan was that when Applicant filed his 2020 tax returns his cumulative amount owed put him over an IRS threshold that would not allow the 2019 Plan to continue. To remedy this threshold problem, he paid \$8,000 (\$7K + \$1K) on September 22, 2022 and had it applied to his 2021 taxes. Those payments were not made under any plan, but those payments removed the other impediment to a plan. (AE B; Tr. 111, 133-134.) He filed returns for tax years 2019 to 2022. (AE AA.) In between July 15, 2021, and September 22, 2022, his credit card garnishment payments continued. (Tr. 124-125, 131.)

Having removed the two impediments to an installment plan, on July 14, 2023, Applicant signed a new IRS Plan (2023 Plan) for \$1,000 per month beginning on September 15, 2023, with the total amount owed being \$47,201. The 2023 Plan covers tax years 2018 through 2021. (AE A.) They are current under the 2023 Plan. (Tr. 147-152; AE A; EX 1C.) EX 1T is an IRS Payment Activity document that shows his \$1,000 payments under the 2023 Plan from September 22, 2022, to March 15, 2024, with the February 15, 2024 payment applied to the 2018 tax year. The March 15, 2024 payment is applied to tax year 2019. Applicant has resolved his 2018 tax delinquency.

SOR ¶ 1.f. This is a debt for delinquent federal income taxes of \$17,122 for the tax year 2019. Applicant is referred to his Answer, page 2, and agrees that he is on a Plan for tax year 2019. He asked his spouse to testify on this subject. She testified that she does the tax returns. When they filed their 2019 tax returns, they asked the IRS for a Plan for 2019 taxes, but the IRS declined because at the time they were already on the April 2019 Plan. The 2019 taxes are now covered by the 2023 Plan. Their \$1,000 monthly payments are current under that Plan, as they are automatically deducted from their bank accounts monthly. Once the 2018 arrearage is paid, the IRS will apply the monthly payments to the 2019 arrearage, and so on through the 2021 arrearage. They are current under the 2023 Plan. (Tr. 147-152; AE A; EX 1T.) (Note: As established under SOR ¶ 1.e., the 2018 tax arrearage has been paid.)

SOR ¶ 1.g. This is a debt for delinquent federal income taxes of \$14,483 for the tax year 2020. GE 2B, at 8, shows that on May 27, 2021, a Plan was pending and on July 17, 2021, a Plan was established. But on November 18, 2021, there was no longer a Plan. Applicant testified that the IRS applied the \$300 per month paid under the 2019

Plan to tax years 2018 and 2019. The 2020 arrearage is covered by and will be paid under the 2023 Plan. They are current under that Plan. (Tr. 147-152; AE A.; EX 1T.)

SOR ¶ 1.h. This is a debt for delinquent federal income taxes of \$13,019 for the tax year 2021. Applicant confirms that GE 2B at 27, an IRS balance printout from its website, shows \$13,221 owed that includes interest and penalties. He testified that it has been paid in full by multiple lump sum checks. He believes it was paid between September 22, 2022, and July 7, 2023. (Tr. 155-159.) EX 1T reports on payments of \$7,000 and \$1,000 made on September 22, 2022, that were credited to the 2021 tax year. (Tr. 134-135; AE B.) The 2021 arrearage is covered by and will be paid under the 2023 Plan. They are current under that Plan. (Tr. 147-152; AE A; EX 1T.)

In summary, Applicant spent 2019, 2020, 2021, 2022, and part of 2023 making efforts to find the right formula of exemptions, deductions, and installment plans with the IRS to bring his taxes into alignment with what had become current tax law. They were always “chasing” their tax filings “six months after the fact.” (Tr. 194-197.) Applicant’s spouse testified that all the scenarios they tried were legal. (Tr. 160-162.)

Applicant’s current 2023 Plan states a total amount due of \$47,201. At payments of \$1,000 per month that began on September 15, 2023, his arrearages should be resolved by about the end of July 2027.

Travel

Applicant testified about several of his foreign trips. The first was a vacation from July 30 to August 12, 2019. He was accompanied by his spouse and one son to countries in Europe. (Tr. 166.) There was also a trip to the Middle East in April 2022. On that trip, he was on business in one country for two weeks. He and his spouse then went on a vacation to a second country for nine days and then to a third country for six days. He estimated that it cost him less than \$5,000. (Tr. 175-177.) They took a single vacation on a business trip to a U.S. state in the fall of 2023. Parts of that trip were covered by points. He estimated that the vacation part personally cost him less than \$4,000. (Tr. 177-178.) He is referred to AE AA, which noted one vacation trip and others that were combined business and vacation trips. He was asked whether taking those trips in any way impaired his ability to pay his debts? He answered:

[I]t did not because we were making payments for the garnishments and for the agreements we had with the IRS and we continued to make those payments through these vacations and business trips. So no, it did not impact our ability to make the payments that we were either obligated to make or had agreed to make. (Tr. 171-172.)

After the hearing, Applicant submitted the following: EX 1K (tabs 1-10) (travel costs European countries); EX 1L (tabs 1-10) (travel costs Middle Eastern countries). Those exhibits documented the foreign trips he testified about.

Personal Finances

Applicant testified about personal finances. He is directed to GE 3 at 8, a personal financial statement (PFS). The exhibit is undated, and he did not know when he completed it. He received several interrogatories and does not know when he sent those back. Reviewing the undated PFS, he said there was very much he would change today. He reiterated that he does not know when he completed the PFS. He consulted with his wife and said she prepared the PFS while he was at a work site. She sent it to him, he signed and returned it. But he was often at that work site, so that does not help much. His AE T (2024 average monthly budget for him and spouse) is much more accurate and current. (Tr. 178-183.)

Applicant is asked again about his PFS. It reported his home equity to be \$280,000. He says it is more now. The PFS reported savings of \$19,781. It is less than that now. By year's end he expects it to be about \$40,000. It is a joint account. The savings account today is \$2,000 to \$3,000. That is savings and checking. That account had \$19,000 in about 2019. He does not recall when the PFS interrogatory was received. Stocks and bonds are mostly in an IRA with about \$400,000. Both cars were bought new in 2015. They were \$60,000 each and are now paid off. (Tr. 183-189.)

Applicant was asked about EX 1T. Combined income is \$16,638 plus \$9,781 (\$26,419). Net salary is \$14,292.81, after deductions for taxes and everything else. There are no deductions for garnishments, because they have all been satisfied. He and his spouse take \$250 each from their IRAs. The net monthly remainder is \$3,323 after expenses. That goes into a savings account to pay taxes, for example the \$1,000 per month to the IRS 2023 Plan that started in September 2023. The \$3,300 extra will start building up an emergency fund. They started this in February 2024. They recently filed their 2023 IRS and state income tax returns. They will get an estimated federal refund of \$4,662. (Tr. 189-193.) They also have filed state and federal income tax returns for tax years 2018 through 2022. (AE AA.)

Personnel Evaluations

Applicant submitted his 2023 Employer Performance Review, EX 1S. The following excerpt is from the "Overall Form Rating" but is reflective of comments made in various subparts of the Form:

[Applicant] continues to be the go-to [engineer] for all things electronic. . . [Applicant] is in his element as a . . . director and efficiently analyzing . . . data . . . I'm especially appreciative of [Applicant's] mentorship of more junior engineers . . . and willingness to provide direct feedback. [Applicant] is highly valuable to the company and independently supports various efforts within [the company] . . . {Applicant} is diligent and eagerly digs into the details providing in-depth analysis and discussion.

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable, in making a decision. The protection of the national security is the paramount consideration. AG ¶¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

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

Analysis

Guideline F – Financial Considerations

The security concern relating to Guideline F 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Guideline F notes disqualifying conditions that could raise security concerns under AG ¶ 19. The followings conditions are applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to . . . pay annual Federal . . . income tax as required.

The SOR consumer debts are established by GE 4 and 5. The SOR tax debts are established by GE 2B. AG ¶¶ 19(a), (c), and (f) apply. The next inquiry is whether any mitigating conditions apply.

Guideline F 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;
- (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.

Consumer Debts

Applicant's four credit card delinquencies had their genesis in a home renovation project that he began in or before 2016. His oldest son, his wife, and their newborn lived with Applicant from 2016 to 2019. To prepare for that period, he converted his basement into an apartment for them. His family had lived in that home since 2002, so the renovation costs were higher than he had anticipated. The project continued through 2018. He used the four SOR credit cards to help purchase the materials to complete the renovations. His son and family moved out in 2019. Applicant's four credit cards went into collections in 2015, 2016, and 2020.

I have considered mitigating conditions AG ¶¶ 20(a) and (d). The project that contributed to the credit card debt began in or before 2016 and was sufficiently complete to allow Applicant's oldest son and family to reside there in 2016. That was quite some time ago. Although Applicant's two younger sons may marry and have children, the renovation is now already available for them to use. So, the renovation costs are unlikely to recur. The birth of his first grandson was wholly beyond Applicant's control. AG 2(c) directs administrative judges to use commonsense judgment in each individual national

security clearance case. Here, Applicant exercised his own paternal judgment and created a home for his oldest son and family. I find that to be a wholly understandable and commonsense act of a father. There remain two questions. They are whether: (1) AG 20(a) fully applies; and (2) AG 20(d) applies.

Applicant paid off his four credit card debts in full through court garnishment, the timing of which were not within his control. They were not prompted by the onset of his security clearance process that began in 2021. By his March 2021 PSI, he was already paying at least one credit card by garnishment. As a general matter, court garnishment “rather than a voluntary effort diminishes its mitigating force.” *See, e.g.,* ISCR Case No. 08-06058 at 4 (App. Bd. Aug. 26, 2010). The Appeal Board, however, does not adjudicate simply by affixing a label “voluntary” or “involuntary” to a garnishment. In ISCR Case No. 04-07360 at 2-3 (App. Bd. Sept. 26, 2006) (Case No. 7360), the Government contended that it was error for the administrative judge to favorably apply a mitigating condition to individual debts that had been satisfied by garnishment. The Board held: “Applicant was not required, as a matter of law, to establish that he had paid-off every debt in its original full amount.” It then held, looking at specific circumstances, that payment of two of four debts through garnishment did not bar mitigation of financial concerns.

In Applicant’s opinion, garnishment was an efficient way to pay off his full debt. Applicant said: “[W]e did not oppose any of these garnishments.” He explained: “I did not want to have any of these unpaid. So rather than accept the offer [of \$5,500 to pay \$15,754] to pay it off, we told them we wanted to pay off the entire amount.” For another credit card, he explained why he declined an offer to pay \$4,242 for a \$12,122 debt: “I wanted to pay off the amounts owed in full. I felt if you owe the money, you should pay it in full.”

Applicant was asked if he had any defenses to the garnishments. He answered: “I don’t understand your question . . . I didn’t even think of opposing it, so I wouldn’t even have thought of any kind of defense.” He did not consult an attorney. Finally, he was asked whether these were involuntary garnishments: “It was garnishment as done by court order. So I guess, yes, sir, I guess you can call that an involuntary garnishment . . . The most direct way to pay off these debts was to make sure it came out of our pay.”

In sum, Applicant did not understand “defenses,” did not consult counsel, did not oppose garnishment, did not want any bills unpaid, and believed he should pay the full amount (even though Case No. 7360 held that was not required). The garnishments were paid out of his and his spouse’s payroll. In fact, they used payroll deductions like an ACH (Automatic Clearinghouse) deduction. The creditors were made whole. To call this garnishment “involuntary” elevates form over substance. The law is not that formulaic.

I find that under these circumstances, Applicant demonstrated reliability, trustworthiness, and good judgment. I also find that by not opposing and acquiescing in court garnishment and insisting on paying the full amounts due, he initiated and adhered to a good-faith effort to repay his creditors. Therefore, AG ¶¶ 20(a) and (d) apply to mitigate SOR ¶¶ 1.a through d.

Federal Income Taxes

Applicant traced his federal income tax problems to the filing of his return in 2019 for tax year 2018. At the time, he and his family had lived in the same home since 2002, had the same or higher income, same exemptions, dependents, and similar withholdings. He followed the IRS instructions to calculate the amount of withholdings. His tax bill for 2018, however, went from \$11,422, for 2017 to \$31,681 for 2018. His withholdings were not enough to cover his 2018 tax obligations. That was unexpected and contrary to 16 years of his and his spouse's federal income tax experience. And he had followed the IRS recommendations and guidelines. For tax year 2018, the Internal Revenue Code had undergone major changes, and they caught him up short.

Applicant promptly addressed his tax problem by establishing the 2019 Plan in April 2019. His efforts to clear up his income tax problem were not prompted by his security clearance process, which would not begin until 2021. He paid under the 2019 Plan through July 15, 2021. In October 2021, the IRS used guidelines or rules and ended the 2019 Plan. In September 2022, he paid \$8,000 to the IRS to address those rules. That made him eligible for a new payment plan.

Now eligible for a new plan, in July 2023, Applicant signed a new IRS Plan (2023 Plan) to pay \$1,000 per month beginning on September 15, 2023, for tax years 2018 through 2021. He is current under that Plan. He has filed state and federal income tax returns for tax years 2018 through 2023. The facts show that Applicant spent 2019, 2020, 2021, 2022, and part of 2023 diligently trying to find the right formula of exemptions, deductions, and installment plans with the IRS to bring his taxes into alignment with what had become current tax law. All the scenarios they tried were valid, but he was always six months to a year after the fact. They were "chasing" the right combination. Now, however, the 2023 Plan encompasses all remaining arrearages, and the end may be in sight. The 2023 Plan began in September 2023, and he is current on that Plan. I find that AG ¶ 20(g) applies and mitigates SOR ¶¶ 1.e through 1.h.

Whole-Person Concept

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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case. There are two issues to be addressed here.

First, at the hearing, Applicant was questioned about several vacation or combination business/vacation trips abroad. After the hearing, he produced documents relating to expenses of those trips. Those documents did not disclose anything unusual or untoward. At the hearing, he was specifically asked whether taking those trips in any

way impaired his ability to pay his debts? He answered: “No, it did not impact our ability to make the payments that we were either obligated to make or had agreed to make.”

Second, Applicant submitted his 2023 Employer Performance Review. The excerpt in the Findings of Fact show that he is held in high esteem by his employer. His employer appreciates his mentorship of junior engineers. And he independently supports various efforts within the company. That review redounds to his credit.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under that guideline and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by financial considerations.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F	FOR APPLICANT
Subparagraphs 1.a -1.h:	For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Clearance is granted.

Philip J. Katauskas
Administrative Judge