



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



In the matter of:)
)
 [Name Redacted]) ISCR Case No. 23-01131
)
 Applicant for Security Clearance)

Appearances

For Government: Cynthia Ruckno, Esq., Department Counsel
For Applicant: Marshall Griffin, Esq.

03/18/2025

Decision

HOGAN, Erin C., Administrative Judge:

The security concerns raised under Guideline F, Financial Considerations, are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On September 14, 2023, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); 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.

The SOR detailed reasons why DCSA CAS 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 Guideline F, Financial Considerations. On October 12, 2023, Applicant responded to the SOR and requested a hearing before an administrative judge. On November 13, 2023, Department Counsel was ready to proceed. The case was assigned to me on May 3, 2024. The case was scheduled for hearing on September 12, 2024. It was continued and rescheduled for hearing on November 13, 2024. It was continued again for good cause and was finally scheduled and heard on December 5, 2024. The hearing was held via video-teleconference.

During the hearing, Department Counsel offered seven exhibits, which were marked as Government Exhibits (GE) 1-7 and admitted without objection. Applicant testified and offered five exhibits, which were marked and admitted as Applicant Exhibits (AE) A – E. The record was held open two weeks until December 12, 2024, to allow Applicant to submit additional documents. No additional documents were received. On December 16, 2024, DOHA received a transcript (Tr.) of the hearing. The record closed on that date.

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 allegations in SOR ¶¶ 1.e, 1.h, 1.i, and 1.v, and denied the allegations in SOR ¶¶ 1.a-1.d, 1.f, 1.g, 1.i – 1.k, 1.m – 1.u, and 1.w – 1.y. His admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 48-year-old employee of a defense contractor seeking to maintain a security clearance. He has worked for his current employer since 2023. He had a three-month period of unemployment in 2020 during the COVID pandemic. He has held a security clearance without incident since 2021. He has a bachelor's degree. He was married for 21 years. They separated in 2021 and divorced in 2022. He and his wife had three children ages 26, 20, and 12. His youngest daughter has special needs. (Tr. 25- 27; GE 1)

Financial Considerations

On July 15, 2020, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). The subsequent background investigation revealed Applicant had delinquent debts and federal tax issues. The SOR alleges the following: Applicant failed to file his Federal Income tax returns for tax years 2017, 2018, 2019, 2020, 2021, and 2022. (SOR ¶ 1.a: GE 1 at 42-44; GE 3 at 30-40); he also failed to file his state income tax returns for tax years 2017, 2018, 2019, 2020, 2021, and 2022. (SOR ¶ 1.b: GE 1 at 42-44; GE 3 at 23); a \$936 medical account that was placed for collection

(SOR ¶ 1.c: GE 6 at 3; GE 7 at 4); a \$727 debt that was placed for collection (SOR ¶ 1.d: GE 6 at 4); a \$4,061 account that was placed for collection (SOR ¶ 1.e: GE 6 at 4); a \$1,645 account that was placed for collection (SOR ¶ 1.f: GE 6 at 6); and a \$1,082 credit card account that was placed for collection (SOR ¶ 1.g: GE 6 at 6).

Additional delinquent accounts include: a \$2,551 account that was placed for collection (SOR ¶ 1.h: GE 5 at 2; GE 6 at 8; GE 7 at 8); an \$876 debt that was placed for collection (SOR ¶ 1.i: GE 6 at 17); a \$936 charged-off account (SOR ¶ 1.j: GE 5 at 9; GE 6 at 18; GE 7 at 7-8); a \$7,307 account that was past due in the amount of \$1,309 (SOR ¶ 1.k: GE 6 at 20); a \$1,510 charged-off account (SOR ¶ 1.l: GE 4 at 7, GE 5 at 3-4; GE 6 at 21; GE 7 at 1); a delinquent credit-card account that was placed for collection (SOR ¶ 1.m: GE 4 at 3; GE 5 at 2); a \$3,295 delinquent credit-union account that was placed for collection (SOR ¶ 1.n: GE 4 at 3; GE 5 at 2); a \$2,258 delinquent credit-card account that was placed for collection (SOR ¶ 1.o: GE 4 at 6; GE 5 at 3); a \$2,215 delinquent credit account that was placed for collection (SOR ¶ 1.p: GE 4 at 5; GE 5 at 3); and a \$1,854 delinquent debt that was placed for collection (SOR ¶ 1.q: GE 4 at 6; GE 5 at 3).

