



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



In the matter of:)
)
) ISCR Case No. 14-01756
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

04/17/2015

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant and his spouse filed a Chapter 7 bankruptcy petition in March 2003 to resolve approximately \$40,000 in medical debt, her student loan debt, and some past-due credit card balances. In November 2011, they lost their previous residence through a foreclosure sale. They have continued to struggle financially, in part, because of her unemployment and their decision to keep their children in private schools. They owe approximately \$14,000 in delinquent property taxes for 2011 and 2012 on their current home. Applicant did not show a sufficient record of repayment that could have alleviated the financial security concerns. Clearance is denied.

Statement of the Case

On July 28, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, and explaining why it was unable to find it clearly consistent with the national interest to continue his security clearance eligibility. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of

Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant responded to the SOR allegations on August 26, 2014.¹ He requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On October 2, 2014, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On October 21, 2014, I issued a Notice of Hearing scheduling the hearing for November 21, 2014.

I convened the hearing as scheduled. The Government submitted three exhibits (GEs 1-3), which were entered into evidence. Applicant expressed concerns about the source of some of the information revealed during his background investigation, but he did not object to GE 3, which contained an investigator's summary of his subject interview. Applicant submitted seven exhibits (AEs A-G), which were admitted without any objections. On the Government's motion, the SOR was amended at the hearing to conform to the evidence presented. Applicant and his spouse testified, as reflected in a transcript (Tr.) received on December 4, 2014.

At Applicant's request, I held the record open for two weeks after the hearing for him to submit additional documentary evidence. No documents were received.

Rulings on Procedure

At the close of the hearing testimony, the Government moved under paragraph E3.1.17 of the Directive to amend the SOR and add a new allegation, as follows:

1.d. You are indebted to the town of [town name and state omitted] for property taxes in the approximate amount of \$14,000.

Applicant filed no objection to the proposed amendment. I granted the Government's motion, but also held the record open for two weeks after the hearing for Applicant to submit evidence of efforts to pay the debt. No documents were received.

Summary of SOR Allegations

The amended SOR alleges under Guideline F that Applicant owed \$2,000 in past-due state income taxes as of July 28, 2014 (SOR 1.a); that he failed to file his state income tax returns for tax years 2005 through 2008 when legally required to do so (SOR 1.b); that he filed a Chapter 7 bankruptcy in March 2003, which was dismissed in June 2003; and that he owes around \$14,000 in local property taxes (SOR 1.d). When he answered the SOR allegations in August 2014, Applicant denied the state tax debt and the alleged noncompliance with his state tax filing obligations. He asserted that he owed a tax debt of

¹ Applicant's Answer bears a typed date of August 22, 2014. However, it was not completed until signed before a notary on August 26, 2014.

only \$79, which he paid in May 2014. Applicant admitted that he had filed for bankruptcy as alleged. At the time, he had two small children, and his spouse was a full-time college student. At his November 2014 security clearance hearing, Applicant's only comment about the property tax debt in SOR 1.d was that he had no knowledge about the debt as of his subject interview.

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact:

Applicant is a 59-year-old electrical installation mechanic, who has worked for his employer, a defense contractor, since November 1975. (GEs 1-3; Tr. 26-27.) He seeks to retain a secret-level security clearance, which was granted in January 2004. (GEs 1, 3.)

Applicant and his spouse married in June 1996. They have two sons, who are now 14 and 16. (GEs 1, 2; Tr. 27-28.) His spouse has three adult children, ages 29, 31, and 33, from a previous marriage. (GEs 2, 3.) In March 1998, Applicant bought his family's first home, taking on a mortgage debt of \$92,500. (GEs 1, 3.)

In March 2003, Applicant and his spouse filed a Chapter 7 bankruptcy. The SOR alleges that it was dismissed in June 2003. Applicant's and his spouse's accounts about the bankruptcy are not completely consistent and in some aspects, are controverted by the bankruptcy schedules.² About his reason for filing, Applicant testified that he received a letter directing him to send his mortgage payments to a mortgage company in another state. Lacking confirmation from his initial lender about the sale or transfer of his mortgage, Applicant continued to make his payments to his initial mortgagor. Before long, he received a foreclosure letter from the new mortgage holder. He hired an attorney who handled the issue for him. Applicant told an Office of Personnel Management (OPM) investigator in January 2014 that his delinquent home loan was "rectified in terms of back payments." (GE 3.) When asked for further clarification about the bankruptcy, Applicant testified that there were a couple of credit card accounts that were past due, and that at least one credit card account was retained and paid, so it was a partial dismissal. (Tr. 61.) He denies any recall of the details of the bankruptcy, including the amount of unsecured debt. (Tr. 67.)

