



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



In the matter of:)
)
) ISCR Case No. 14-01957
)
Applicant for Security Clearance)

Appearances

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

08/13/2015

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant did not timely file his federal and state income tax returns, or pay the taxes due, for tax years 2005 through 2012. While he has since filed most of his delinquent returns for these tax years, he owes approximately \$58,749 in federal and \$31,000 in state income taxes, penalties, and interest. He also owes approximately \$8,750 in collection debt after paying off a judgment debt. The financial considerations concerns are not fully mitigated. Clearance is denied.

Statement of the Case

On October 10, 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 grant or 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 submitted an undated response to the SOR allegations. He did not indicate whether he wanted a hearing or a decision based on the written record. On December 14, 2014, Applicant requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). 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 April 21, 2015, I scheduled the hearing for May 13, 2015.

I convened the hearing as scheduled. The Government submitted four exhibits (GEs 1-4). A chart, which was prepared by Applicant as a supplement to his oral closing argument, was marked as a hearing exhibit (HE), but not admitted as a full exhibit. Applicant submitted 13 exhibits (AEs A-M), which were admitted without any objections. Applicant testified, as reflected in a transcript (Tr.) received on May 20, 2015.

At Applicant's request, I held the record open for three weeks for him to submit additional documentary evidence. On June 2, 2015, Applicant submitted eight exhibits. Department Counsel filed no objections by the June 30, 2015 deadline for comment. Applicant's submissions were marked and received as AEs N-U.

Summary of Pleadings

The SOR alleges under Guideline F that Applicant owed the Internal Revenue Service (IRS) \$51,366 (SOR 1.a); delinquent state taxes of \$18,107 (SOR 1.k); and charged-off or collection debt totaling \$10,117 (SOR 1.b-1.i) as of October 2014. Additionally, Applicant is alleged to have failed to timely file federal (SOR 1.j) and state (SOR 1.k) income tax returns and pay taxes owed for tax years 2005 through 2012.

When Applicant responded to the SOR, he indicated that he was working with an accountant on his pending federal and state tax issues (SOR 1.a, 1.j, and 1.k). He had established a payment plan with the creditor holding SOR 1.b to pay off the debt over six months in \$250 increments. Applicant did not dispute the debt balances in SOR 1.c-1.i, which he planned to resolve within the next three to six months.

Findings of Fact

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

Applicant is 51 years old, and he has been employed as a structural fabrication mechanic I ("shipfitter") with a defense contractor since February 2014. He seeks his first DOD security clearance. (GE 1; AEs O, P; Tr. 20-21.)

Applicant did not finish high school. (Tr. 20.) He earned his Graduate Equivalency Diploma in 1984. (GE 3.) Applicant was married from December 1986 to April 2013. He has three sons, ages 29, 26, and 22. (GE 1; AE U; Tr. 20-21.) During his marriage, Applicant and his family lived with his mother. He paid his mother no rent, but he gave her some money from time to time. (Tr. 103-105.)

Applicant worked for his home state for 18 years. (AE S; Tr. 115.) From May 2002 to June 2013, Applicant had his own excavating business. (GE 1; Tr. 21.) He allowed his business license with the state to lapse around that time and did not renew it. (GE 3.) Applicant left it up to his spouse to file their federal and state income tax returns during their marriage. (Tr. 24.)

Around 2010, Applicant took his state pension of \$50,000 and used it as a down payment to purchase 85 acres of land for \$125,000 from his mother's friend. Applicant paid \$1,000 a month for approximately 18 months to this friend, who was the first lienholder on the property. (Tr. 105-110.) Planning to obtain a mortgage construction loan, Applicant began looking into his finances, and he realized that his tax returns had not been filed starting with tax year 2005, some debts had not been paid, and some money was missing. (Tr. 107, 110.) Applicant testified that his ex-wife's financial irresponsibility was a factor in the dissolution of his marriage. (Tr. 105-106.)

At the time their divorce was finalized, Applicant was ordered to pay his ex-wife \$100 per week for the care of their disabled son, and to continue the monthly payments on the loan for her car until it was satisfied. (AE U.) Applicant testified that he assumed repayment responsibility for all the debt because his ex-wife was unemployed and cared for their disabled son. (Tr. 51-52.) Applicant walked away from the 85-acre property because he could not continue to make the payments. (Tr. 107.)

Income earned by Applicant plowing for the state, \$2,438 in late December 2010 and \$7,425.38 in January 2011, was taken and applied toward his state income tax debt for 2006. (AEs I, J.) Applicant made no payments himself toward any federal or state tax debts. In December 2010, the IRS filed a tax lien for \$31,933.63 for delinquent income taxes for 2007. In March 2011, the IRS filed a tax lien of \$19,432.79 for unpaid income taxes for 2008. (GE 3.) The tax liens went unaddressed, so in June 2012, the IRS filed a \$51,366.42 lien against Applicant. (GEs 2, 3.) He testified at his hearing that he tried to make payments toward the lien, but could not because he had yet to file his delinquent returns. (Tr. 36.)

After Applicant and his ex-spouse separated, Applicant had Mr. X prepare his delinquent returns and his year-end bookkeeping entries for tax years 2005 through 2010.¹ Mr. X charged him \$1,200 for year-end bookkeeping and \$1,500 for preparing personal

¹ Applicant testified that Mr. X prepared his income tax returns for tax years 2005 through 2010 in 2010. However, his income tax returns for 2010 were not due until April 2011. It is likely that Applicant approached his accountant in 2011, after the IRS filed tax liens against him. It took Applicant about 18 months to pay off Mr. X's fees for preparing the returns for 2005 through 2010. By then, Applicant had incurred new tax preparation fees for 2011. (Tr. 75-76.)

and corporate returns for each year. Mr. X would not release the tax returns to Applicant or file them because Applicant was behind in paying his tax preparation fees. Between March 2013 and September 2013, Applicant paid \$1,500 to Mr. X, to reduce his fee balance to \$1,200, but on September 1, 2013, Mr. X charged him \$1,000 for the year-end bookkeeping for 2012 and \$1,500 for his 2012 tax returns. Applicant owed Mr. X about \$3,700 in fees that he could not afford to pay, so Mr. X would not file the returns. (AE K; Tr. 59-60, 75-76.)

On January 6, 2014, Applicant completed and certified to the accuracy of an Electronic Questionnaire for Investigations Processing (e-QIP) in conjunction with his application to work for his current employer. He responded affirmatively to whether he had failed to file or pay Federal, state, or other taxes when required by law or ordinance. He indicated that he failed to pay federal taxes of \$1,767 for 2005, and to file federal returns or pay taxes of \$7,644 for 2006, \$12,503 for 2007, \$7,998 for 2008, \$22,339 for 2009, \$11,585 for 2010, \$1,500 for 2011, and \$1,000 for 2012. He also disclosed that he had not paid state income taxes of \$1,246 for 2005, \$1,865 for 2006, \$2,603 for 2007, \$2,061 for 2008, \$7,039 for 2009, \$2,543 for 2010, \$500 for 2011, and \$250 for 2012. About his efforts to address the tax delinquency issues, Applicant added that he was working with an attorney to resolve them and had paid \$9,864 to the state since 2010.² Applicant responded “No” to the inquiries concerning any delinquencies involving routine accounts. (GE 1.)

As of January 14, 2014, Applicant’s credit report showed several consumer credit accounts as having been charged off or placed in collection, as reflected in the following table.

Debt in SOR	Delinquency history	Payment status
1.b. \$1,367 collection debt	Credit card account opened Dec. 2004; last activity Nov. 2011; \$1,367 for collection Jul. 2013 (GEs 2, 4); \$1,117.16 judgment. (AE M.)	Per stipulation, paid \$25 per month Nov. 2014-Mar. 2015 and \$197.16 in Apr. 2015 to satisfy debt. (AE M; Tr. 44.)
1.c. \$305 collection debt	\$305 telecommunications debt for collection in Jun. 2011; no payments as of Feb. 2012. (GE 2.)	No payments as of May 2015. (Tr. 44.)
1.d. \$5,920 charged-off debt	Credit card account opened Apr. 2001, authorized user; last activity Aug. 2011; \$5,920 charged-off balance as of Jan. 2014. (GEs 2, 4.)	No payments as of May 2015; assignee added \$2,000 in interest to debt. (AE N; Tr. 45, 87.)
1.e. \$90 collection debt	\$90 in collection Aug. 2013. (GE 2.)	No payments as of May 2015. (Tr. 45.)

² The state tax payments were by interception of income he earned plowing for the state. (AEs I, J.) He testified that he paid another \$7,000 by check (Tr. 71), although he provided no proof. (Tr. 42.)

1.f. \$1,417 collection debt	Signed wireless phone contract for son Dec. 2011; \$1,417 in collection Jul. 2013. (GE 2; Tr. 89-90.)	No payments as of May 2015. (Tr. 45.)
1.g. \$251 collection debt	\$251 insurance debt in collection Jan. 2013. (GE 2.)	No payments as of May 2015. (Tr. 45.)
1.h. \$250 medical debt	\$250 medical debt in collection Aug. 2013. (GE 2.)	No payments as of May 2015. (Tr. 45.)
1.i. \$517 collection debt	Wireless phone debt from Jun. 2010; ³ \$517 for collection Aug. 2012; unpaid as of Feb. 2015. (GEs 2, 4.)	No payments as of May 2015. (Tr. 45.)

On January 30, 2014, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant explained that he had not filed his federal or state income tax returns or paid taxes owed for tax years 2005 through 2012 because of financial hardship and his ex-wife's financial irresponsibility. She handled the household finances and spent their income on credit purchases. Applicant indicated that he was working with an accountant (Mr. X) to determine his creditors and to make repayment arrangements with the IRS and state tax authority. Applicant admitted that he owed some consumer credit debt incurred by his ex-wife, but he was unaware of the details. When confronted with the adverse information on his credit record, Applicant acknowledged the tax lien and the debts in SOR 1.b-1.d, 1.f-1.g, and 1.i. He did not recognize the debts in SOR 1.e or 1.h. Applicant explained that he had a downturn in his construction business, which caused financial problems. He expressed a willingness to have his wages garnished to pay his debts if he lands a job with the defense contractor. (GE 3.)

In February 2014, Applicant began working for his current employer at an hourly wage of \$18.50. (AE O; Tr. 21.) With his shift differential, he earned almost \$20 an hour. (Tr. 53.) In August 2014, Applicant took on a \$15,299 loan for a motorcycle. Monthly payments are \$308 for five years. (GE 4.) His fiancée co-signed on the loan, and he bought it to replace a 1999 truck with 380,000 miles on the engine. (Tr. 50.) He and his fiancée began cohabiting in August 2014. (Tr. 103.)

Applicant was granted an extension, to October 15, 2014, to file his federal income tax return for tax year 2013. (AE A.) Around October 2014, Applicant began working with another accountant (Ms. Y) to prepare his tax returns for 2011 to 2013 at a fee of \$1,000. (Tr. 79-80.) Around October 15, 2014, he filed his federal and state income tax returns for 2013. He reported adjusted gross income of only \$915. His federal income tax refund of \$111 was intercepted by the IRS and applied to his tax debt for 2007. (AEs A, B.) Applicant

³ Applicant admitted both wireless phone debts in SOR 1.f and 1.i when he was interviewed by the OPM investigator. He now believes that they are the same debt and that he paid \$400 toward an \$800 bill. Three months later, his son incurred another \$600 in charges, of which Applicant paid a negotiated \$300. (Tr. 89-91.) There is no evidence that establishes conclusively that they are the same debt. His credit report of January 2014 shows two separate accounts in collection placed by the wireless phone company with different account numbers. (GE 2.)

asked Ms. Y to also prepare his returns for 2011 and 2012, but he did not have all the necessary paperwork for those years. (Tr. 61-63, 74, 82.) She contacted Mr. X for the information, but he apparently would not provide it. (Tr. 80.)

In April 2015, Applicant provided accountant Mr. X with his income tax paperwork for tax year 2014. Mr. X discounted Applicant's outstanding fee balance to \$2,000, which Applicant paid. (Tr. 61-62.) In April 2015, Applicant filed his income tax returns for tax years 2007 through 2014 (refiled for 2013). (AEs A-H; Tr. 25-38.) He indicated that he was working on getting his federal 2007 and 2008 returns refiled. He claims he filed jointly when he should have filed as married, filing separately. (AE N.) Applicant offered to file his federal income tax returns for 2005 and 2006, but he was told by the IRS that it was not necessary. (Tr. 25.) Applicant believes he owes between \$1,500 and \$2,000 in federal income taxes for 2005 and 2006. (Tr. 26.)

As of May 2015, Applicant and his ex-wife owe delinquent federal taxes of \$7,998 for 2008 and \$22,339 for 2009 on respective adjusted gross incomes of \$79,209 and \$154,623. They owe state taxes for those years of \$2,061 and \$7,039. (AEs A, G, H; Tr. 33-34.) As married filing separately, Applicant reported adjusted gross income of \$80,013 for 2010, \$69,510 for 2011, and \$12,828 for 2012. As of May 2015, he owes the IRS \$17,406 for 2010, \$11,552 for 2011, and \$510 for 2012, but nothing for 2013 or 2014. (AEs A, E, F; Tr. 28, 31, 33.) With penalties and interest, Applicant owes the state tax authority \$5,431 for 2007, \$6,987 for 2008, \$6,043 for 2009, and \$8,043 for 2010. (AE I.) His returns show that he underpaid his state taxes for 2011 by \$2,444 and for 2012 by \$52, not including penalties and interest. (AEs D, E.) He expects a refund of \$3 for 2013. (AE B.) He filed his 2014 income tax return as single and reported adjusted gross income of \$35,487. His federal refund of \$1,056 was intercepted and credited to his tax delinquency for 2007. (AE A.) He overpaid his state income taxes by \$475 (AE C), which would likely be applied to his state tax delinquency, which totals approximately \$31,000 with penalties and interest. (Tr. 42.) On May 11, 2015, Applicant offered to pay the state tax authority \$4,000 toward his delinquent taxes. The state refused to accept the funds, but agreed to waive all of the penalties and half of the interest for a lump-sum payment of \$18,000. (Tr. 42-43.) Applicant has paid nothing toward his delinquent federal tax debt, which totals more than \$58,000. (Tr. 36.)

As of May 2015, Applicant's hourly wage was \$22.20. (Tr. 53.) He was living with his fiancée. He does not pay rent, but he contributes some money for food on take-home pay of \$600 a week. (Tr. 46.) Applicant pays \$1,000 a month in rent for the garage where he stores the equipment from his excavating business. He is in the process of selling all the assets so that he can clear up his debt. (Tr. 47.) He gives his fiancée \$175 a month for her car insurance. (Tr. 48-49.) He also pays \$175 a month for his ex-wife's car insurance in lieu of the \$100 a month to care for their disabled son. (Tr. 99, 101-102.) His other monthly expenses are his motorcycle payment, \$125 per month for his motorcycle insurance, and \$50 for cellphone service. (Tr. 48-49, 99.) He spends \$100 to \$150 a week on food and gasoline. He estimates that he will be able to put \$300 per month toward repaying his tax debts. (Tr. 53.) He has never considered filing for bankruptcy. (Tr. 111.)

Applicant enjoys his job with the defense contractor. (Tr. 112.) He takes advantage of overtime when it is available to him, usually a couple times a month. (Tr. 100.) Applicant would like his security clearance so that he can apply for a supervisory position. (Tr. 112.)

Applicant submitted several character references, including from a state employee with whom he worked for 10 years. Applicant had a reputation for honesty and a good work ethic when he worked for the state. (AE S.) Local business owners, who are familiar with Applicant's performance in his excavating business, attest to Applicant being dependable, well-organized, and hardworking. (AEs Q, R.) Applicant has met all his current employer's expectations, although his supervisor indicates that he still has a lot to learn. (AEs O, P.)

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 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.

The Guideline F concerns are established. Seven accounts in Applicant’s name totaling \$4,197 were placed for collection. Additionally, a \$5,920 credit card debt was charged off for nonpayment. As an authorized user on an account opened by his ex-wife during their marriage, Applicant would not be legally liable for the debt. However, he agreed to take responsibility for repayment of the debt in their divorce. Of greater concern from a financial judgment standpoint, Applicant failed to file timely federal and state income tax returns for tax years 2005 through 2012. As of May 2015, he owes approximately \$58,749 to the IRS, including a \$51,366 tax lien, and another \$31,000 to the state for delinquent income taxes, penalties, and interest. Three disqualifying conditions under AG ¶ 19 apply:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

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,” is not satisfied. The consumer credit debts became delinquent between 2011 and 2013, not so long ago. Moreover, Applicant had not filed his delinquent tax returns for tax years 2005 through 2012 as of the issuance of the SOR in October 2014. In 2011, the state intercepted \$9,864.37 in income Applicant earned plowing for the state and applied it toward his delinquent tax debt, but his state and federal taxes otherwise went unpaid.

Applicant attributes his failure to comply with his income tax filing and tax payment obligations partially to his spouse, who was supposed to file their returns during their marriage. He also asserts that his spouse incurred credit card debt in his name. AG ¶ 20(b) allows for mitigation when debts are incurred beyond a person's control:

(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.

With respect to the consumer credit card debt in SOR 1.d, Applicant could well not have known about the debt, given his ex-wife was the primary cardholder. He certainly knew about the wireless phone debt incurred by his son (SOR 1.f) because he arranged with the creditor to pay a reduced balance to keep his son's phone activated. (Tr. 89-90.) Applicant was also aware that his federal and state tax returns had not been filed or his taxes paid. His income well exceeded the filing threshold in 2008 (\$79,207), 2009 (\$154,623), 2010 (\$80,013), and 2011 (\$69,510).⁴ Applicant had his own excavating business, and it was irresponsible of him to neglect his obligations to file returns and pay taxes. Applicant apparently made some effort to address the issue of his delinquent tax returns in 2011, when he had accountant Mr. X prepare his late returns. Mr. X refused to file them because Applicant had not paid his bookkeeping and tax preparation fees. Applicant did not pay off the fees for preparing the returns from 2005 through 2010 until sometime in 2012, when he owed another \$2,700 for 2011. To the extent that AG ¶ 20(b) is implicated by his accountant holding Applicant's returns, Applicant has not credibly explained his failure to pay his accountant's fees. Applicant's income from 2008 through 2011 should have been sufficient to cover the tax preparation fees. Applicant did not exercise sound financial judgment by spending \$50,000 of his state pension as a down payment on 85 acres of land in 2010 when he owed federal and state income taxes. As consequence of his nonpayment of taxes, his tax burden is now almost \$90,000. AG ¶ 20(b) has minimal applicability.

Concerning efforts to address his outstanding financial issues, Applicant testified that he filed all his federal delinquent tax returns from 2007 through 2012, although he is apparently in the process of refile his returns for 2007 and 2008. He offered to file his federal returns for 2005 and 2006, but he was told by the IRS that they were not required. He testified that he has filed all his delinquent state income tax returns from 2005 through 2012. Applicant has paid in full the judgment debt (SOR 1.b); albeit not until after the creditor obtained a judgment against him. Two mitigating conditions under AG ¶ 20 are implicated to efforts to resolve debts:

(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

⁴ The adjusted gross income figures were likely Applicant's income, given that there is no evidence that his ex-spouse worked outside the home. Applicant paid her \$100 a week and assumed responsibility for all the debt incurred during the marriage because she was unemployed.

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

Applicant's delay in filing his delinquent tax returns notwithstanding, he is not likely to neglect his tax filing obligations in the future. He applied for an extension to file his 2013 taxes and filed them on the deadline. He filed his 2014 tax returns on time. Even so, it is difficult to mitigate fully the financial concerns in light of his almost \$90,000 in income tax debt and \$8,750 in collection debt still outstanding. At his present annual income of approximately \$36,000, he is not likely to eliminate his debt burden in the near future, even if the state accepts \$18,000 in resolution of his \$31,000 tax debt. Nothing in the Directive requires that Applicant be free of delinquent debt for him to be granted security clearance eligibility, but his burden of overcoming the financial considerations security concerns is not met by his ongoing inattention to such small collection debts as \$90 (SOR 1.e), \$251 (SOR 1.g), and \$250 (SOR 1.h).

Applicant now believes that the wireless phone debts in SOR 1.f and 1.i are the same debt. As of January 2014, he had two collection accounts on his record placed by the wireless phone provider. The accounts had different numbers and balances, and Applicant presented no documentation to rebut the reasonable inference that they are separate accounts. Furthermore, when he was interviewed by the OPM investigator, he related that the debt in SOR 1.f was for his son's telephone while the debt in SOR 1.i was his account. He failed to establish AG ¶ 20(e), which states:

(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.

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 disclosed his income tax debts when he completed his e-QIP in January 2014. With adjusted gross income of \$12,828 in 2012 and only \$915 in 2013, Applicant cannot reasonably be expected to have made progress toward repaying his income tax debts in the two years preceding his employment with the defense contractor. Applicant has not taken on new debt in the last few years, with the exception of a \$15,229 motorcycle loan in August 2014 to replace an old vehicle. He has been paying this loan on time. Applicant presented evidence of ethical behavior and hard work as an excavating contractor. His work as a “shipfitter” has met his present employer’s expectations.

Nonetheless, 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.). His disregard of his tax matters for several years raises considerable doubts about his judgment and his willingness to comply with laws and regulations. For the reasons noted above, based on the facts before me and 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 Applicant security clearance eligibility at this time.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant ⁵

⁵ Applicant’s efforts to file his delinquent state tax returns is viewed favorably, but the allegation is found against him because of his lack of payments toward his tax debt.

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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge