



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 23-02889

Appearances

For Government: John Hannick, Esq., Department Counsel

For Applicant: Michael DeAngelis, Esq.

02/18/2025

Decision

HARVEY, Mark, Administrative Judge:

Guideline E (personal conduct) security concerns are mitigated; however, Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On November 7, 2021, Applicant completed an Electronic Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On February 26, 2024, 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)

The SOR detailed reasons why the DCSA did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Specifically, the SOR set forth security concerns arising under Guidelines F and E. (HE 2) On July 12, 2024, Applicant responded to the SOR. On July 26, 2024, Department Counsel was ready to proceed. On July 30, 2024, the case was assigned to me. On August 29, 2024, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing on September 30, 2024. (HE 1) The hearing was held as scheduled, using the Microsoft Teams video teleconference system. (HE 1)

During the hearing, Department Counsel offered nine exhibits into evidence, and Applicant offered 15 exhibits into evidence. (Tr. 15-16; GE 1-GE 9; Applicant Exhibits (AE) A-AE O) All proffered exhibits were admitted into evidence without objection. (Tr. 15-16) On November 6, 2024, DOHA received a copy of the transcript. The record closed on November 29, 2024. (Tr. 104,121) On December 2, 2024, one post-hearing exhibit was received and admitted into evidence without objection. (AE P)

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 did not admit or deny the SOR allegations. He made some admissions of the underlying facts alleged in the SOR; however, he denied the security significance of the underlying facts. His admissions are accepted as findings of fact.

Applicant is a 44-year-old security protection officer who has been employed by a non-DOD federal-government contractor for three years. (Tr. 17-19.) He was born in a foreign country; he is a U.S. citizen; and he has lived in the United States for more than 35 years. (Tr. 17) He has been married 13 years, and his three children are ages 7, 9, and 15. (Tr. 18, 105) His spouse is an accountant, and her annual income is about \$75,000. (Tr. 72, 105) He has not served in the military. (Tr. 18) He has a bachelor's degree in criminal justice. (Tr. 18) Before his current employment, he worked as a county juvenile detention specialist for about 42 months. (Tr. 19) His supervisor at the county detention facility said he was never suspended from work. (Tr. 33; AE K) In 2018, he worked as a juvenile development officer for another government entity. (Tr. 20) His resume provides additional information about his professional background. (AE D)

Financial Considerations

Applicant said he had car-related issues, emergency home repairs, and his spouse lost her employment for a few months, and these events had an adverse effect on his finances. (Tr. 58-59, 61) He also said he and his spouse spent too much money on vehicles. (Tr. 76-77) The February 26, 2024 SOR alleges the following negative financial information:

SOR ¶ 1.a alleges Applicant owes federal income taxes totaling \$16,300 (rounded to nearest \$100). In 2012 and 2013, the Internal Revenue Service (IRS) audited his federal income tax returns and concluded he failed to properly file his returns because

he improperly took deductions. (Tr. 21, 39) In 2013, he obtained a new tax return preparer. (Tr. 41) In 2016, the IRS prepared a substitute federal income tax return for Applicant for tax year (TY) 2014, and an additional \$9,000 in taxes was assessed. (Tr. 41; GE 2 at 21) For TY 2015, the IRS filed his tax return in 2017. (Tr. 42; GE 2 at 24-25)

The following table summarizes information about Applicant's federal income taxes. Adjusted gross income (AGI) is rounded to the nearest \$1,000, and taxes owed (-) or refunded (+) are rounded to the nearest \$100. Copies of cited exhibits for TYs 2013-2023 are at AE M and GE 2.