Applicant's spouse testified that they "probably owed less than \$10,000 when they filed for bankruptcy, so in retrospect, it was a poor decision to file for bankruptcy." She later admitted on cross-examination that she had forgotten about a \$40,000 medical debt included in the bankruptcy, which was for her older daughter's care, and "probably the reason" for the bankruptcy filing. (Tr. 78-79.) She also acknowledged that her student loan debt was included in the bankruptcy. (Tr. 79.) According to Applicant's spouse, their debts were discharged, including the mortgage on their home. They did not reaffirm the debt but retained ownership and continued to pay the mortgage. (Tr. 71, 76.) As for the loan

² In questioning Applicant's spouse, the Government referred to some bankruptcy records, which were not submitted in evidence. Apparently, the bankruptcy included the mortgage, two credit card debts, \$36,000 in student loans, and a \$40,000 medical bill. (Tr. 78.)

involved in their misdirected payments, Applicant's spouse testified that it was a small, "semi-predatory" loan of \$8,000 that was sold several times. They hired a lawyer and settled the debt. (Tr. 76-77.)

Applicant and his family stayed in their home following the bankruptcy filing. According to his e-QIP, they moved to their current residence in October 2005. (GE 1.) Applicant purchased the house with savings accumulated from living with his parents until he was 38 years old. (GE 1, 3: Tr. 59-61.) Applicant's spouse testified discrepantly that they stayed in the home until approximately 2008 when they needed a bigger home so that Applicant's father could move in with them. (Tr. 71.) Around that time, their home was flooded, and they did not qualify for assistance from the Federal Emergency Management Agency (FEMA). (Tr. 60, 72.) The property was uninhabitable due to mold issues, and they did not have \$30,000-\$40,000 to restore it. Applicant stopped paying the mortgage, and the property was sold at a foreclosure auction in November 2011. (GE 3.)

Applicant's father resided with them from 2008 until his death in 2012. (Tr. 79-80.) Applicant's spouse handled their household bills, and until it was flooded, the bills for their previous residence. She knew that some bills for that home, such as the electric bill, went unpaid after they abandoned the property. She took over handling bills for her father-in-law's house, and with some difficulty, found placement in assisted living for Applicant's disabled brother. Applicant's spouse earned wages of only \$11,982.23 in 2008. She left her job of 10 years as a hospital nurse to care for her father-in-law. Applicant and his spouse's adjusted gross income for 2008 was \$62,576, down from \$96,378 in 2007. (AEs F, G.) Applicant's spouse had some credit card debts of her own that went unpaid. (Tr. 72-73, 77.) They had some savings, and she cashed in her retirement account of approximately \$12,000 to pay bills. (Tr. 99.)

Applicant and his spouse have no financial or legal obligation for his disabled brother. Applicant's brother was on the deed to his father's property. When Applicant's brother could not be convinced to sell the house, a guardian ad litem was appointed, and Applicant's brother was eventually placed in a state facility. (Tr. 94-95.)

On October 31, 2013, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP) to renew his security clearance eligibility. In response to a financial record inquiry concerning failure to file or pay federal state or other taxes when required by law or ordinance, Applicant indicated that he failed to file federal and state income tax returns for tax year 2008, and that he owed \$2,000. Applicant disclosed no other financial difficulties or delinquencies. (GE 1.)

On January 2, 2014, Applicant was interviewed by an authorized investigator for the OPM. Applicant reported holding a secret clearance since January 2004 with no security-related issues. About his financial issues, Applicant admitted to the investigator that he had not filed his state income tax returns for tax years 2005 through 2008 totaling about \$2,000. His spouse handled the taxes and failed to file returns for those years. Applicant expressed no knowledge about why the returns were not filed. He added that the state notified him and his spouse in 2012 about their delinquent tax liability, and that he was in

negotiations with the state's tax authority to make payments and waive any penalties and interest. He indicated that he could afford to pay the tax arrearage and attributed the failure to file timely returns to his spouse's oversight. Applicant denied any other financial issues apart from missing one car payment in 2004 or 2005. When confronted about some delinquent accounts (i.e., charged-off credit card debts of \$1,580, \$529, and \$582 and a \$257 collection debt), Applicant explained they were his spouse's debts. A \$1,364 past-due utility debt on his record was for services to his previous residence when he and his family had already moved, but he still owned the residence. He acknowledged that the delinquencies were caused by poor financial management. He expressed intent to pay the debts. (GE 3.)

On June 24, 2014, Applicant affirmed that the investigator accurately reported the information Applicant provided during his January 2014 interview. (GE 3.) An SOR was issued to Applicant, in part, because of his reported failure to file his state income tax returns for tax years 2005 through 2008 on time and because of the reported \$2,000 tax debt. In his Answer to the SOR and at his security clearance hearing, Applicant discrepantly asserted that his spouse had paid a \$79 state tax debt for 2007, but that he and his spouse otherwise received tax refunds. He questioned the source of the information about not filing timely returns for 2005 through 2008 and about owing \$2,000 in state income taxes, even though he had listed the \$2,000 tax debt on his e-QIP, admitted the tax issues during his subject interview in January 2014, and told the investigator that he had been notified of the tax debts by the state in 2012. He speculated that his spouse might have listed the information on his e-QIP. Yet, he discrepantly testified that when he confronted his spouse about the tax issues after his interview, she denied any knowledge of the tax issues. (Tr. 30-38.)

Applicant's spouse testified to her knowledge that all their state income tax returns had been filed by 2013 (Tr. 112), and that when the DOD raised the issue about not filing state tax returns for 2005 through 2008, she went to the state tax authority and was told that nothing was owed. When she went to renew her nursing license in May 2014, she had to pay a \$79.09 state income tax debt for one year when they underpaid their state taxes. (AE B.) They paid \$733 with their return but owed \$79, likely due to "a mistake somewhere." (Tr. 73-74, 81, 84, 106-107.) She learned about the \$79 debt around February 2014. (Tr. 81.) She denied that they ever owed \$2,000 in delinquent state income taxes. (Tr. 91.) Copies of their state income tax returns for tax years 2005, 2007, and 2008 were submitted in evidence only to confirm that they were entitled to refunds for particular years, and not for their filing dates. Their 2005 state income tax return, dated February 18, 2006, shows they overpaid their state tax liability by \$678. (AE E.) Their 2007 state income tax return is undated and shows an underpayment of \$733.³ (AE F.) Their 2008 state income tax return is dated February 18, 2009, and it shows that they overpaid their state income taxes by \$455. (AE G.) Applicant did not sign the copies until November 20, 2014. Applicant's spouse signed and dated them as she prepared them. (Tr. 128-131.) She maintains that they were filed, albeit "possibly late." (Tr. 86-88.) Available evidence does not corroborate if or when they were filed. However, as of May 2014 (AE A) and August

³ Their 2007 return shows taxes withheld of \$2,473 on a tax liability of \$3,206, which would leave them with a tax debt of \$733 and not the \$744 reported. (AE F.)

2014 (AE C), Applicant and his spouse were considered in good standing with the state's division of taxation.

Applicant's spouse speculated that the tax debt listed on Applicant's e-QIP could have been for property taxes because they owed \$14,000 in past-due property taxes.⁴ However, she also testified that the property tax debt is for 2011 and 2012 and not for any years from 2005 to 2008. (Tr. 108-112.) In June 2014, Applicant and his spouse took out a loan with the state to repay their past-due property taxes. They have paid at most \$500 on the loan. The loan was available to them because she was caring for her father-in-law and unemployed. They have six years to pay off the loan before a lien will be placed on their property. (Tr. 118-119.) Applicant had testified before his spouse, and he had indicated that he was "pretty sure" they were current on their property taxes, although his spouse would know about them. (Tr. 53.) She testified that she had "told him all along that there was a possibility [they] would take out this loan" to pay their property taxes. (Tr. 112.) By 2012, she had discussed with Applicant that she had not paid their property taxes. (Tr. 115.) As of November 2014, she was saving money to pay their 2013 property taxes. (Tr. 118.)

Applicant's annual performance evaluations for his work from October 2008 through October 2014 show that he has met all his employer's expectations. His hourly wage increased incrementally from \$24.51 in October 2009. His hourly wage for the past year was \$28.11. (AEs D.) Applicant works as much overtime as he can, averaging eight hours of overtime per week. His spouse is a registered nurse, but she is not presently employed. (Tr. 54.) Applicant owns their home outright. (Tr. 53.) He and his spouse have only one

⁴ Applicant's spouse testified about their property tax debts, as follows:

A: In other words, we didn't just not pay them. It was a decision.

Q: Okay, And at any point in 2011, 2012, or 2013, did you make any payments on those [town name omitted] property taxes?

A: No.

Q: Any partial payments?

A: No.

Q: Okay.

A: Because typically you pay them in a lump payment anyway.

Q: Sure. What about 2013's taxes—what's the state of those?

A: We're in the process of paying them. Like we pay—it's not an issue until the end of the year when they're due, but I am saving money up to make sure that we pay them.

Q: Okay. But I'm saying 2013—so this is 2014 now. So have you paid for last year too?

A: Well, 2013 is paid up until through—yes, I have money saved to pay the taxes. I have not paid them as of yet.

Q: Okay. So in June of 2014, you came to an agreement for a loan for approximately \$14,000 to cover those 2011 and 2012 property taxes. Is that correct?

A: Yes.

Q: Okay. And when was your first payment on that loan?

A: It's not that kind of a loan. It's a—you have six years to—it's not a traditional loan. It is you have six years to pay back this debt that you owe and if you don't, then it's a problem. Then we put a lien on your property.

(Tr. 117-118.)

working car, which she drives. (Tr. 54, 56.) She has a car payment of \$320 per month. (Tr. 96.)

Applicant's spouse handles their finances as well as their taxes. (Tr. 36, 57.) Applicant is unaware of some of their expenses, such as the amount of their cable bill and his spouse's car payment, which he estimated at \$138. (Tr. 56-57.) She does not inform him about their finances unless there is a problem. (Tr. 81.) Neither Applicant nor his spouse has had any formal financial counseling. (Tr. 63.)

Applicant and his spouse incur \$700 per month in private school costs for their sons.⁵ The elder of his two sons has a partial scholarship of \$7,000 to cover the \$12,000 costs of his high school. (Tr. 64, 80.) Applicant's spouse confirmed that it has been a strain at times to meet their expenses on only Applicant's income. She intends to return to work in the near future. (Tr. 77-78.) Additional monthly expenses include \$200 for cable television/Internet, \$150 for cell phones, \$200 for car insurance, and \$320 for utilities. (Tr. 95-97.) Their net discretionary income is around \$400 a month with paying only one of their sons' tuition costs. They typically pay their outstanding fees to the other school with their federal and state income tax refunds. (Tr. 100.) They received a state income tax refund of \$1,360 for tax year 2013. (Tr. 102.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant

⁵ Applicant's spouse testified that until she returns to work, some of the payments are "on a holding pattern." They have other bills that have taken priority, and the schools have been willing to work with them. (Tr. 96.)

is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that 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. Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern about financial considerations is articulated in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant and his spouse filed a Chapter 7 bankruptcy in March 2003. The SOR alleges that the bankruptcy was dismissed in June 2003. There is no evidence that Applicant was asked about the bankruptcy during his January 2, 2014 personal subject interview, possibly because it was outside the scope of his latest security clearance application. At his security clearance hearing, Applicant attributed the bankruptcy filing to some problems with his mortgage payments, which his spouse later clarified involved an \$8,000 loan rather than the mortgage. Applicant also testified that some credit card debt was discharged in the bankruptcy. When asked to clarify the disposition of the bankruptcy, Applicant responded that it was partially discharged in that one or two bills were retained. Applicant’s spouse testified that they made a poor decision to file for bankruptcy, given they owed “probably less than \$10,000.” She explained that their mortgage was discharged in bankruptcy, but that they continued to make their mortgage payments until their home was flooded. When confronted by Department Counsel with information that additional debt had been included in the bankruptcy, Applicant’s spouse admitted that the home loan, two credit card debts, her \$36,000 in private student loans, and a \$40,000 medical bill were

included in the bankruptcy. Whether the bankruptcy was discharged or dismissed, it is evidence of financial difficulties that implicate both AG ¶ 19(a) and AG ¶ 19(c):