Additional delinquent accounts include: a \$1,460 delinquent account that was placed for collection (SOR ¶ 1.r: GE 5 at 4); an \$1,460 delinquent debt that was placed for collection (SOR ¶ 1.s: GE 4 at 7; GE 5 at 4); a \$1,285 delinquent cell phone account that was placed for collection (SOR ¶ 1.t: GE 5 at 4); a \$1,226 delinquent account that was placed for collection (SOR ¶ 1.u: GE 4 at 8; GE 5 at 4); an \$867 charged-off gas station credit-card account (SOR ¶ 1.v: GE 4 at 8, GE 5 at 5); a \$478 delinquent gas station credit-card account that was charged off (SOR ¶ 1.w: GE 4 at 9); a \$332 department store credit-card account that was charged off (SOR ¶ 1.x: GE 4 at 9); and a \$1,955 delinquent credit-card account that was placed for collection (SOR ¶ 1.y: GE 3 at 8, 12).

Applicant has held several contractor positions in the national security area for over 20 years. He claims he ran into financial problems in 2016 when his then wife (now ex-wife) was injured at work. She had surgery and was unable to work for a few months. When she returned to work, she worked for 50% less pay in her new job. During this time, she decided to cash out one of her Individual Retirement Accounts (IRA) which had a \$10,000 balance to pay some bills. Applicant discovered that they owed the IRS \$6,000 as a penalty for early withdrawal of the IRA. He decided to apply his 2017 federal income tax refund to the 2016 federal income tax debt. When he prepared his federal taxes for 2017, he discovered he owed \$4,000. He did not file his 2017 federal and state income tax returns because he did not know what to do about the taxes he owed. He eventually did not file his federal and state income tax returns for tax years 2018, 2019, 2020, 2021, and 2022. (Tr. 29 – 39 ; GE 1 at 42; GE 2 at 14)

Applicant was the sole-provider for a family of five living in an expensive area. He began to fall behind on his debts. He also admits he and his wife were over-extended on

credit cards. He did not know how to deal with his debt until someone mentioned an organization called NDR. He entered into an agreement with them on June 28, 2021, to help him resolve his debts. His divorce was final in 2022 and he will no longer be responsible for his wife's expenses. He admits his issues with debt and taxes became more difficult to handle as they increased. He has taken steps to get help in paying off the debt. (GE 2 at 14, 18-37)

On August 25, 2020, he began working with a tax service (HTS). He testified that they helped with filing his overdue income tax returns and paying fees and penalties. He claims the status of his federal taxes is that they are in review with the IRS. HTS is also working with him to file his state income tax returns as well. He has saved \$18,500 to be able to pay any settlement the IRS offers. HTS has advised him that they anticipate he will have to pay the IRS about \$25,000. If this is accurate, he will owe an additional \$7,000 to settle the federal tax debts. (Tr. 35 -39; GE 2 at 14, 38-49; GE 3 at 41)

The current status of the delinquent debts are as follows:

SOR ¶ 1.a: Failure to file Federal income tax returns from tax years 2017 to tax years 2022: Applicant's tax firm, HTS, provided a letter indicating that they represent Applicant in his tax case. They have submitted all relevant information to the IRS and are currently awaiting their response. They note that Applicant has already made payments totaling \$18,500 towards the potential tax liability associated with the case. No proof was provided that Applicant's Federal income tax returns were filed and received by the IRS for tax years 2017, 2018, 2019, 2020, 2021, and 2022. While he is working on his Federal tax issues, the tax issues remain outstanding. (AE B)

SOR ¶ 1.b: Failure to file state income tax returns for at least tax years 2017, 2018, 2019, 2020, 2021 and 2022: Applicant testified that the tax firm, HTS, will be filing his state income tax returns as well. He believes that he does not owe any money towards his state income tax returns. He did not provide proof that his state income tax returns were filed for tax years 2017 – 2022. The state tax issues remain outstanding.