| Tax Year | Tax Return Filed | Filing Status | Adjusted Gross Income | Tax Owed (-) Tax Refund (+) | Source |
|----------|------------------|-------------------------|-----------------------|-----------------------------|---------------|
| 2009 | Apr. 15, 2010 | Single | \$72,000 | +\$10,100 | GE 2 at 9 |
| 2010 | Apr. 23, 2011 | Single | \$74,000 | +\$7,800 | GE 2 at 10 |
| 2011 | Apr. 16, 2012 | Married filing joint | \$132,000 | +\$9,100 | GE 2 at 13 |
| 2012 | Dec. 5, 2016 | Married filing separate | \$91,000 | -\$8,600 | GE 2 at 16 |
| 2013 | Feb. 23, 2015 | Married filing separate | \$83,000 | -\$4,000 | GE 2 at 18-20 |
| 2014 | Feb. 22, 2017 | Married filing separate | \$79,000 | -\$7,000 | GE 2 at 21-23 |
| 2015 | Feb. 13, 2017 | Married filing separate | \$70,000 | +\$2,300 | GE 2 at 24-25 |
| 2016 | Dec. 18, 2017 | Married filing joint | \$89,000 | +\$2,100 | GE 2 at 26 |
| 2017 | July 11, 2018 | Married filing separate | \$86,000 | +\$6,100 | GE 2 at 27-28 |
| 2018 | Nov. 4, 2019 | Head of household | \$102,000 | +\$3,000 | GE 2 at 29-30 |
| 2019 | Apr. 15, 2020 | Head of household | \$76,000 | +\$1,700 | GE 2 at 31-32 |
| 2020 | Apr. 29, 2022 | Head of household | \$76,000 | +\$4,100 | GE 2 at 33-34 |
| 2021 | Oct. 4, 2023 | Head of household | \$100,000 | +\$3,000 | GE 2 at 35-36 |
| 2022 | Not Provided | | | | |
| 2023 | Apr. 15, 2024 | Head of household | \$111,000 | -\$5,700 | AE M |

For **TY 2010**, in March 2013, the IRS assessed additional tax of \$6,900. (GE 2 at 10) From July 2013 to August 2015, Applicant made monthly \$75 payments. (GE 2 at 11) In August 2016, he was dropped from the IRS installment program. (GE 2 at 11) In April 2017, a credit was transferred from his 2016 tax return, and the debt for TY 2010 was paid. (GE 2 at 11) His current balance owed to the IRS for TY 2010 is \$0. (GE 2 at 10-12)

For **TY 2011**, in March 2013, the IRS assessed additional tax of \$6,400. (GE 2 at 13) Applicant's tax return had deductions of \$55,600, and Applicant thought the deduction may have been for medical expenses. (Tr. 100) He did not review his tax return after the preparer completed it. (Tr. 100) In April 2014, a credit was transferred from Applicant's tax return for TY 2014, and in April 2017, a credit was transferred from his tax return for TY 2016, which significantly reduced his tax debt for TY 2011. (GE 2 at 14) From February to August 2018, he made payments, and he resolved his tax debt for TY 2011. His current balance owed to the IRS for TY 2011 is \$0. (GE 2 at 13-15)

For **TY 2012**, the IRS filed a substitute return for Applicant on December 5, 2016. (GE 2 at 16) A tax of \$12,800 was assessed against payments of \$8,300. (GE 2 at 17) In 2023, the payoff amount was \$8,600. (GE 2 at 16) The only payment shown from 2018 to 2023 was one \$250 payment in May 2019. (GE 2 at 17) According to correspondence from the IRS, as of February 7, 2024, he owed \$8,900 for TY 2012. (GE 4 at 2)

For **TY 2013**, the IRS sent Applicant an inquiry about the absence of his federal income tax return in November 2014, and a notice that a substitute return would be filed in late November 2014. (GE 2 at 18) In February 2015, the IRS filed a substitute return for Applicant. (GE 2 at 18) The IRS assessed taxes of \$11,000 and withholding of \$7,000. (GE 2 at 19) In April 2018, the IRS transferred \$5,600 from his return for TY 2017. (GE 2 at 19) From April 2019 to September 2019, he made monthly payments from \$225 to \$250, and he resolved his tax debt for TY 2013. (GE 2 at 18-20; AE M) His current balance to the IRS for TY 2013 is \$0.