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant denies that he failed to comply with state income tax filing obligations for tax years 2005 through 2008 (SOR 1.b) or that he owed \$2,000 in delinquent state income taxes as of July 2014 (SOR 1.a). In his Answer, he asserted that he owed only \$79 for tax year 2007, which he paid. The Government, who has the burden under ¶ E3.1.14 of the Directive to establish controverted facts, presented Applicant's October 31, 2013 e-QIP, in which he responded affirmatively to whether, in the last seven years, he had failed to file or pay Federal, state, or other taxes when required by law or ordinance. He indicated that he failed to file IRS and state income tax returns for tax year 2008 and that he had not satisfied \$2,000 in tax debt. The Government also presented a report of subject interview in which Applicant not only reportedly admitted that he had not filed state income tax returns for tax years 2005 through 2008 totaling approximately \$2,000, but also that he had listed only tax year 2008 on his e-QIP due to oversight. Moreover, he indicated that he and his spouse had been notified by the state tax authority in early 2012 about the back taxes, and that he was currently in negotiations with the state to make payments and to waive penalties and interest. A summary of his interview containing this information was provided to Applicant for review and possible correction. On June 24, 2014, Applicant affirmed the accuracy of that account without making any changes. A clearance interview summary that Applicant certified as accurate is an admission by a party opponent. See ISCR Case No. 11-13999 (App. Bd. Feb. 3, 2014). Although admissible evidence, it must be evaluated in light of the other evidence of record, including evidence of real estate tax delinquency of \$14,000 for tax years 2011 and 2012.

Both Applicant and his spouse denied that they owed \$2,000 in past-due state income taxes as of the issuance of the SOR in July 2014. Applicant's spouse, who handles the family's finances, testified that perhaps Applicant was thinking about their property taxes when he admitted owing a tax liability. Yet, she also testified that the property taxes were owed for 2011 and 2012, not for 2005 through 2008. Applicant denies knowing about the property tax debt as of his January 2014 interview with the OPM investigator. He claimed that he only found out about the debt very recently. (Tr. 111.) If his testimony is accurate, the property tax debt would not explain his reported admissions of a state tax liability on his e-QIP and during his subject interview. A document from the state tax authority shows that Applicant and his spouse were in good standing as of May 2014, so presumably any state income tax delinquency has been resolved, either by payment or by application of tax refund monies. The evidence does not firmly establish that Applicant owed \$2,000 in past-due state income taxes as of the issuance of the SOR in July 2014. AG ¶ 20(e) applies, but only to the issue of any outstanding state tax liability:

- (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.

AG ¶ 19(a) and ¶ 19(c) apply to the property tax debt, which is not disputed.

The Government presented no documentation from the state indicating that Applicant has not filed or filed late his income tax returns for tax years 2005 through 2008. Applicant submitted in evidence his state income tax returns for tax years 2005, 2007, and 2008, showing that he and his spouse were entitled to refunds for tax years 2005 and 2008. However, it is unclear when those returns were filed. Applicant's spouse repeatedly asserted that the returns, which Applicant signed the day before his hearing, were accurate only to show tax refunds and not for filing dates. She handled their tax returns and admitted that the returns could have been filed late. The state could conceivably have assessed a tax liability to Applicant and his spouse in 2012 based on late filings of returns or nonpayment of their tax debt for 2007 that Applicant's spouse then paid around May 2014. Applicant's spouse admitted that "maybe" she was contacted in 2012 by the state about their state income taxes. (Tr. 90.) Applicant submits that they received tax refunds for all but tax year 2007, which suggests that returns have been filed. However, a tax refund does not necessarily prove that returns were filed on time. Applicant told the OPM investigator that his spouse told him that she thought she had filed them, but also that he was in negotiations with the state about his delinquent taxes, which his spouse claims never happened. (Tr. 90.) He told the OPM investigator that the failure to file timely returns was because of his and his spouse's oversight. AG ¶ 19(g), "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same," is implicated when income tax returns are filed late, even if they have since been filed. Applicant has not offered a satisfactory explanation for why he volunteered on his e-QIP that he failed to file his tax return for tax year 2008 if his return had been filed. If the state's records were inaccurate, then Applicant should have been able to obtain some confirmation from the state that his tax returns were filed on time. I left the record open after the hearing, but nothing was submitted.