SOR ¶ 1.c: \$936 delinquent account placed for collection. He used this credit card while going through his divorce. He intends to enroll this debt to his debt repayment agreement with NDR to arrange for it to be settled and paid. (Answer to SOR)

SOR ¶ 1.d: \$727 delinquent account placed for collection. This debt was included in his agreement with NDR. He was making payments and the debt was settled on August 28, 2023. (Tr. 43; GE 7 at 2)

SOR ¶ 1.e: \$4,041 delinquent debt placed for collection. The debt is enrolled in his agreement with NDR and is awaiting settlement. (Tr. 43; Answer to SOR)

SOR ¶ 1.f: \$1,645 delinquent account placed for collection. This debt was enrolled in his agreement with NDR. He was making payments and the debt was settled on June 30, 2024. (Tr. 44; Answer to SOR; AE A at 3)

SOR ¶ 1.g: \$1,082 delinquent account placed for collection. This debt is enrolled in his agreement with NDR. He is making payments and the debt is 50% paid off. (Tr. 44; Answer to SOR; AE A at 1)

SOR ¶ 1.h: \$2,551 delinquent account placed for collection: This debt is enrolled in his agreement with NDR. Payments have begun. Five percent of the debt has been paid so far. (Tr. 44; Answer to the SOR; AE A at 1)

SOR ¶ 1.i: \$876 charged-off account: This debt was enrolled in his agreement with NDR. Payments were made and it was settled in full on November 13, 2023. (Tr. 44; Answer to SOR; AE A at 3; GE 3 at 45)

SOR ¶ 1.j: \$936 charged-off account: This debt was enrolled in his agreement with NDR. It is awaiting settlement. Applicant claims it is a duplicate of the debt alleged in SOR ¶ 1.c. The amounts are similar. I find for Applicant with respect to SOR ¶ 1.j because it is a duplicate of SOR ¶ 1.c. (Tr. 45; Answer to SOR; AE A at 3)

SOR ¶ 1.k: Past-due account in the amount \$1,309, with a balance of \$7,307. The account is now current. (Tr. 45; Answer to SOR; AE E at 11, 13)

SOR ¶ 1.l: \$876 charged-off account: This debt is enrolled in his agreement with NDR and is awaiting settlement. (Tr. 45; Answer to SOR; AE A at 2)

SOR ¶ 1.m: \$3,975 delinquent account placed for collection: This debt is enrolled in his agreement with NDR. Payments are being made and it is 66% paid off. (Tr. 46; Answer to SOR; AE A at 1)

SOR ¶ 1.n: a \$3,295 delinquent credit union account that was charged off. This debt was enrolled in his agreement with NDR. The debt was paid in full on September 3, 2023. (Tr. 46; Answer to SOR; AE A at 2)

SOR ¶ 1.o: a \$2,258 delinquent union account that was placed for collection. This debt is enrolled in his agreement with NDR. He is awaiting a settlement plan. (Tr. 46; Answer to SOR; AE A at 2)

SOR ¶ 1.p: a \$2,215 delinquent credit card account that was placed for collection. This debt is enrolled in his agreement with NDR. He is making payments. The debt is 59% paid off. (Tr. 46; Answer to SOR; AE A at 1)

SOR ¶ 1.q: a \$1,854 delinquent credit card account that was placed for collection. This debt is enrolled in his agreement with NDR. He is making payments. The debt is 61% paid off. (Tr. 49; Answer to SOR; AE A at 1)

SOR ¶ 1.r: a \$1,460 delinquent credit card account that was placed for collection. This debt is enrolled in his agreement with NDR. He is making payments. The debt is 48% paid off. (Tr. 49; Answer to SOR; AE A at 2)

SOR ¶ 1.s: a \$1,432 delinquent credit card account that was placed for collection. This debt is enrolled in his agreement with NDR. He is making payments. The debt is 95% paid off. (Tr. 49; Answer to SOR; AE A at 4)

SOR ¶ 1.t: a \$1,285 delinquent cell phone that was placed for collection. Applicant settled this account on February 22, 2023. This debt is resolved. (Tr. 50; Answer to SOR; AE E at 19)

SOR ¶ 1.u: a \$1,226 delinquent credit card account that was placed for collection. This debt is enrolled in his agreement with NDR. He is making payments. The debt is 95% paid off. (Tr. 50; Answer to SOR; AE A at 4)

SOR ¶ 1.v: a \$867 delinquent gas station credit-card account that was charged-off. This debt is enrolled in his agreement with NDR. He is awaiting a settlement plan. (Tr. 50; Answer to SOR; AE A at 2)

SOR ¶ 1.w: a \$478 delinquent gas station credit-card account that was charged off. Applicant paid this creditor directly on February 22, 2023. The debt is resolved. (Tr. 50-51; Answer to SOR; AE E at 17-18)

SOR ¶ 1.x: a \$332 delinquent department store credit-card account that was charged-off. Applicant claims this debt was settled and paid in full on February 22, 2023. The debt is resolved. (Tr. 51; Answer to SOR; AE E at 1-2)

SOR ¶ 1.y: a \$1,955 delinquent credit-card account that was placed for collection. Applicant claims this is a duplicate of the debt alleged in SOR ¶ 1.o. This debt is enrolled in his agreement with NDR. He is awaiting a settlement plan. (Tr. 51; Answer to SOR; AE A at 2)

In response to interrogatories, dated October 10, 2022, Applicant provided a copy of his budget. His net monthly income was \$8,679. His monthly expenses totaled \$2,943. His monthly payments totaled \$4354. His net monthly remainder was \$1,382. (GE 2 at 17) During the hearing, he testified that his net monthly income is about \$8,400. He rents a townhome for \$2,000 a month. His younger daughter lives with him part of the time. His son who attends a local community college lives with him as well. He pays his college

tuition. He has about \$400 in savings. The record is unclear as to whether Applicant's expenses have changed since October 2022. (Tr. 62-64)

Applicant is looking into ways to manage his money better. He describes his current financial situation as not great, but getting better. He is looking into taking financial management course. He has watched videos of reputable finance people. He is focused on his financial recovery and then hopes to save for the future. His primary focus is taking care of his children. In his spare time, he plays guitar and listens to records. (Tr. 55-57, 61)

Whole Person Factors

Mr. W.C. testified on Applicant's behalf during the hearing. He retired in 2022 after 18 years of Federal civilian service. He met Applicant in 2014 when he began working with him. Applicant directly reported to him. He worked with Applicant for six years. He describes him as an outstanding employee. He was a hard worker and problem solver. He was always calm, cool, and collected. He says Applicant is extremely trustworthy and recommends him for a security clearance. (Tr. 16-23)

Mr. T.F. is the Director of Operations of the defense contractor where Applicant currently works. He has held the position since April 2023. He met Applicant when he started working for the contractor in April 2023. He is now his direct subordinate. He has maintained regular oversight over Applicant's work and professional conduct through direct and indirect supervision. Applicant has consistently demonstrated exemplary character throughout his employment. He has maintained a secret clearance while employed with the contractor and has shown unwavering reliability handling classified information. He has maintained a positive relationship with the government customer. He has never given him any cause for concern regarding his reliability, trustworthiness, or judgment. He fully supports his continued access to classified information. (AE C at 1-2)

Mr. J.B. has been a personal friend of Applicant's for over 30 years. He describes him as good-natured, grounded, even-tempered and trustworthy. From 1997 to 2002, they were in a band together. He is very reliable and he could always count on him to help fix a problem. He considers him a part of his family. He was a devoted husband and adoring father. He is respectful, responsible and dependable. He would trust him with his family's safety and his family finances. He is an honorable man whom he is privileged to call a friend. (AE C at 3-4)

Ms. M.F., Applicant's Licensed Marriage and Family Therapist (LMFT), provided a letter on Applicant's behalf. He has been seeing her for psychotherapy since July 2021. They first met on a weekly basis and currently meet on a bimonthly basis. He is dealing with issues related to the effects of his marital separation and divorce after 21 years of marriage. The issues were not only marital but also involved personal finances. During

the last years of his marriage, Applicant was the sole provider for his family without contribution from his wife's income. The divorce was final in November 2022. As a result, Applicant is now in a better position to live within his means. Ms. M.F. states that while Applicant does not consider this an excuse for his financial situation, this was his reality. She hopes that his situation be considered when determining his government security clearance eligibility. (AE D)

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 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

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern for financial considerations:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following applies in this case:

(a) inability to satisfy debts:

(b) 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.

AG ¶¶ 19(a) and 19(b) apply because Applicant incurred 23 delinquent debts, an approximate total balance of \$38, 255. AG ¶ 19(f) applies because Applicant failed to timely file his state and federal income tax returns for tax years 2017, 2018, 2019, 2020, 2021, and 2022.

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

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

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, 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;

(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.

AG ¶ 20(a) does not apply because many of Applicant's financial issues are ongoing and remained unresolved at the close of the record. AG ¶ 20(b) partially applies because it appears Applicant's divorce was a condition beyond his control that adversely affected his finances. This mitigating condition is given less weight, because I cannot conclude he acted responsibly under the circumstances. Applicant incurred a lot of delinquent debt before his divorce which he ignored for years. His decision to not file his federal and state income tax returns from tax years 2017 to 2022 was not responsible.

AG ¶ 20(d) applies with respect to the debts alleged in SOR ¶¶ 1.c, 1.f, 1.i, 1.n, 1.t and 1.w because he paid them in full using NDR. The debts alleged in SOR ¶¶ 1.g, 1.h,

1.m, 1.p, 1.q, 1.r, 1.s, and 1.u also apply because he is actively making payments towards these debts. He has been working with NDR to resolve all of his delinquent debts for several years now. He is making a good-faith effort to resolve his debts.

AG ¶ 20(g) does not apply because there is insufficient documentation in the record which verifies that Applicant has filed all of federal and state tax returns for tax years 2017 to 2022. The record is also unclear how much Applicant will owe in past due federal income taxes and whether he will owe any for state income taxes. While Applicant is given credit for hiring HTS to help him sort out his tax situation, nothing was resolved at the close of the record. With regard to timely filing tax returns, the DOHA 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).

While Applicant has made progress in resolving his financial issues, significant issues remain regarding his failure to file his federal and state income tax returns for over six years. It is too soon to conclude that Applicant met his burden of proof to mitigate the concerns raised under financial considerations.

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 commonsense 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 those guidelines but some warrant additional comment.

I considered Applicant's over 20-year history as a contract employee for the U.S. government. I considered he has held a security clearance since 2001. I considered the favorable comments from his current supervisor, current and former co-workers and his close friend. I considered the letter from his therapist and the fact that he is still dealing with the adverse effects of his divorce. I also considered that he is a dedicated father. I considered that he has taken significant steps toward paying his delinquent debt through NDR. Despite these considerations, a concern remains because of Applicant's failure to provide proof that he filed all of his federal and state income tax returns for tax years 2017, 2018, 2019, 2020, 2021, and 2022. While he began to take steps to resolve his federal and state tax problems in 2020 by hiring HTS, he still failed to file his federal and state income tax returns in 2021 and 2022. His lack of diligence in timely filing his federal and state income tax returns for over six years remains an issue. While Applicant put aside \$18,500 to help pay any taxes owed, it is unclear that he will be able to resolve his tax debts. A promise to pay in the future, is not sufficient to mitigate security concerns raised by Applicant's failure to timely file his federal and state income tax returns for over six years and his history of neglecting his delinquent accounts in the past.

The security concerns raised under Financial Considerations are not mitigated.

Formal Findings

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

Paragraph 1, Guideline F: **AGAINST APPLICANT**

Subparagraphs 1.a – 1.c, 1.e 1.l, 1.o and 1.v: Against Applicant

Subparagraphs 1.d, 1.f -1.k, 1.m, 1.n,1.p-1.u, 1.w – 1.y: For Applicant

Conclusion

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Erin C. Hogan
Administrative Judge