For **TY 2014**, the IRS sent Applicant an inquiry about the absence of his federal income tax return in March 2016, and in April 2016, the IRS sent a notice to Applicant that a substitute return would be filed. (GE 2 at 22) In November 2016, the IRS prepared a substitute return for Applicant, and in February 2017, the IRS filed a duplicate return. (GE 2 at 21-22) The IRS assessed taxes of \$9,500 and withholding of \$2,600. (GE 2 at 22) In April 2019, the IRS transferred \$3,000 from his return for TY 2018 and \$600 from his return for TY 2020. (GE 2 at 23) In February 2023, he owed the IRS \$8,000. (GE 2 at 21-23) According to correspondence from the IRS, as of March 8, 2024, he owed \$8,000 for TY 2014. (GE 4 at 3; AE M)

For **TY 2015**, the IRS filed a substitute return for Applicant on February 13, 2017. (GE 2 at 24) The IRS transferred his \$2,300 refund for TY 2015 to address his tax debt for TY 2011. (GE 2 at 25) He does not owe any taxes for TY 2015.

For **TY 2016**, Applicant filed his federal income tax return on December 18, 2017. (GE 2 at 26) There is no evidence he requested an extension. (GE 2 at 26) The IRS transferred his \$2,100 refund for TY 2016 to address his tax debt for TY 2011. (GE 2 at 26) He does not owe any taxes for TY 2016.

For **TY 2017**, Applicant filed his federal income tax return on July 11, 2018. (GE 2 at 27) There is no evidence he requested an extension. (GE 2 at 26) The IRS transferred his \$500 refund for TY 2017 to address his tax debt for TY 2011 and his

\$5,600 refund to address his tax debt for TY 2013. (GE 2 at 28) He does not owe any taxes for TY 2017. (AE M)

For **TY 2018**, Applicant filed his federal income tax return on November 4, 2019. (GE 2 at 29) There is no evidence he requested an extension. (GE 2 at 29) The IRS transferred his \$3,000 refund for TY 2018 to address his tax debt for TY 2014. (GE 2 at 30) He does not owe any taxes for TY 2018. (AE M)

For **TY 2019**, Applicant timely filed his federal income tax return. (GE 2 at 31) The IRS did not process his federal income tax return until March 2022. (GE 2 at 31) He does not owe any taxes for TY 2019. (AE M)

For **TY 2020**, Applicant filed his federal income tax return on April 29, 2022. (GE 2 at 33) There is no evidence he requested an extension. (GE 2 at 33) The IRS transferred his \$600 refund for TY 2020 to address his tax debt for TY 2014. (GE 2 at 34) His refunds of about \$1,200 were applied to “non-IRS debt” in November 2022. (GE 2 at 34) He said the non-IRS debt may be his state income taxes. (Tr. 71) He does not owe any taxes for TY 2020. (AE M)

For **TY 2021**, Applicant filed his federal income tax return on October 4, 2023. (GE 2 at 35) He requested a filing extension to October 15, 2022. (GE 2 at 35) The IRS applied his \$3,000 to “non-IRS debt” in November 2023. (GE 2 at 36) He said the non-IRS debt may be his state income taxes. (Tr. 71) He does not owe any taxes for TY 2021.

For **TY 2022**, Applicant did not provide an IRS tax transcript. For **TY 2023**, he filed his federal income tax return on April 15, 2024. (AE M) He owed \$11,500 and \$6,200 was withheld. (AE M) As of October 8, 2024, the date of the IRS tax transcript, he owed \$5,700, and he did not make any payments after April 16, 2024. (AE M)

At his hearing, Applicant said that in October 2015, Applicant began a \$200 monthly payment plan with the IRS. (Tr. 44-46; GE 2 at 19-20; GE 3 at 13-14) He had three IRS payment plans from 2015 to about 2021, which he ended because he believed it was not affordable. (Tr. 45-47; GE 2 at 19-20; GE 3 at 13-14) He informed the IRS if he was not going to make a payment. (Tr. 46) The IRS did not garnish his pay. (Tr. 47)

On February 7, 2024, Applicant said in his response to DOHA interrogatories that he owed \$16,300 for federal income taxes. (GE 3 at 2) On March 15, 2024, Applicant made an agreement with a tax service, and on July 11, 2024, he paid a tax service or the IRS \$102. (Tr. 47, 49; SOR response at 1) The goal of the tax service is to reduce the amount that he will have to pay the IRS and to establish a reasonable payment plan. (Tr. 48) He does not have a settlement with the IRS. (Tr. 22) He said he made a few payments. (Tr. 22) He did not make any payments to address his IRS debt from July 12, 2024 to October 28, 2024. (Tr. 50) He intends to make a payment by the end of October 2024. (Tr. 50-51) On December 2, 2024, he said he paid the IRS \$200 in 2024. (Tr. 103; AE P)

