



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 14-02529

**Appearances**

For Government: Christopher Morin, Esquire, Department Counsel

For Applicant: *Pro se*

11/04/2014

**Decision**

GALES, Robert Robinson, Administrative Judge:

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

**Statement of the Case**

On January 30, 2013, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).<sup>1</sup> On July 15, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility – Division A (CAF) issued a Statement of Reasons (SOR) to him, pursuant to 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 *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the DOD on September

<sup>1</sup> GE 1 ((SF 86), dated January 30, 2013).

1, 2006) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct), and detailed reasons why the DOD adjudicators could not make a preliminary affirmative finding under the Directive 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 acknowledged receipt of the SOR on July 25, 2014. In a sworn statement, dated July 25, 2014, Applicant responded to the SOR allegations.<sup>2</sup> He was informed that his Answer was incomplete and that it was necessary for him to elect either a hearing before an administrative judge or have his case decided on the written record in lieu of a hearing. He subsequently requested a hearing before an administrative judge. On August 29, 2014, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on September 2, 2014. A Notice of Hearing was issued on September 2, 2014. I convened the hearing, as scheduled, on September 17, 2014.<sup>3</sup>

During the hearing, four Government exhibits (GE 1 through GE 4) were admitted into evidence without objection. Applicant testified, but offered no documentary evidence. The transcript of the hearing (Tr.) was received on October 1, 2014. The record closed on October 1, 2014.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all of the factual allegations in the SOR under financial considerations (§ 1.a. through 1.h.) and personal conduct (§ 2.a. and 2.b.). Applicant's admissions 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 45-year-old employee of a defense contractor. He has been serving as a driver since January 2013.<sup>4</sup> He also went through periods of unemployment from August 2006 until December 2006, and from October 2010 until December 2010.<sup>5</sup> He graduated from a vocational high school in June 1987.<sup>6</sup> Applicant

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<sup>2</sup> Applicant's Answer to the SOR, dated July 25, 2014.

<sup>3</sup> The Directive established that notification as to the date, time, and place of a hearing be furnished to an applicant at least 15 days in advance of the time of the hearing. See, Directive, Encl. 3, § E3.1.8. In this instance, Department Counsel and Applicant were in discussions regarding the potential time and location long before the actual Notice of Hearing was issued. The Notice of Hearing was issued on September 2, 2014, and Applicant acknowledged receipt of the Notice on September 11, 2014. Thus, the period between the issuance of the Notice and the hearing was approximately 15 days, and the period between receipt of the Notice and the hearing was approximately 10 days. I inquired of Applicant if he had any procedural issues to take up before getting into the evidence and he responded "no." I construed his answer to mean that the period of notice was sufficient, and Applicant thereby waived the 15-day notice requirement. See, Tr. at 13-14.

<sup>4</sup> GE 1, *supra* note 1, at 9-10.

<sup>5</sup> GE 1, *supra* note 1, at 11, 13.

enlisted in the U.S. Army in July 1990, but because he had some serious dental issues, he was given an uncharacterized separation after only one month in recruit basic training.<sup>7</sup> Applicant was married in November 1990, separated in February 2010, and divorced in May 2011.<sup>8</sup> He has resided with a cohabitant since April 2011.<sup>9</sup> He has no children.<sup>10</sup> He has never held a security clearance.

## Financial Considerations

There was nothing unusual about Applicant's finances until about 12 to 15 years before 2013. Applicant recalled that he had filed for bankruptcy during that time period and that the "case" was discharged. He could not recall if his filing was under Chapter 7 or Chapter 13 of the U.S. Bankruptcy Code.<sup>11</sup> No evidence was developed to determine if the case was dismissed or if the debts were discharged. At some unspecified point thereafter, a series of events occurred that contributed to the accumulation of debt from various credit cards, medical bills, and other sources. In addition to his two periods of unemployment, credit issues arose when, as he contends, his now ex-wife started opening credit card accounts in both their names and spending too much money.<sup>12</sup> Applicant was unaware of some of the accounts, and he was under the erroneous impression that his wife was making payments on some of the other accounts.<sup>13</sup> Some of those accounts became delinquent and were placed for collection. Once he was divorced, Applicant did not have any ongoing financial obligations in terms of support or alimony.<sup>14</sup> In 2012, Applicant did not timely file his federal and state income tax returns for 2011 because he forgot to do so.<sup>15</sup> Applicant never sought financial counseling or debt consolidation counseling.<sup>16</sup>

In addition to his unfiled federal and state income tax returns with an unspecified liability, the SOR identified seven purportedly continuing delinquencies as reflected by a

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<sup>6</sup> GE 1, *supra* note 1, at 8-9; Tr. at 21-22.

<sup>7</sup> GE 1, *supra* note 1, at 16-17; GE 2 (Personal Subject Interview, dated February 28, 2013), at 1; Tr. at 25-26.

<sup>8</sup> GE 1, *supra* note 1, at 18; GE 2, *supra* note 7, at 1; Tr. at 26-27.

<sup>9</sup> GE 1, *supra* note 1, at 19.

<sup>10</sup> GE 2, *supra* note 7, at 2; Tr. at 27.

<sup>11</sup> GE 2, *supra* note 7, at 2.

<sup>12</sup> GE 2, *supra* note 7, at 2.

<sup>13</sup> GE 2, *supra* note 7, at 2-3; Tr. at 29-30.

<sup>14</sup> Tr. at 27.

<sup>15</sup> GE 2, *supra* note 7, at 2.

<sup>16</sup> GE 2, *supra* note 7, at 3; Tr. at 61.

credit report from February 2013<sup>17</sup> totaling approximately \$818. Applicant acknowledged that all of those debts were incurred before he was divorced.<sup>18</sup> Those debts listed in the SOR and their respective current status, according to the credit report, other evidence in the case file, and Applicant's admissions regarding the same, are described below.

(SOR ¶¶ 1.a. and 1.g.): There are two veterinary accounts with balances of \$251 and \$59 that were placed for collection in 2009 and 2011, respectively.<sup>19</sup> The account was for veterinary services for one of Applicant's three dogs.<sup>20</sup> He has not made any effort to approach the creditor to establish repayment plans, and he has not made any payments to the creditor.<sup>21</sup> In February 2013, Applicant told the investigator from the U.S. Office of Personnel Management (OPM) that he would contact the creditor in an effort to resolve the accounts,<sup>22</sup> but during the hearing he acknowledged he did not do so.<sup>23</sup> The accounts have not been resolved.

(SOR ¶¶ 1.b., 1.e., and 1.f.): There are three medical accounts with unidentified medical service providers with balances of \$110, \$96, and \$90 that were placed for collection in 2008 or 2012.<sup>24</sup> Applicant has not made any effort to approach the creditors to establish repayment plans, and he has not made any payments to the creditors.<sup>25</sup> The accounts have not been resolved.

(SOR ¶ 1.c.): There is an insurance account with a balance of \$107 that was placed for collection in 2012.<sup>26</sup> Applicant has not made any effort to approach the creditor to establish repayment plans, and he has not made any payments to the creditor.<sup>27</sup> The account has not been resolved.

(SOR ¶ 1.d.): There is a cable account with a balance of \$105 that was placed for collection in 2012.<sup>28</sup> Applicant has not made any effort to approach the creditor to

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<sup>17</sup> GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated February 12, 2013).

<sup>18</sup> Tr. at 28.

<sup>19</sup> GE 3, *supra* note 17, at 8-9.

<sup>20</sup> Tr. at 56.

<sup>21</sup> GE 2, *supra* note 7, at 3; Tr. at 54.

<sup>22</sup> GE 2, *supra* note 7, at 3.

<sup>23</sup> Tr. at 31.

<sup>24</sup> GE 3, *supra* note 17, at 8-9.

<sup>25</sup> GE 2, *supra* note 7, at 3; Tr. at 54-55.

<sup>26</sup> GE 3, *supra* note 17, at 8.

<sup>27</sup> GE 2, *supra* note 7, at 3; Tr. at 54.

<sup>28</sup> GE 3, *supra* note 17, at 8.

establish repayment plans, and he has not made any payments to the creditor.<sup>29</sup> The account has not been resolved.

During his 2013 OPM interview, Applicant contended that he was able to meet his financial obligations, and that he did not live beyond his means.<sup>30</sup> However, during the hearing his story changed:<sup>31</sup>

Right at the moment, I'm just working and trying to make the money to survive, and when I do have the extra money, I've been trying to catch up on bills because I'm behind with my rent and all that from . . . with her. I've been just trying to catch up, and right now, I'm just staying afloat. And, my salary, I'm bringing home just over \$600 a week and it's rough to take care of three people on \$600 a week.

The "three people" in question are Applicant's cohabitant, her 10-year-old daughter, and Applicant.<sup>32</sup> He explained that his cohabitant previously had a good job, but had a heart attack, is diabetic, and went into renal failure, making her bedridden and unable to work.<sup>33</sup> As a result, he pays for all their household expenses, utilities, clothing, food, and his cohabitant's car payments, as well as her medical expenses that are not fully covered by disability and Medicare.<sup>34</sup> When asked about his financial priorities with regard to his delinquent debts, Applicant stated that his first priority is taking care of his family.<sup>35</sup> He conceded that he "probably could have" addressed his smaller delinquent debts, and did not say he was "totally unable to" do so, but in trying to take care of his family, those debts were put aside.<sup>36</sup>

Applicant's net income is approximately \$600 to \$638 per week which equates to \$3,600 per month.<sup>37</sup> He paid off his truck,<sup>38</sup> but the motorcycle he purchased in 2012 still has a year's payments left.<sup>39</sup> He has about \$100 to \$200 in his checking account,

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<sup>29</sup> GE 2, *supra* note 7, at 3; Tr. at 54.

<sup>30</sup> GE 2, *supra* note 7, at 3.

<sup>31</sup> Tr. at 31. Although he claimed at one point to be behind in his rent, Applicant subsequently acknowledged he was actually current. See Tr. at 35.

<sup>32</sup> Tr. at 31-32.

<sup>33</sup> Tr. at 32-33. Although Applicant's cohabitant is allegedly bedridden and unable to work, he also acknowledged she recently got into a wreck with her car causing \$1,000 in damages, and that he had to find a way to come up with the funds necessary to repair the vehicle. See Tr. at 42.

<sup>34</sup> Tr. at 33, 35.

<sup>35</sup> Tr. at 58.

<sup>36</sup> Tr. at 58-59.

<sup>37</sup> Tr. at 34.

<sup>38</sup> Tr. at 36.

<sup>39</sup> Tr. at 40-41.

but no savings.<sup>40</sup> He also has a boat which is in need of unspecified repairs.<sup>41</sup> Applicant contends he has no funds available for discretionary spending of savings, but since he did not submit a personal financial statement, it is difficult to assess his true financial status. It is his intention to “stay afloat right now and get to where [he] can start really paying these things.”<sup>42</sup>

In both his SF 86 and Answer to the SOR, Applicant admitted that he had failed to timely file his federal and state income tax returns for 2011.<sup>43</sup> The OPM investigator did not address the state income tax return, and Applicant did not mention it. During the hearing, Applicant revised his Answer to the SOR and contended that he is “pretty sure” or believed he had filed the state return and received a refund of \$100.<sup>44</sup> He did not submit any documentation to support his contentions pertaining to the state income tax filing. He did not timely file his federal income tax return because he did not have the estimated \$1,000 to pay at that time.<sup>45</sup> He subsequently intended to file the federal return along with his 2012 return, but did not do so. He now contends he filed the 2011 return with his 2013 return in April 2014.<sup>46</sup> He did not submit any documentation to support his contentions pertaining to the federal income tax return for 2011.

## Personal Conduct

(SOR ¶ 2.a.): On January 30, 2013, when Applicant completed his SF 86, he responded to a particular question pertaining to his financial record. The question in Section 26 – Financial Record asked if he was currently over 120 days delinquent on any debt. Applicant answered “no” to the question. He certified that the response was “true, complete, and correct” to the best of his knowledge and belief, but the response to that question was, in fact, false. Applicant subsequently denied intending to falsify his response, and explained that he knew he had some debts, but not as many as he eventually found out about, and accidentally clicked “no” when he should have said “yes.” He claimed that he simply made a mistake.<sup>47</sup>

(SOR ¶ 2.b.): As noted above, Applicant failed to timely file his federal and state income tax returns for 2011. There is uncorroborated oral evidence that he eventually

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<sup>40</sup> Tr. at 38-39.

<sup>41</sup> Tr. at 39.

<sup>42</sup> Tr. at 60.

<sup>43</sup> GE 1, *supra* note 1, at 28-29; Applicant’s Answer to the SOR, *supra* note 2, at 2.

<sup>44</sup> Tr. at 42, 49.

<sup>45</sup> Tr. at 42-43, 45; GE 1, *supra* note 1, at 28-29.

<sup>46</sup> Tr. at 43-44.

<sup>47</sup> Tr. at 50-52.

may have filed his state income tax return, but no documentary evidence to support his contentions pertaining to the federal income tax return for 2011 was submitted.

## 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.”<sup>48</sup> As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. 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.”<sup>49</sup>

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.”<sup>50</sup> 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.<sup>51</sup>

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<sup>48</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>49</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>50</sup> “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 (4<sup>th</sup> Cir. 1994).

<sup>51</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”<sup>52</sup>

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.”<sup>53</sup> 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). At some point about 12 to 15 years before 2013, Applicant filed for bankruptcy, but the nature and

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<sup>52</sup> *Egan*, 484 U.S. at 531

<sup>53</sup> See Exec. Or. 10865 § 7.



ultimate result of that filing is not very clear in Applicant's mind. At an unspecified point during his marriage, some accounts became delinquent and were placed for collection. Applicant found himself with insufficient funds to make routine monthly payments, and various other accounts also became delinquent, and they, too, were placed for collection. Applicant failed to timely file his federal and state income tax returns for 2011. Applicant contends he has no funds available for discretionary spending of savings, and cannot pay any of his delinquent debts. 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 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*.<sup>54</sup>

AG ¶ 20(b) only minimally applies. AG ¶¶ 20(a), 20(c), and 20(d) do not apply. The nature, frequency, and relative recency of Applicant's intermittent and continuing financial difficulties over many years, but essentially since at least 2008, make it difficult to conclude that it occurred "so long ago" or "was so infrequent." While there is evidence that some of his financial difficulties may have been caused by his ex-wife, those delinquent seven debts are relatively small (between \$59 and \$251). Applicant's two periods of unemployment occurred in 2006 and 2010, but Applicant failed to offer any specifics as to what financial difficulties may have been caused by those two periods. Additionally, while Applicant has made continuing payments for all household expenses, utilities, clothing, food, and his cohabitant's car payments and some of her medical expenses, and he attributes his inability to make payments towards his own delinquent

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<sup>54</sup> 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)).

debts to taking care of his cohabitant and her daughter, without more detailed explanations, it is difficult to assess to what degree those financial hardships were beyond Applicant's control. The filing status of his federal and state income tax returns for 2011 still remains unclear. Applicant has been with his current employer since January 2013. He had the financial ability to pay off his truck and purchase a motorcycle, but he has not made any effort to approach the seven creditors to establish repayment plans, and he has not made any payments to those creditors. Instead, he has simply ignored his delinquent debts while noting that his ex-wife created them. There are simply too many inconsistencies and too many explanations. There is insufficient evidence that Applicant was unable to do more to pay his delinquent SOR debts. To the contrary, there is evidence that he probably could have addressed those delinquent debts. Applicant failed to act responsibly under the circumstances.<sup>55</sup>

Applicant never received financial counseling or debt consolidation guidance. In addition, he failed to establish that there are clear indications that his finances are under control. Applicant failed to initiate a "good-faith effort," to start repaying any of his SOR-creditors. Over the years since the debts were established Applicant did not act aggressively, timely, or responsibly to resolve his delinquent debts. Instead, he ignored his debts and continues to do so. More positive movements should have already taken place to resolve some of his delinquent accounts.

### **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(a), it is potentially disqualifying if there is

a deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

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<sup>55</sup> "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)).

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. . . .

As noted above, on January 30, 2013, when Applicant completed his SF 86, he responded to a certain question pertaining to his financial record. The question in Section 26 – Financial Record asked if he was currently over 120 days delinquent on any debt. Applicant answered “no” to that question. He certified that the response was “true, complete, and correct” to the best of his knowledge and belief, but the response to that question was, in fact, false. Although he admitted the allegation in his Answer to the SOR, Applicant subsequently denied intending to falsify his response, and explained that he knew he had some debts, but not as many as he eventually found out about, and accidentally clicked “no” when he should have said “yes.” He claimed that he simply made a mistake.

Applicant's response provides sufficient evidence to examine if his submission was a deliberate falsification, as alleged in the SOR, or merely the result of a mistake, as he claims. He denied the false responses were deliberate or an attempt to falsify the material facts. Applicant's explanation, to be accepted, requires that a substantial degree of unreasonableness be ignored. If Applicant had acknowledged the deliberate nature of his actions and expressed that it was foolish on his part to have falsified his responses and concealed the truth, his actions might have been considered aberrant behavior. Applicant clings to his explanation that when he completed the SF 86 he knew there were a few delinquent accounts, but was unaware that so many of his accounts were delinquent and placed for collection. He claims that he simply pushed the wrong button in answering the question. In the absence of any character evidence pertaining to Applicant's honesty and truthfulness, his position is unreasonable. AG ¶ 16(a) has been established.

Applicant failed to timely file his federal and state income tax returns for 2011. AG ¶ 16(e) has been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. AG ¶ 17(a) may apply if *the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts. 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, AG ¶ 17(c) may apply. Also, AG ¶ 17(d) may apply if the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.* None of the mitigating conditions apply.

## 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 in favor of mitigating Applicant's conduct. With the exception of his periods of unemployment, Applicant has generally been employed. He is apparently a caring cohabitant and stepfather figure.

The disqualifying evidence under the whole-person concept is more substantial than the mitigating evidence. Applicant failed to timely file federal and state income tax returns for 2011. Although he contends he eventually filed the state return, and claims the federal issue is under review by the IRS, he has offered no documentation to support his contentions or his claim. Applicant conceded that he "probably could have" addressed his smaller delinquent debts, and did not say he was "totally unable to" do so, but in trying to take care of his family, those debts were put aside. Instead of addressing even the smallest of his delinquent debts (a \$59 bill for veterinary services to one of his dogs or a \$90 medical bill for his ex-wife), Applicant chose to purchase a motorcycle, pay off a truck, and repair his cohabitant's damaged vehicle. In prioritizing his debts, Applicant simply ignored the delinquent ones. When asked about delinquent debts in his SF 86 Applicant responded that he did not have any when in reality, he did. From his actions and attitude, it appears that he had no intention to address his delinquent accounts. He has established no plan to do so. Applicant's long-standing failure to repay creditors, at least in reasonable amounts, or to arrange payment plans, reflects traits which raise concerns about his fitness to hold a security clearance.

I am mindful that any one factor, considered in isolation, might put Applicant's credit history in a sympathetic light. I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>56</sup> The absence of any efforts or evidence to reflect actual payments to his SOR

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<sup>56</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

creditors are sufficient to raise continuing security concerns. The absence of more timely efforts to file his 2011 federal and state income tax returns is also disquieting. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:<sup>57</sup>

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 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 negative track record of making no efforts to pay his creditors, and generally ignoring them. And, he failed to timely file his 2011 federal and state income tax returns. Overall, the record evidence leaves me with substantial questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations and personal conduct.

### **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:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant

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<sup>57</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant

Paragraph 2, Guideline E:	AGAINST APPLICANT
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Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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ROBERT ROBINSON GALES  
Administrative Judge