DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
------	)	ISCR Case No. 14-01999
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: *Pro se*

01/29/2015

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations and personal conduct. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On January 3, 2014, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application.[1] On July 11, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility – Division A (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective

[1] GE 1 (e-QIP, dated January 3, 2014).

September 1, 2006. The SOR alleged security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on July 24, 2014. In a sworn statement, dated August 15, 2014, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on November 13, 2014. The case was assigned to me on November 14, 2014. A Notice of Hearing was issued on December 2, 2014, and I convened the hearing as scheduled on December 17, 2014.

During the hearing, 4 Government exhibits (GE 1 through GE 7) and 11 Applicant exhibits (AE A through AE K) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on January 5, 2015. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He submitted additional documents which were marked as AE L through AE Q and admitted into evidence without objection**.** The record closed on December 24, 2014.

Findings of Fact

In his Answer to the SOR, Applicant admitted nearly all of the factual allegations pertaining to financial considerations (¶¶ 1.a. through 1.f.) and personal conduct (¶ 2.a.). Applicant's answers are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 48-year-old employee of a defense contractor. He has worked for his employer since October 1999.[2] He also was self-employed, conducting part-time businesses from March 2004 until December 2008 and from December 2010 until the present.[3] He is a June 1985 high school graduate.[4] He has never served with the U.S. military.[5] He has never held a security clearance.[6] Applicant was married the first time in November 1989, and divorced in March 2004.[7] He and his first wife have three children:

[2] GE 1, *supra* note 1, at 11.

[3] GE 2 (Personal Subject Interview, dated January 24, 2014), at 1.

[4] GE 1, *supra* note 1, at 10.

[5] GE 1, *supra* note 1, at 15.

[6] GE 1, *supra* note 1, at 38.

[7] AE Q (Court Record, various dates), at 2; GE 1, *supra* note 1, at 16-17; GE 2, *supra* note 3, at 2.

a son (born in 1990) and two daughters (born in 1994 and 1998).[8] He was married to his second wife in March 2007, and divorced in July 2010.[9]

Financial Considerations

There was nothing unusual about Applicant's finances until about 2010. After he and his second wife divorced, he found it difficult to live on only one income because he was responsible for paying child support for his minor children.[10] He did not have enough money to make all the monthly payments on his bills and was unable to pay his federal income tax. As a result, some accounts became delinquent. Applicant's current girlfriend gives him unspecified financial guidance and has stressed the importance of "toeing the line."[11] In December 2014, Applicant met with a senior financial advisor for assistance in implementing a budget that will limit his excess spending and create a method of savings for the future; cut some of his monthly expenses to improve cash flow; implement a scheduled investment plan with systematic contributions from his salary; take advantage of retirement savings and retirement accounts; and conduct quarterly reviews in order to stay on track.[12]

The SOR identified two delinquent debts that had been placed for collection or charged off, as reflected by a January 2014 credit report[13] and an October 2014 credit report,[14] as well as two delinquent, unpaid income tax debts. Those four debts total approximately $18,475. There are also allegations that Applicant had failed to file his federal income tax returns for the tax years 2010, 2011, and 2012. Those allegations and their respective current status, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below.

(SOR ¶¶ 1.a. and 2.d.): Applicant failed to timely file his federal income tax return for the tax year 2010. He was under the impression that he had an extension, but that was not the case. Applicant attributed his failure to file on a variety of reasons: he had just been through a divorce; he was in a poor mental state over the divorce; he was focused on reconciling with his ex-wife; he did not have the money he was expected to pay in taxes; and he was unaware that he could have filed the tax returns and entered into installment agreements with the Internal Revenue Service (IRS). In October 2011, with the assistance of a bookkeeping service, Applicant filed his 2010 return. The initial

[8] GE 1, *supra* note 1, at 25-26; GE 2, *supra* note 3, at 2.

[9] GE 1, *supra* note 1, at 17-18.

[10] GE 2, *supra* note 3, at 2.

[11] Tr. at 60.

[12] AE P (E-mail, dated December 22, 2014).

[13] GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated January 9, 2014).

[14] GE 4 (Equifax Credit Report, dated October 31, 2014).

unpaid tax was $1,705, and it increased to $2,136, including interest and penalty.[15] Applicant subsequently contacted the IRS to make arrangements for a repayment plan, but because he still had insufficient funds to follow through with the plan, he failed to make any payments.[16] In January 2014, he again contacted the IRS and commenced discussions regarding a new repayment plan. Those discussions took place over several months and they finally came to fruition.[17] In August 2014, Applicant instituted a voluntary garnishment and payroll deduction agreement to withdraw $177.50 from his wages every two weeks to pay to the IRS for his delinquent income taxes.[18] In December 2014, that amount was increased to $230 every two weeks.[19] The account is in the process of being resolved.

(SOR ¶ 1.b.): Applicant failed to timely file his federal income tax return for the tax year 2011. It is unclear if he actually filed an extension, for while he did not think he had filed for an extension, his accountant indicated that he had.[20] Applicant attributed his failure to file on the same variety of reasons as described above.[21] He also added that since his first ex-wife and her husband were both unemployed, in order to provide for his children, he assisted them monetarily whenever he could.[22] In October 2013, Applicant filed his 2011 return, at the same time he filed his tax return for the tax year 2012.[23] The unpaid tax was $2,984.[24] In August 2014, Applicant instituted the voluntary garnishment and payroll deduction agreement described above, and the payments included his unpaid income taxes for 2011.[25] The December 2014 agreement also included the unpaid income taxes for 2011.[26] The account is in the process of being resolved.

(SOR ¶¶ 1.c. and 1.d.): Applicant failed to timely file his federal income tax return for the tax year 2012. It is unclear if he actually filed an extension for he did not

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[15] Tr. at 23-28; GE 2, *supra* note 3, at 2.

[16] Tr. at 27-28; GE 2, *supra* note 3, at 2.

[17] Tr. at 32-33.

[18] AE A (Payroll Deduction Agreement (Form 2159), dated August 26, 2014); AE D (Employee Pay Statement, dated October 17, 2014).

[19] AE B (Form 2159, dated December 1, 2014).

[20] Tr. at 29; AE L (Letter and Application for Automatic Extension of Time To File U.S. Individual Income Tax Return (Form 4868), undated).

[21] Tr. at 29-30.

[22] Tr. at 30-31.

[23] Tr. at 28-29, 31.

[24] Tr. at 31.

[25] AE A, *supra* note 18; AE D, *supra* note 18.

[26] AE B, *supra* note 19.

think he had done so.[27] Applicant attributed his failure to file on the same variety of reasons as described above. In October 2013, Applicant filed his 2012 return, at the same time he filed his tax return for the tax year 2011.[28] The unpaid tax was $11,906,[29] and it increased to $15,687, including interest and penalty.[30] In August 2014, Applicant instituted the voluntary garnishment and payroll deduction agreement described above, and the payments included his unpaid income taxes for 2012.[31] The December 2014 agreement also included the unpaid income taxes for 2012.[32] The account is in the process of being resolved.

It is unclear if Applicant filed his federal income tax return for the tax year 2013 in April 2014 or in August 2014 because he does not recall if he asked for an extension.[33] He estimated he owed the IRS $9,320 for the tax year 2013.[34] In December 2014, it was estimated that Applicant owed the IRS approximately $34,000 in unpaid income tax, penalties, and interest for the tax years 2010 through 2013.[35] There is no evidence that the IRS ever filed a tax lien against him. Applicant has embraced the paradigm of timely income tax return filing, and he contends he is now "up to speed on the IRS, definitely for now." He does not intend to make that same mistake in the future. Also, in an effort to reduce his end-of-the-year tax burden, for over a year and one-half, he has increased his withholding by claiming zero dependents.[36]

(SOR ¶ 1.f.): There is a credit card with a credit limit of $300 and high credit of $532 that was $509 past due when it was placed for collection and subsequently charged off in June 2012.[37] The account was eventually sold to a debt purchaser in August 2014.[38] Applicant contacted the original creditor, and eventually Applicant and the debt purchaser to which he was directed agreed to repayment arrangements in December 2014.[39] Although payments were to commence in December 2014 and

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[27] Tr. at 29.

[28] Tr. at 28-29, 31.

[29] Tr. at 31.

[30] Tr. at 31.

[31] AE A, *supra* note 18; AE D, *supra* note 18.

[32] AE B, *supra* note 19.

[33] Tr. at 33.

[34] Tr. at 33.

[35] AE B, *supra* note 19.

[36] Tr. at 36-38.

[37] GE 3, *supra* note 13, at 6; GE 4, *supra* note 14, at 1.

[38] GE 4, *supra* note 14, at 1; AE C (Letter, dated December 2, 2014); Tr. at 42.

[39] AE C, *supra* note 38.

conclude in February 2015,[40] Applicant accelerated the payments, and paid off the remaining balance on December 19, 2014.[41] The account has been resolved.

(SOR ¶ 1.g.): There is a cable account with an unpaid balance of $129 that was placed for collection in 2009.[42] Applicant was not aware that the account had become delinquent until he tried to reestablish service with the company several years later. He believes the balance may have been related to equipment, but he is not sure.[43] He paid the bill in August 2013.[44] Applicant's most recent credit report no longer lists the account.[45]

During the hearing, Applicant noted that he apparently had two additional delinquent accounts that were in his October 2014 credit report[46] but not alleged in the SOR. The two minor balances ($8.99 and $50) were paid by him on December 19, 2014.[47] Other than his remaining combined income tax balance, Applicant no longer has any delinquent accounts. He has reduced his expenses by, among other actions, selling his residence, reducing his insurance, and selling his truck for an economy car.[48] He no longer uses credit cards.[49]

Under the child custody order associated with Applicant's first divorce, he was required to pay his first wife $486 every other week in child support for his three minor children.[50] He has never been in arrears.[51] On December 23, 2014, he finally addressed the fact that two of the children are no longer minors (one child resides with him), and he submitted a supplemental petition for modification of child support and credit for overpayment for the two adult children, as well as credit for the 50 percent of the orthodontic expenses (totaling $1,830.94) he already paid when his ex-wife claimed she was unable to do so.[52] In support of his petition, Applicant submitted a family law financial affidavit, reflecting a net monthly income of approximately $3,353, with $2,981

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[40] AE C, *supra* note 38.

[41] AE M (Letter, dated December 23, 2014).

[42] GE 3, *supra* note 13, at 8.

[43] Tr. at 44-45.

[44] Applicant's Answer to the SOR, dated August 27, 2014, at 2; Tr. at 45.

[45] GE 4, *supra* note 14.

[46] Tr. at 53-54.

[47] AE O (Payment Receipt, dated December 19, 2014); AE N (Credit Receipt, dated December 19, 2014).

[48] Tr. at 50-53.

[49] Tr. at 55.

[50] AE Q, *supra* note 7, at 2; AE D, *supra* note 18.

[51] Tr. at 38.

[52] AE Q, *supra* note 7, at 2-3; Tr. at 58.

in total monthly expenses, leaving a surplus of approximately $372 available for discretionary savings or spending.[53] When the supplemental petition for modification of child support is granted, his monthly surplus should increase.

Personal Conduct

(SOR ¶ 2.a.): As noted above, Applicant failed to timely file his federal income tax returns for 2010, 2011, and 2012.

Work Performance and Character References

Applicant's supervisor, the business office manager, and a former business partner have known Applicant for 13 years. They find him to be forthright, honest, conscientious, punctual, dependable, hard-working, easy-going, with a positive attitude, and willing to assist others.[54] His supervisor added that Applicant is definitely an asset to the company.[55] A former coworker and a friend have both known Applicant for over 30 years. They favorably characterized him using such terms as trustworthy, honesty, character, integrity, and reliability.[56] A parent whose daughter Applicant coached in his spare time was effusive in her praise of Applicant. She noted that over the 15 years that she has known Applicant, he has served as a volunteer coach on weekends, and because of his dedication, selfless hard work, wisdom, honesty, kindness, and integrity, her entire family and Applicant have become dear friends.[57] She attributed his efforts to her daughter's eventual success as an Olympian, Pan American Gold Medalist, and a world record-holder.[58] Applicant's former mother-in-law and father-in-law have known him for over 25 years. They too refer to his integrity, trustworthiness, strong work ethic, and dependability.[59]

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."[60] As Commander in Chief, the President has the authority to control access to information bearing on national

[53] AE Q, *supra* note 7, at 12-17.

[54] AE H (Character Reference, dated November 18, 2014); AE J (Character Reference, dated November 30, 2014); AE G (Character Reference, dated November 14, 2014).

[55] AE H, *supra* note 54.

[56] AE F (Character Reference, dated December 2, 2014); AE K (Character Reference, dated December 1, 2014).

[57] AE E (Character Reference, dated November 24, 2014).

[58] AE E, *supra* note 57.

[59] AE I (Character Reference, dated October 31, 2014).

[60] *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."[61]

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."[62] The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.[63]

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. 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 as to potential, rather than actual, risk of compromise of classified information.

[61] Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

[62] "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "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).

[63] *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Furthermore, "security clearance determinations should err, if they must, on the side of denials."[64]

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."[65] Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out 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 notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. In addition, a "failure to file annual Federal, state, or local income tax returns as required. . ." may raise security concerns under AG ¶ 19(g). Applicant failed to timely file his federal income tax returns for 2010, 2011, and 2012. Several accounts were placed for collection or charged off. AG ¶¶ 19(a), 19(c), and 19(g) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Also, under AG ¶ 20(b), financial security concerns may be mitigated where "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of

[64] *Egan*, 484 U.S. at 531.

[65] *See* Exec. Or. 10865 § 7.

employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances." Evidence that "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" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."[66]

AG ¶¶ 20(a), 20(b), 20(c), and 20(d) apply. Applicant's financial problems were not caused by frivolous or irresponsible spending, and he did not spend beyond his means. Instead, as noted above, Applicant attributed his failure to file his federal income tax returns on a variety of reasons: he had just been through a divorce; he was in a poor mental state over the divorce; he was focused on reconciling with his ex-wife; his first ex-wife and her husband were both unemployed, and in order to provide for his children, he assisted them monetarily whenever he could; he did not have the money he was expected to pay in taxes; and he was unaware that he could have filed the tax returns and entered into payment arrangements with the IRS.

Applicant was clearly naive about financial matters for he did not know that he should have filed his tax returns even if he did not have the funds to pay his taxes; he was unaware that the IRS accepted installment agreements; and he was unaware that simply because a negative listing appears in a credit report, he may not actually be indebted to the listed creditor or collection agent. Applicant may have been confused and ignorant of his legal responsibilities, because at that time, he had not yet obtained any financial guidance. But those factors are not sufficient reason to simply excuse Applicant's tardy actions. His failure to take more timely decisive action during the three-year period from April 2011 through April 2014 is acknowledged. However, in October 2011 he took the first step in resolving the 2010 taxes when he finally filed his return. The 2011 and 2012 returns were finally filed in October 2013. Applicant has in place a repayment arrangement with the IRS. Under a voluntary garnishment and payroll deduction agreement, $230 is sent to the IRS every two weeks.

This is not a situation where an applicant has an intentional lengthy period of irresponsible inaction regarding his federal income tax filing and payment obligations.[67]

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[66] The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue 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 [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (internal citation and footnote omitted, quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

[67] *See* ISCR Case No. 12-05053 at 4-5 (App. Bd. Oct. 30, 2014).

While Applicant's judgment and actions in this regard can be characterized as delayed, his eventual responses and actions – essentially well-before the SOR was issued – were in the absence of any IRS-generated lien or involuntary garnishment proceedings. Applicant now has received counseling from a financial counselor. All of Applicant's accounts are current, including the two that he acknowledged which were not alleged in the SOR. Other than his remaining combined income tax balance, Applicant no longer has any delinquent accounts. He has reduced his expenses and he no longer uses credit cards. His monthly surplus of approximately $372 available for discretionary savings or spending should increase substantially when his continuing overpayment of child support for his two adult children is finally corrected and ended. There are clear indications that Applicant's financial problems are under control. Applicant's actions under the circumstances confronting him, do not cast doubt on his current reliability, trustworthiness, or good judgment.[68]

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(d), it is potentially disqualifying if there is

> credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations. . . .

Under AG ¶ 16(e), it is also potentially disqualifying if there is

> personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing. . . .

[68] *See* ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

Applicant failed to timely file his federal income tax returns for 2010, 2011, and 2012. AG ¶¶ 16(a) and 16(e) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. AG ¶ 17(c) may apply if "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." Also, AG ¶ 17(e) may apply if "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress."

AG ¶¶ 17(c) and 17(e) apply. For the reasons fully set forth in my analysis pertaining to financial considerations, Applicant has embraced the paradigm of timely income tax return filing and vows not to make that same mistake in the future. With his new-found understanding of his legal responsibilities, and his receipt of financial counseling, Applicant has taken positive steps to eliminate or avoid similar circumstances.

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 relevant 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

There is some evidence against mitigating Applicant's conduct. Applicant failed to timely file federal income tax returns for 2010, 2011, and 2012. He had several accounts become delinquent and placed for collection.

The mitigating evidence under the whole-person concept is more substantial than the disqualifying evidence. Applicant's financial problems arose when he was going through his second divorce. For a substantial period before as well as thereafter, he was overwhelmed by the entire situation: he was in a poor mental state and he was focused on reconciling with his ex-wife. In addition, his first ex-wife and her husband

were both unemployed, and in order to provide for his children, he assisted them monetarily whenever he could. Applicant was clearly naive about financial matters for he did not know that he should have filed his tax returns even if he did not have the funds to pay his taxes. He was unaware that the IRS accepted installment agreements. Although there was a three-year period during which he failed to take more timely decisive action by timely filing his federal income tax returns, something finally changed. There was no federal income tax lien or SOR to motivate him. In October 2011 he took the first step in resolving the 2010 taxes when he filed his return. The 2011 and 2012 returns were filed in October 2013. Applicant has in place a repayment arrangement with the IRS. Under a voluntary garnishment and payroll deduction agreement, $230 is sent to the IRS every two weeks. Unknown to him at the time, Applicant had several accounts with relatively minor balances that were delinquent and placed for collection. Once he learned of their existence he paid those accounts in full. Applicant has received financial counseling, reduced his expenses, no longer uses credit cards, and eliminated his delinquent accounts.

There are other dimensions of Applicant as well. His supervisor, colleagues, a former business partner, friends, and even his former in-laws have known Applicant for many years. They are all effusive about him. He is, among other attributes, forthright, honest, conscientious, dependable, hard-working, trustworthy, honest, reliable, and kind. Active in the community, he has served as a volunteer coach for a young lady who became an Olympian, Pan American Gold Medalist, and a world record-holder. There are clear indications that Applicant's financial problems and associated personal conduct are under control. His actions under the circumstances do not cast doubt on his current reliability, trustworthiness, or good judgment.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:[69]

> In evaluating Guideline F cases, the Board has previously noted that the concept of "'meaningful track record' necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] 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 [or her] 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

[69] ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant has demonstrated a "meaningful track record" of debt reduction and elimination efforts. While he failed to timely file several of his federal income tax returns, his explanations for those failures, in light of the continuing circumstances following his divorce, are credible. Overall, the record evidence leaves me without substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial considerations and personal conduct. *See* AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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:	For APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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ROBERT ROBINSON GALES
Administrative Judge