SOR ¶ 1.b alleges Applicant owes state income taxes totaling \$29,200 (rounded to nearest \$100). He filed his state tax returns for TYs 2012 through 2014 several years late. (Tr. 51; GE 2 at 37-39) He said his tax returns were completed but not filed. (Tr. 51) His TYs 2015 and 2016 state income tax returns may not have been filed until April 2023. (Tr. 52-53; GE 2 at 62) He blamed the failure to timely file his tax returns on his tax preparer. (Tr. 53) He said the tax preparer is deceased, and he did not remember his name. (Tr. 53) For TY 2015, he withheld \$394 for his state income taxes, and his state tax bill was about \$2,300. (Tr. 54; GE 2 at 59-60) In TYs 2016 and 2017, his state tax withholding was zero, and his taxes for each of those years was about \$3,500. (Tr. 55; AE 2-67-68) Applicant said he had “no idea” why his withholding was so low. (Tr. 55) In some instances, the IRS audit results may have been transferred to the state tax authority resulting in an additional state income tax. (Tr. 23)

Applicant received a \$2,600 refund from the state tax authority for TY 2009. (GE 2 at 41) He requested a \$2,200 refund from the state tax authority for TY 2010; however, after an audit, the refund was reduced to \$400. (GE 2 at 47, 50) He requested a \$2,900 refund from the state tax authority for TY 2011; however, after an audit, the refund was reduced to \$1,100. (GE 2 at 52, 55) He owed the following amounts when he filed his state income tax returns: TY 2015 (\$2,500) (GE 2 at 60); 2016 (\$3,700) (GE 2 at 64); 2017 (\$3,400) (GE 2 at 63); 2018 (\$3,900) (GE 2 at 71); 2019 (\$400) (GE 2 at 73); 2020 (\$500) (GE 2 at 76); and 2021 (\$500) (GE 2 at 79). State tax transcripts for TY 2022 and 2023 are not part of the record.

The state tax authority provided three letters dated September 6, 2023, indicating: a \$4,600 bill for TY 2012 was paid; a \$5,100 bill for TY 2013 was not paid; and an \$800 bill for TY 2014 was not paid. (GE 2 at 37-39) The TY 2012 tax was assessed on September 10, 2015; the TY 2013 tax was assessed on March 31, 2017; and the TY 2014 tax was assessed on October 22, 2020. (GE 2 at 37-39)

On February 7, 2024, Applicant said in his response to DOHA interrogatories that he owed \$29,200 for state income taxes. (GE 3 at 2-5) He owed state income taxes for TYs 2014, 2015, 2016, 2017, 2019, 2020, and 2021. (GE 3 at 5) On March 15, 2024, he made an agreement with a tax service, and on June 29, 2024, he paid the tax service \$653, to assist with his tax debt. (SOR response at 2) On October 10, 2024, the state tax authority wrote that his \$653 payment is due on October 20, 2024; it is payment 3 of 59; and his current payoff amount is \$28,997. (AE O) “Additional penalties and interest will accrue until the balance is paid in full.” (AE O) He called the state tax authority and advised his payment scheduled for October 20, 2024, would be made on October 31, 2024. (Tr. 56-57) On December 2, 2024, Applicant said in an email that he paid the state tax authority \$3,172 in 2024. (AE P)

SOR ¶ 1.c alleges a charged-off bank debt for \$1,377, and SOR ¶ 1.d alleges a charged-off bank debt for \$457. In 2015, Applicant opened the accounts with the creditors. (Tr. 63) He lived in a state with a five-year statute of limitations on credit card debt when he opened the accounts. (GE 1) Shortly after the accounts were opened, they became delinquent, and he did not make any payments. (Tr. 65) He did not indicate he received a letter of forgiveness or cancellation of the debts from the creditor. (Tr. 65) He

believed the debts were still “valid.” (Tr. 65) On July 12, 2024, he said he made efforts; however, he was unable to make “substantive contact” with the creditor or collection agent handling the debts. (SOR response at 2) He said the creditor was unable to locate their collection service. (Tr. 24) He said he would have paid the debt if it could be located. (Tr. 24, 67) These two debts are no longer listed on his credit report. (Tr. 24)

SOR ¶¶ 1.e and 1.f allege two charged-off credit card debts for \$5,173 and \$3,957. The credit card accounts were opened in 2014 or 2015. (Tr. 57-58) In 2021, he informed an Office of Personnel Management (OPM) investigator that the two debts were charged off. (Tr. 59) He did not indicate he received a letter of forgiveness or cancellation of the debts from the creditor. (Tr. 60) On July 12, 2024, Applicant said he made efforts; however, he was unable to make “substantive contact” with the creditor or collection agent for the debts in SOR ¶¶ 1.e and 1.f. (Tr. 26, 62; SOR response at 2-3) These two debts are no longer listed on his credit report. (Tr. 25-26) He said he paid the SOR ¶ 1.f debt. (SOR response)

SOR ¶ 1.g is an account placed for \$1,048. (Tr. 26-27) Applicant said it was his mother’s debt. (Tr. 27) He said it was paid, and it has a zero balance. (Tr. 27)

Applicant’s May 2023 personal financial statement shows he and his spouse have gross monthly income of about \$10,200; monthly expenses of about \$4,000; monthly debt payments of about \$1,400; and a net monthly remainder of about \$4,800. (GE 2 at 83) He provided correspondence from creditors indicating he settled non-SOR debts in 2018, 2021, and 2022. (Tr. 67-69; GE 2 at 84, 85; SOR response)

Personal Conduct

The February 26, 2024 SOR alleges the following negative personal conduct employment-related information:

SOR ¶ 2.a alleges in October 2018, Applicant was terminated from his employment working with juvenile detainees for sleeping while on duty, failure to perform checks, prohibited use of a cellphone, and tardiness. He was unaware of the restriction on cell phones. (Tr. 81-83) His employer counseled him before his termination. On July 12, 2024, he said he “promptly addressed any misunderstanding or mistakes as soon as they were brought to his attention. His efforts to rectify issues in good faith demonstrate his commitment to maintaining accuracy and integrity in his work.” (SOR response at 6) He knew his employer intended to terminate him; however, he was unsure if he received a termination letter. (Tr. 84) If he received a letter, he discarded it. (Tr. 85)

SOR ¶ 2.b alleges in early 2020, Applicant’s employer counseled him for failure to supervise detainees. He said two juveniles were in an altercation, and his employer counseled him for not being close enough to make a timely intervention. (Tr. 29, 86-87) He denied that he was negligent. (Tr. 30)

SOR ¶ 2.c alleges in about November 2020, Applicant’s employer warned him in a written counseling about repeated tardiness. (Tr. 28) He said each time he was late for

work, which was due to traffic or bad weather, he called his employer, and the late arrival was excused. (Tr. 28-29, 83, 88)

SOR ¶ 2.d alleges in about April 2021, Applicant's employer reprimanded him for failure to follow protocol and sleeping while on duty. He said someone failed to answer the radio, and the employer assumed he was asleep. (Tr. 31) He denied that he was asleep. (Tr. 31, 79) However, he said in his SOR response that he dozed off momentarily, which he said at his hearing was a possibility. (Tr. 95-96) He may have received a 30-day suspension from his employer for the incident. (Tr. 96)

SOR ¶ 2.e alleges in about September 2021, Applicant's employer reprimanded him for failure to follow protocol. He said the reprimand was for his failure to get a phone log form so that a call from a detainee could be made. (Tr. 90) He said he was alone with the detainees, and he could not leave to get the form. (Tr. 91) He also suggested that the problem could have been that the detainee was not permitted to make the call, or the person called did not answer the call. (Tr. 91-92) A third possibility was that a person who was called complained about being harassed by a detainee, or perhaps the person called was on a restricted list. (Tr. 93, 99) He was unsure about why he received a reprimand. (Tr. 94)

Applicant's supervisor from 2017 to 2021 for the employment relating to SOR ¶¶ 2.a, 2.b, 2.c, and 2.e, described his workplace incidents as relatively minor. (AE K) The supervisor emphasized that his employer had strict policies about how employees handled detainees. *Id.* Applicant is eligible to return to employment with the employer. *Id.*

Applicant's higher-level supervisor for ten years for the employment related to SOR ¶ 2.d said Applicant was a "very honest, punctual, and hardworking individual that enjoyed his job. Most of his write ups from Supervisors I managed were nothing unusual and some shouldn't have probably resulted in a write up because he always explained why it occurred." (AE L)

Character Evidence

Applicant's current supervisor for the past three years wrote he is diligent and professional. (AE F) Another supervisor said he demonstrates "teamwork, self-motivation, and attention to detail." (AE G) He is "deeply committed" to his employer's mission. (AE G) A coworker at his present employment praised Applicant's honesty and professionalism. (AE H) Five character statements supported approval of his access to classified information. (AE F; AE G; AE H; AE K; AE L)

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 three 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 or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required."

"[A] single debt can be sufficient to raise Guideline F security concerns." ISCR Case No. 19-02667 at 3 (App. Bd. Nov. 3, 2021) (citing ISCR Case No. 14-05366 at 3 (App. Bd. Feb. 5, 2016)). "Additionally, a single debt that remains unpaid over a period of years can properly be characterized as a history of not meeting financial obligations." *Id.*

The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(f). Additional inquiry about the possible applicability of mitigating conditions is required. Discussion of the disqualifying conditions are 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).

AG ¶ 20(a) does not apply to the debts which were delinquent when the SOR was issued. “It is also well established that an applicant’s ongoing, unpaid debts demonstrate a continuing course of conduct and can be viewed as recent for purposes of the Guideline F mitigating conditions.” ISCR 22-02226 at 2 (App. Bd. Oct. 27, 2023) (citing ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017)).

Applicant borrowed the funds from the creditors in SOR ¶¶ 1.c through 1.f around 2014 or 2015, and he stopped paying those debts shortly thereafter. He indicated these four SOR debts were dropped from his credit report. “[T]hat some debts have dropped off his [or her] credit report is not meaningful evidence of debt resolution.” ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer. See Title 15 U.S.C. § 1681c. See Federal Trade Commission website. Debts may be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid, a creditor fails to timely respond to a credit reporting company’s request for information, or when the debt has been charged off.

Under the state law where Applicant was a resident when he borrowed the funds, the four debts in SOR ¶¶ 1.c to 1.f became collection barred five years after he stopped making payments, which was around 2021. Any reliance on the state statute of limitations for security clearance purposes is misplaced. “[D]ebts remain relevant for security clearance purposes even if they are no longer enforceable due to the running of the statute of limitations. That is, a judge may consider the underlying circumstances of these uncollectable debts in evaluating whether an applicant demonstrated good judgment, trustworthiness, and reliability.” ISCR Case No. 20-01618 at 3 (App. Bd. Sept. 29, 2022) (citing ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003)). See also ISCR Case No. 23-02885 at 2 (App. Bd. Dec. 30, 2024) (stating same). “[R]eliance on a state’s statute of limitations does not constitute a good-faith effort to resolve financial difficulties and is of limited mitigative value.” *Id.* (citing ISCR Case No. 15-01208 at 3 (App. Bd. Aug. 26, 2016)). These four debts continue to have some relevance as they show a history of delinquent debt. However, the four debts are mitigated because they became uncollectible about three years ago. The debt in SOR ¶ 1.g was paid. Applicant made payments on some non-SOR debts as indicated in his credit reports and some receipts.

Applicant provided some mitigating information under AG ¶ 20(b). Applicant said he had car-related issues, emergency home repairs, and his spouse lost her employment for a few months, and these events had an adverse effect on his finances. These are circumstances partially or fully beyond his control. 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)). He did not establish mitigation under AG ¶ 20(b) because he failed to prove that he acted responsibly under the

circumstances. The connections of the adverse circumstances to his delinquent debts, and the financial costs of these circumstances are unclear.

Applicant failed to timely file state and federal income tax returns for TYs 2012 to 2016, 2018, 2020, and 2021. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). This non-SOR allegation (failure to timely file tax returns) will not be considered except for the five purposes listed above.

"[U]ntil an applicant has a meaningful financial track record, it cannot be said as a matter of law that he has initiated a good-faith effort to repay overdue creditors or otherwise resolved debts. The phrase 'meaningful track record' necessarily includes evidence of actual debt reduction through payment on debts." ISCR 22-02226 at 2 (App. Bd. Oct. 27, 2023) (citing ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007)).

In ISCR Case No. 17-03229 at 6 (App. Bd. June 7, 2019) the Appeal Board said:

As we have previously stated, the timing of resolution of financial problems is an important factor in evaluating an applicant's case for mitigation because an applicant who takes action to resolve financial problems only after being placed on notice his or her clearance is 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 or her own interests. *Id.* (citing ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017)).

Applicant's most recent payment plans with the state tax authority and the IRS were made after the SOR was issued. In 2024, he paid the state tax authority \$3,172, and the debt is currently about \$26,000. He did not provide a copy of an IRS payment plan. In 2024, he paid the IRS \$200 to address his federal income tax debt, which is about \$21,000 with the addition of his federal income tax debt for TY 2023 of \$5,700. He has not made enough payments to establish a "meaningful track record" for either debt. He has had delinquent federal and state income taxes for more than 10 years. Financial considerations security concerns are not fully mitigated. I am not confident that he will pay these two tax debts and maintain his financial responsibility based on his history of having financial problems and being terminated from previous IRS payment plans.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

AG ¶ 16 includes two conditions that could raise a personal conduct security concern and may be disqualifying as follows:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

The record establishes AG ¶¶ 16(d) and 16(e). Discussion of the disqualifying conditions is in the mitigating section, *infra*.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns in this case:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

From 2018 to 2021, the following negative employment issues occurred: Applicant was sleeping while on duty; he failed to perform checks on detainees; he improperly used a cellphone; he was late for work on multiple occasions; he failed to follow policy regarding detainee telephone calls; and he failed to properly supervise juvenile detainees. His current employment does not involve juveniles or detainees. His current supervisor lauds his duty performance. This type of improper behavior which ended in September 2021 has not recurred; and it is unlikely to occur in the future. I do not believe he would compromise national security to avoid disclosure of his employment-related misconduct. AG ¶ 17(c) applies. Personal conduct security concerns are mitigated.

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 Guidelines F and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 44-year-old security protection officer who has been employed by a non-DOD federal government contractor for three years. His spouse is an accountant, and her annual income is about \$75,000. He has a bachelor's degree in criminal justice. Before his current employment, he worked as a juvenile detention specialist for a county. His supervisor at the county detention facility said he was never suspended from work. In 2018, he worked as a juvenile development officer for another government entity. His resume provides additional information about his professional background.

Applicant had some performance issues from 2018 to 2021 primarily relating to his handling of juvenile detainees. His current position does not involve working with juveniles or detainees. His supervisor for the past three years wrote he is diligent and professional. Another supervisor said he demonstrates "teamwork, self-motivation, and attention to detail." (AE G) He is "deeply committed" to his non-DOD federal employer's mission. (AE G) A coworker at his present employment praised his honesty and professionalism. Five character statements of coworkers or supervisors support approval of his access to classified information.

The evidence against grant of a security clearance is more persuasive. Applicant's financial problems are detailed in the facts and financial considerations section, *supra*, and this evidence is more substantial than the evidence of mitigation. He has owed delinquent taxes for more than 10 years. He did not establish that he was unable to make more timely and significant progress resolving his federal and state income tax debts. He waited until after he received the SOR to start new payment plans to address his tax debts. I am not convinced he will comply with the current payment plans. The financial evidence raises unmitigated questions about his reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

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 debts and maintenance of his financial responsibility, 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 mitigated personal conduct security concerns; however, he failed to mitigate financial considerations security concerns.

Formal Findings

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

| | |
|--------------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a and 1.b: | Against Applicant |
| Subparagraphs 1.c through 1.g: | For Applicant |
| Paragraph 2, Guideline E: | FOR APPLICANT |
| Subparagraphs 2.a through 2.e: | 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