



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



In the matter of:)
)
) ISCR Case No. 23-00795
)
Applicant for Security Clearance)

Appearances

For Government: Jeffrey Kent, Esq., Department Counsel
For Applicant: *Pro Se*

02/06/2024

Decision

HARVEY, Mark, Administrative Judge

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

Statement of the Case

On January 27, 2022, Applicant completed an Electronic Questionnaires for Investigations Processing or security clearance applicant (SCA). (Government Exhibit (GE) 1) On May 12, 2023, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive 4, establishing in Appendix A, the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2) Applicant provided a response to the SOR, and he requested a hearing. (HE3)

On August 30, 2023, Department Counsel was ready to proceed. On September 15, 2023, the case was assigned to me. On September 22, 2023, DOHA issued a notice

setting the hearing for November 1, 2023. (HE 1) On October 13, 2023, the Defense Office of Hearings and Appeals (DOHA) issued an Amended SOR. (HE 4)

The Amended SOR detailed reasons why DOHA did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the Amended SOR set forth security concerns arising under Guideline F. (HE 4) On October 26, 2023, Applicant provided a response to the Amended SOR. (HE 5) The hearing was held as scheduled on November 1, 2023, using the Microsoft Teams video teleconference system. (HE 1)

During the hearing, Department Counsel offered ten exhibits into evidence, and Applicant did not offer any documents into evidence. (Tr. 16-22; GE 1-GE 10) Applicant objected to the admissibility of his bankruptcy filing because it was incomplete and later withdrawn. (Tr. 18; GE 3) I overruled the objection because it went to the weight rather than the admissibility of the document. (Tr. 18-19; GE 3) All proffered exhibits were admitted into evidence. (Tr. 19-22; GE 1-GE 10)

On November 1, 2023, I emailed Applicant a blank personal financial statement, and I asked him to complete it and return it to me. (HE 7) I also requested that he provide either his IRS Form 1040s or even better, if available, his IRS tax transcripts for the last five years. (HE 7) On November 13, 2023, DOHA received a copy of the transcript. On November 27, 2023, I emailed Applicant a transcript of the hearing. (HE 7) The record closed on January 5, 2024. (Tr. 62, 63) Applicant did not provide any post-hearing financial exhibits; however, he did provide an email about his plan to pay his debts, which I admitted as Applicant Exhibit (AE) A.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 1.g through 1.m. (HE 5) He denied the SOR allegations in ¶¶ 1.a through 1.f and 1.n. He also provided mitigating information. His admissions are accepted as findings of fact.

Applicant is a 57-year-old aircraft inspector for a large defense contractor, and he worked for the defense contractor for 18 years. (Tr. 7, 9-10) In 1984, he graduated from high school. (Tr. 7) He has Federal Aviation Administration (FAA) and Air Frame and Power Plant (AFPP) licenses. (Tr. 7) He has about 20 college credits. (Tr. 7) He has been married three times, and his most recent marriage was in 2012. (Tr. 8) His two sons were born in 1987 and 1990. (Tr. 8)

Applicant served in the Army from 1984 to 1987; his military occupational specialty (MOS) was helicopter mechanic (67V); he left the Army as a specialist, and he received an honorable discharge. (Tr.9)

Financial Considerations

In 2012, Applicant started a business which marketed information. (Tr. 28) Around 2016, his income after taxes was about \$250,000, and in 2019, the income was about \$120,000. (Tr. 29) In 2016, his spouse retired from her job and her income was from Social Security. (Tr. 31) She is several years older than Applicant. His most important business client died in 2020 of a brain aneurism. (Tr. 29) In May 2018, his stepson stole \$50,000 from his company, and Applicant fired him. (Tr. 36, 53-57) His business stopped receiving income in April 2020 because of the COVID 19 pandemic. (Tr. 27) In March 2021, he returned to his former employment with the defense contractor. (Tr. 32) His current hourly pay is \$38, and he could get a raise to \$55 an hour if his security clearance is approved. (Tr. 48) His annual salary in 2023 was about \$78,000. (Tr. 51) Total family income is about \$130,000. (Tr. 51) He does not have any remainder after paying his expenses. (Tr. 52) The SOR alleges the following financial concerns.

SOR ¶¶ 1.a and 1.b allege Applicant failed to timely file as required his federal and state income tax returns for tax years (TY) 2020, 2021, and 2022. Applicant said he filed his federal and state income tax returns for TYs 2020, 2021, and 2022 in August 2023. (Tr. 23-24, 26) He said he did not file his federal income tax returns timely because he owed \$3,000 in taxes for TY 2020, \$6,000 in taxes for TY 2021, and about \$7,500 to \$8,000 in taxes for TY 2022, and he did not have the funds to pay. (Tr. 24-25) His tax attorney may have filed for an extension to file his TY 2022 federal income tax return. (Tr. 25) He said he generated and filed his own tax returns for TYs 2020, 2021, and 2022. (Tr. 50) They were not filed on his behalf by a tax attorney or accountant. He said he would provide the tax returns after the hearing. (Tr. 26)

SOR ¶¶ 1.c and 1.d allege Applicant owes \$100,000 in delinquent federal income taxes for TY 2020 and \$60,000 in delinquent state taxes for TY 2020. Applicant said the figures of \$100,000 and \$60,000 were listed in his bankruptcy filings. (Tr. 46) He said "I don't think I owe anything to [the state tax authority]. I think they wrote it off in the bankruptcy. They gave me a refund on one of those years, \$350 If I owed money, you [would] think they'd hold it." (Tr. 26)

SOR ¶ 1.e alleges Applicant filed a Chapter 13 bankruptcy in March 2023, and this bankruptcy was dismissed in April 2023 for failure to file information. (GE 3) SOR ¶ 1.f alleges Applicant filed a Chapter 7 bankruptcy in July 2022, and this bankruptcy was dismissed in August 2022 for failure to file information. (GE 4) Applicant filed for bankruptcy because he had business debt totaling about \$200,000. (Tr. 27) He found out from personal research that the bankruptcy court could discharge his taxes that are three years old or older, and his federal income taxes were not included in the bankruptcy. (Tr. 26) He did not provide a citation for his theory about the bankruptcy court discharging tax debts that were three years or older. He told his attorney to withdraw the bankruptcy filing. (Tr. 26, 48) He wanted to withdraw the Chapter 13 bankruptcy because he could not afford the payments. (Tr. 49)

In Applicant's 2022 Chapter 13 bankruptcy filing he indicated his real estate was valued at \$500,000, and his two mortgages totaled \$375,000. (GE 3 at 16, 18, 25) He indicated \$160,000 for taxes and certain other unspecified debts owed to the government.

(*Id.* at 28) He said his wife was not employed, and she had zero income. (*Id.* at 31) He indicated zero income for her on line 8e of Schedule I for social security income. (*Id.* at 32) He said his net monthly remainder was negative \$413. (*Id.* at 35) He received credit counseling. (GE 4 at 10)

SOR ¶¶ 1.g through 1.n allege Applicant has eight debts totaling \$63,216 placed for collection as follows: 1.g for \$14,739; 1.h for \$14,546; 1.i for \$14,342; 1.j for \$12,631; 1.k for \$3,177; 1.l for \$1,813; 1.m for \$1,697; and 1.n for \$271. Most of the debts were business debts. (Tr. 42-43) He did not make any payments on any of the debts because he intended to include them in his bankruptcy. (Tr. 41, 52) He said he has been trying to get the bankruptcy filed for 30 months, and he could not predict when it would be filed. (Tr. 42)

On December 13, 2022, Applicant provided his responses to DOHA interrogatories. (GE 2) He indicated he had not made any payment arrangements or payments to the SOR creditors. (GE 2 at 5-12) His case was pending a meeting of the creditors in the bankruptcy court. (GE 2 at 32) His personal financial statement indicated he had a monthly remainder of \$600, and he was making payments on his mortgage (mortgage amount of \$323,000) and two vehicle loans (monthly payments of \$363 and \$518). (GE 2 at 35) He said he borrowed \$7,000 from a 401(k) account. (*Id.*)

Applicant did not believe the debt in SOR ¶ 1.n for \$271 was valid because he is receiving services from the same telecommunications company which is listed as a creditor in SOR ¶ 1.n. (Tr. 44) In comparison to his overall finances, this debt is *de minimis*. This debt is mitigated.

Applicant has a \$50,000 home equity loan, and he started a payment plan. (Tr. 41, 52) He made his first \$1,000 payment the day of his hearing. (Tr. 41)

Applicant received \$77,000 from the federal government because of the pandemic. (Tr. 33) The federal government forgave \$60,565 of the funds he borrowed. (GE 8) The record does not include a copy of his application for forgiveness of this debt. (GE 8 at 2) The application for forgiveness was supposed to include an attestation that the funds were needed for continued operation of the business. (*Id.*)

Applicant said his house is worth about \$700,000, and his loan is about \$270,000. (Tr. 58) I asked Applicant to provide a copy of his new bankruptcy filing and copies of his tax returns or tax transcripts for the last five years. (Tr. 59-60) I asked him to provide a credit report from five years ago, if possible, because it might show his financial responsibility before the COVID 19 pandemic. (Tr. 60) On December 12, 2023, Applicant sent an email to me in which he said:

A lot of plans have changed since [w]e talked last. My wife and I have separated and filed for divorce. Our house is put up for sale. It is agreed that we Will not file bankruptcy. All debt will be paid off with the proceeds from home. I am going to have requested items done this weekend and will get them to you by Monday. Sorry for delay as you can see, I've been busy.
(AE A)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it

is clearly consistent with the national interest to grant or continue his [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts "; "(c) a history of not meeting financial obligations "; and "(f) failure to file ... annual Federal, state, or local income tax returns ... as required."

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

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden

shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted).

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

The financial considerations mitigating conditions under AG ¶ 20 which may be applicable in this case are as follows:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

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

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

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the

applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

Applicant provided some important mitigating information. His business collapsed due to circumstances beyond his control: the COVID 19 pandemic; the unexpected death of his primary customer; and theft from his business by his stepson. After his hearing he indicated he is getting divorced. However, "[e]ven if [an applicant's] financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the [administrative judge] could still consider whether [the applicant] has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at-4 (App. Bd. Dec. 1, 1999)). A component is whether he maintained contact with creditors and attempted to negotiate partial payments to keep debts current. Applicant did not provide supporting documentary evidence that he initiated or maintained contact with several creditors over the last five years. He did not show frequent contacts with his creditors from 2021 to present. He did not establish that he acted responsibly under the circumstances. SOR ¶ 20(b) is partially established.

Applicant filed his TY 2020 and 2021 federal and state income tax returns in August 2023. A willful failure to timely make (means complete and file with the IRS) a federal income tax return is a misdemeanor-level federal criminal offense. Title 26 U.S.C. § 7203, willful failure to file return or supply information, reads:

Any person ... required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to . . . make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor

A willful failure to make return, keep records, or supply information when required, is a misdemeanor without regard to the existence of any tax liability. *Spies v. United States*, 317 U.S. 492 (1943); *United States v. Walker*, 479 F.2d 407 (9th Cir. 1973); *United States v. McCabe*, 416 F.2d 957 (7th Cir. 1969); *O'Brien v. United States*, 51 F.2d 193 (7th Cir. 1931). For purposes of this decision, I am not weighing Applicant's failure to timely file his federal income tax returns against him as a crime. In regard to the failure to timely file his federal income tax returns for TYs 2020 and 2021, the Appeal Board has commented:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By

the same token, neither is it directed toward *inducing an applicant to file tax returns*. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* 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. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis in original). See ISCR Case No. 15-01031 at 4 (App. Bd. June 15, 2016) (citations omitted); ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015). The Appeal Board clarified that even in instances where an "[a]pplicant has purportedly corrected [his or her] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant's security worthiness in light of [his or her] longstanding prior behavior evidencing irresponsibility" including a failure to timely file federal income tax returns. See ISCR Case No. 15-01031 at 3 & n.3 (App. Bd. June 15, 2016) (characterizing "no harm, no foul" approach to an applicant's course of conduct and employing an "all's well that ends well" analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR).

The Appeal Board in ISCR Case No. 15-01031 (App. Bd. June 15, 2016) explained that in some situations, even if no taxes are owed when tax returns are not timely filed, grant of access to classified information is inappropriate. In ISCR Case No. 15-1031 (App. Bd. June 15, 2016), the applicant filed his 2011 federal income tax return in December 2013, his 2012 federal tax return in September 2014, and his 2013 federal tax return in October 2015. He received federal tax refunds of at least \$1,000 for each year. Nevertheless, the Appeal Board reversed the administrative judge's decision to grant access to classified information.

In ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017) the Appeal Board reversed the grant of a security clearance, discussed how AG ¶ 20(g) applied, and noted:

The timing of the resolution of financial problems is an important factor in evaluating an applicant's case for mitigation because an applicant who begins to resolve financial problems only after being placed on notice that his clearance was in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his own interests. In this case, applicant's filing of his Federal income tax returns for 2009-2014 after submitting his SCA, undergoing his background interview, or receiving the SOR undercuts the weight such remedial action might otherwise merit.

In this instance, Applicant did not file two of his overdue federal and state income tax returns until after he completed his SCA and received the first SOR. Under all the

circumstances, Applicant's failures to timely file his federal and state income tax returns for TYs 2020 and 2021 are not mitigated.

Applicant has seven debts in collections totaling about \$62,000 and owes an unclear amount of federal and state income taxes. A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a credible plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant had an obligation to provide the requested copies of tax returns or IRS tax transcripts to corroborate his filing of accurate tax returns and the amounts of taxes owed. In ISCR Case No. 15-04851 at 4 (App. Bd. Apr. 28, 2017), the Appeal Board said:

[I]t is reasonable for a Judge to expect applicants to present documentation about their efforts to resolve debts. See, e.g., ISCR Case No. 07-10310 at 2 (App. Bd. Jul. 30, 2008). As a general proposition, moreover, the lack of corroboration is a factor that Judges may consider in determining the amount of weight that should be given to an applicant's statements about particular facts.

Applicant received financial counseling with each of his bankruptcies, and he provided a budget as part of the bankruptcy process. On December 12, 2023, he said he planned to sell his residence and use the proceeds to pay his debts. In ISCR Case No. 16-03889 at 4 (App. Bd. Aug. 9, 2018), the Appeal Board reversed the grant of a security clearance, and provided guidance on the weight to be given promises to pay debts in the future as follows:

As it stands, Applicant's case for mitigation of this particular concern is no more than a promise to resolve the debt in the future, which is not sufficient to establish mitigation within the meaning of the Directive. See, e.g., ISCR Case No. 14-04565 at 2 (App. Bd. Sep. 18, 2015) (Promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner).

Applying the Appeal Board's jurisprudence, Applicant did not prove that he was unable to make greater progress sooner in the resolution of his debts in collection and federal and state income tax debts. Under all the circumstances, he failed to establish mitigation of financial considerations security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall common-sense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 57-year-old aircraft inspector for a large defense contractor, and he has worked for the defense contractor for 18 years. He has FAA and AFPP licenses. He has about 20 college credits. He served in the Army from 1984 to 1987; his MOS was helicopter mechanic (67V); he left the Army as a specialist; and he received an honorable discharge.

Applicant provided important financial considerations mitigating information. Several circumstances beyond his control adversely affected his finances, and his business collapsed. There is no evidence he had financial problems before the collapse of his business. He filed his federal and state tax returns for TYs 2020, 2021, and 2022 in August 2023. He received financial counseling and generated a budget.

The evidence against grant of a security clearance is detailed in the financial considerations section, *supra*, and this evidence is more substantial at this time than the evidence of mitigation. Applicant did not establish that he was unable to timely file his federal and state income tax returns for TYs 2020 and 2021. His failure to take timely, prudent, responsible, good-faith actions from April 2021 (when his TY 2020 tax return was due) to get his tax returns timely filed until August 2023 (when the TYs 2020 and 2021 tax returns were filed) raise unmitigated questions about his reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. Applicant has seven debts in collections totaling about \$62,000, and it is unclear how much federal and state income tax debt he has, and what he is doing to resolve them. He has not sold his house, and his future promise to pay off his delinquent creditors with his share of the proceeds is inadequate to mitigate the debts in collections.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record

discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards resolution of his delinquent debts, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate financial considerations security concerns.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a, 1.b, 1.c, 1.d, and 1.g through 1.m:	Against Applicant
Subparagraphs 1.e, 1.f, and 1.n:	For Applicant

Conclusion

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

Mark Harvey
Administrative Judge