Mitigating condition AG ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's current, reliability, or good judgment," partially applies in that the bankruptcy is not recent. There is no evidence of new consumer credit card debt. However, it is difficult to mitigate all the financial considerations concerns under AG ¶ 20(a), even assuming that Applicant and his spouse have satisfied their state income tax filing and payment issues. Applicant and his spouse did not timely pay their 2011 and 2012 local real estate taxes. By mid-November 2014, their local real estate taxes for 2013 had not been paid.

Applicant's bankruptcy was partially caused by factors outside of his control in that his spouse incurred approximately \$40,000 in medical debt for her daughter, which was not covered by insurance. AG ¶ 20(b) is only partially implicated:

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances.

Applicant's spouse, who handles the family's finances, stopped working when Applicant's father came to live with them around 2008 or 2009. She took on the responsibility of finding an appropriate assisted-living facility for her disabled brother-in-law and for caring for her father-in-law. However burdensome the family obligations, Applicant and his spouse were still required to file their state income tax returns on time and to pay their property taxes when due. Applicant's father died in 2012, and his spouse was still unemployed as of November 2014. Lack of spousal income does not satisfy AG ¶ 20(b) when it is by choice. Furthermore, while it is understandable that Applicant and his spouse want the best for their sons, the expense of private school tuition is difficult to justify when their property taxes went unpaid.

Two mitigating conditions address debt resolution under AG ¶ 20:

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control, and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The DOHA Appeal Board has explained what constitutes a good-faith effort to repay creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)). The Government did not allege any consumer credit debt surviving the bankruptcy, despite Applicant's default on the mortgage for his previous residence. About delinquent state income tax returns, Applicant's spouse testified that they were filed by 2013. (Tr. 112.) Applicant testified that he started being more attentive to their tax obligations in 2014, although he acknowledges that his spouse handled their 2013 tax returns. (Tr. 52.) As for the

delinquent property taxes, he testified that he learned about them only recently. Around June 2014, he and his spouse were given a loan to pay their \$14,000 in delinquent property taxes. It is unclear whether they borrowed the full \$14,000 or something less to resolve their debt. Whether or not they brought their property taxes up-to-date with the loan proceeds, Applicant and his spouse had paid no more than \$500 on the loan as of November 2014. The loan does not require monthly payments. Yet, it is difficult to mitigate the financial considerations concerns completely without some corroboration that all state income tax returns have been filed and that they are making some effort to repay the loan for the delinquent property taxes.

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 his conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

The financial analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a longtime defense contractor employee, who has met his employer's expectations. Perhaps because he works 48 hours a week, and his spouse has been unemployed since 2008 or 2009, Applicant has taken a hands-off approach to his family's finances with some negative consequences (i.e., likely late filing of state income tax returns and failure to pay their property taxes). He thought that his spouse's car payments are \$138, which is significantly less than its actual \$320. He was seemingly unaware that they pay \$150 per month for cell phone service. He has shown some financially responsible behavior in that he is not incurring credit card debt. He and his spouse have only one car between them, having chosen instead to provide private school education for their children, which is especially important to his spouse. At the same time, his obligations to timely file returns and to pay local taxes on his home were not afforded sufficient priority. Concerns about his financial judgment also persist because he was either unclear on the status of his state income tax returns as of January 2014 or he was not being fully forthright about his tax issues at his security clearance hearing.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases, stating:

[A]n applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Under the circumstances, his case in mitigation would have been aided substantially had he shown some payments towards his delinquent property taxes or the loan to resolve the real estate taxes. He was given an opportunity to supplement the evidentiary records after his hearing, and he submitted no documents to clarify or update the record about his state income tax filings and his real estate tax payments. The issue of the delinquent property taxes did not surface until his hearing, leaving me with some question about whether the DOD has an accurate understanding of Applicant's finances.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Perhaps at some future date, Applicant may be able to show that he has a good handle on his finances and that his financial situation is sufficiently stable to no longer raise security concerns. Based on the record before me in light of the adjudicative guidelines that I am required to consider, I am unable to conclude that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge