



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-05476

Appearances

For Government: Tara Karoian, Esq., Department Counsel and
John B. Glendon, Esq., Deputy Chief Department Counsel
For Applicant: Sheldon I. Cohen, Esq.

12/04/2015

Decision

HARVEY, Mark, Administrative Judge:

Applicant's credit reports and statement of reasons (SOR) showed one judgment and 13 collection accounts totaling \$50,663. He filed his federal and state tax returns late for tax years 2010 to 2014. All of his SOR debts are resolved, except for one debt totaling about \$4,700, and his \$13,000 federal tax debt; both debts are in payment plans. Applicant retired from Navy service as a chief petty officer after serving 20 years of active service, including 11 years of sea duty. For 30 years he has made important contributions to national security and established a track record of integrity and honesty. Financial considerations security concerns are mitigated. Access to classified information is granted.

History of the Case

On March 22, 2014, Applicant completed and signed an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86) (Government Exhibit (GE) 1) On December 10, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF could not make the affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. (HE 2) Specifically, the SOR set forth security concerns arising under the financial considerations guideline.

On February 24, 2015, Applicant responded to the SOR, and on March 3, 2015, he requested a hearing. On June 27, 2015, Department Counsel was ready to proceed. On August 7, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for September 10, 2015. (HE 1) The hearing was held as scheduled. (Transcript (Tr.) 1)¹ During the hearing, I approved Applicant's request to recess the hearing because he was not prepared to fully address his financial issues. On September 22, 2015, DOHA issued a hearing notice continuing the hearing to October 22, 2015. (HE 2) The hearing was held as scheduled.

During the hearing, Department Counsel offered three exhibits, which were admitted into evidence without objection. (Tr1. 20-21; Tr2. 9; Government Exhibit (GE) 1-3) Department Counsel offered statistics from the Internal Revenue Service (IRS) showing Applicant's adjusted gross income (AGI) (averaging about \$220,000 from 2010 to 2014) placed him in the top four percent of U.S. taxpayers. (Tr2. 165) Applicant objected due to lack of relevance. (Tr2. 166) The exhibit has limited relevance because it does not take into consideration the characteristics of the individual taxpayer. (Tr2. 166-167) Applicant offered 45 exhibits, and 40 were admitted without objection. (Tr1. 1, 20-21; Tr2. 52; Applicant Exhibit (AE) A-SS) Department Counsel objected to AEs S, U, BB, NN, and OO because they are charts or tables Applicant prepared. (Tr2. 53-58, 197-198) Applicant's memorandum of law on admissibility of tables or charts is attached to the record as HE 6. (Tr2. 61) Admission was deferred pending Applicant's statements about the content of the tables. (Tr2. 59-60) The tables Applicant generated had some errors. (Tr2. 97-99)

At the time of the hearing, Applicant's federal tax transcripts, which are generated by the IRS after receipt of Applicant's income tax returns, were unavailable. Those transcripts were subsequently provided and admitted as an exhibit. (AE TT) The IRS transcripts were used to generate the table at page four, *infra*. Department Counsel objected based on hearsay and lack of relevance to admission of a Law Blog discussing legal problems of one of the collection agents seeking funds from Applicant. (Tr2. 101-105; AE U) Department Counsel and Applicant's objections go to the weight the exhibits receive. All objections to admissibility were overruled. (Tr2. 95-96, 105, 122, 166-168, 198) After the hearing Applicant provided four additional exhibits, which were admitted without objection. (AE TT-WW) On September 18, 2015, the first transcript was received (Tr1). On November 3, 2015, the final exhibit was received, and the record was closed. (AE UU) On November 5, 2015, the second transcript was received. (Tr2)

¹The citations to the transcript for the first hearing are Tr1., and citations to the second hearing are Tr2.

Findings of Fact

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 1.f and 1.k. He denied the remaining SOR allegations, and he also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 51-year-old employee of a defense contractor, who is seeking a security clearance. He provides advice on systems in development. (Tr2. 174) In 1981, he graduated from high school. (Tr1. 5) He served on active duty in the U.S. Navy from 1986 to 2006. (Tr1. 7; AE EE) In 2007, he received a bachelor of science degree in information technology management. (Tr1. 6) He completed half of a master's degree. (Tr1. 6) He completed 11 years and 2 months of sea service. (AE EE) Applicant was promoted to master chief petty officer (E-9) after 16 years of active Navy service. (Tr2. 64; AE EE) In the Navy he operated and maintained systems. (Tr1. 6) In 1989, he married, and he has two sons, who are 20 and 21 years old and are in college. (Tr1. 42; GE 1) He has held a security clearance for more than 29 years. (Tr1. 7) There are no allegations of security violations. (Tr1. 16)

Financial Considerations

Applicant's finances were harmed when he attempted to keep the mortgage on his residence in state C in current status; his spouse was excessively spending; and he financially supported his brother's family and his sister. (Tr2. 79-82) In 2002, Applicant purchased his residence in state C for \$335,000; he made a down payment of \$18,000; and he financed the remainder. (Tr1. 35-36; Tr2. 70-71, 181) The monthly payments were about \$3,000. (Tr2. 70-71)

In September 2006, Applicant put his home in state C on the market for \$450,000 in preparation for moving in December 2006, to state V after retirement from active Navy service. (Tr1. 16, 37) The housing bubble burst, and there was a dramatic, unprecedented drop in residential real estate values in state C. In a short time, Applicant lost \$120,000 in market value of his home in state C, and the property was "underwater" as the market value was substantially less than his mortgage. (Tr1. 16-19, 37, 46) In 2008, housing prices declined 39 percent in his county, and 8 percent of the housing units in his county were in foreclosure. (SOR response, enclosure 2) Applicant was unable to sell his home in state C. (Tr1. 17) From 2006 to 2010, Applicant had a monthly negative cash flow of from \$1,500 to \$3,000 on the house in state C, and he had a substantial tax deduction from owning a home in state C, while living in state V. (Tr1. 18; Tr2. 83, 153, 175) In 2009, he stopped making mortgage payments on his home in state C. (Tr1. 45; Tr2. 82-83) Starting in 2010, his federal income taxes increased by about \$8,000 annually after the mortgage lender foreclosed on the property in state C. (Tr2. 71, 83, 175-177) Applicant did not receive any funds from the transfer of his residence in state C to the mortgage company. (Tr2. 71) The SOR does not allege that the foreclosure raised a security concern, and there is no evidence the mortgage lender is seeking payment from Applicant.

In 1996, Applicant's spouse had postpartum depression. (Tr2. 72) She was later diagnosed with paranoid schizophrenia and then bipolar II with manic episodes. (Tr2. 71) In 2003, she heard voices. (Tr2. 73) She continues to suffer from emotional and mental problems. (Tr2. 21, 28-29) She was delusional and paranoid. (Tr2. 39) She suspected Applicant's mother and others of conspiring against her. (Tr2. 43, 73-74) She spent money excessively. (Tr2. 31-32, 40, 76) Her monthly expenditures on unnecessary items were about \$1,600. (Tr2. 76-77) She shopped and spent heavily. (Tr2. 39) She purchased items the family never used. (Tr2. 40-41) Applicant is patient and supportive. (Tr2. 22) Eventually, Applicant separated his accounts from his spouse's accounts. (Tr2. 77, 123-124) TRICARE covered most of her medical treatment. (Tr2. 75; AE AA)

In 2009, Applicant's brother, his brother's wife, and his brother's 10-year-old daughter lived with Applicant's family for one year because Applicant's brother was unemployed. (Tr2. 36-37) Applicant was very generous and provided food and support for his brother's family when they lived together and later after his brother's family moved out on their own. (Tr2. 38, 44) Applicant also provided financial support to his sister. (Tr2. 45) Applicant is honest and "a man of true faith and integrity." (Tr2. 45)

Applicant's history of delinquent debt is documented in his credit reports, SF 86, SOR response, and hearing record. Applicant's SOR alleges and the record establishes the following financial information:

SOR ¶¶ 1.a and 1.b allege Applicant failed to file state tax returns for tax years 2010 through 2013, and federal tax returns for tax years 2010 through 2012. Applicant explained why he did not timely file his tax returns as follows, "That period of time was very overwhelming. I was dealing with a lot of work, a lot of issues with my wife, a lot of financial stress, and I was - - I just failed to meet my responsibility as far as that's concerned." (Tr2. 155) He drafted his tax returns and could have filed them timely; however, he believed he would have to send funds for the taxes owed with the returns, and he did not have the funds to do so. (Tr2. 178, 180-181) He described 2010 to 2013 as "the worst three-year period of my life. And I will stipulate that I did a poor job." (Tr2. 178) He did not obtain legal advice about filing his tax returns, and he was not aware that it was a misdemeanor not to file his tax returns. (Tr2. 179)

By the time his hearing occurred, Applicant had filed his federal and state tax returns, and he paid all of his state taxes and most of his federal income taxes. (Tr2. 89-91, 96-97, 123, 153; AE D; AE E; AE P; AE DD; AE PP; AE SS; AE TT) His state tax returns were filed at the same time as his federal income tax returns. (Tr2. 90; AE SS; AE TT) His records establish the following federal income tax information (amounts are rounded to nearest thousand dollars for privacy reasons) (AE TT):

Tax Year	Date Federal Income Tax Return Filed	Adjusted Gross Income ²	Income Tax Withheld or Paid ³	Income Tax Owed	Refund or Deficit () including Penalties and Interest
2010	May 16, 2014	\$189,000	\$33,000	\$32,000	\$0
2011	May 16, 2014	\$224,000	\$44,000	\$40,000	\$0
2012	May 16, 2014	\$245,000	\$48,000	\$46,000	(\$1,000)
2013	Feb. 24, 2015	\$224,000	\$30,000	\$40,000	(\$14,000)
2014	Oct. 5, 2015	\$217,000	\$40,000	\$39,000	\$1,000

Applicant has an established payment plan where the IRS has agreed to accept payment of \$400 monthly from Applicant. (Tr2. 92; AE Q) For tax years 2010 to 2014 Applicant paid the IRS \$195,000, and has a federal tax debt for \$13,000. (Tr2. 92; AE TT) This is approximately the total of interest and penalties remaining from under withholding of his monthly payments and late filing of his federal income tax returns for 2010 to 2014. (AE TT) He plans to pay the remainder of his IRS debt in 12 months. (Tr2. 93)

The credit card debt in SOR ¶ 1.c for \$6,378 is for a judgment filed in October 2010—**Paid**. (AE VV) Applicant contacted the creditor, and the creditor said no payment was due. (AE VV; AE WW at 3-4) In October 2015, the creditor provided a printout showing Applicant made payments from 2008 to 2013. (AE VV at 4-5) On November 2, 2015, the creditor, who obtained the judgment, filed a satisfaction of judgment with the court. (Tr2. 99-100, 126-131; GE 3 at 22; AE CC at 6; AE VV at 12-13)

SOR ¶ 1.d alleges a collection account for \$210—**Paid**. On August 14, 2015, Applicant paid \$314 resolving this debt. (Tr2. 100; AE F)

SOR ¶ 1.e alleges a collection credit card account for \$14,135—**Paid**. In 2010, Applicant entered into a payment agreement with the collection agent. (AE G; GE 2 at 4) Applicant had two accounts with the same creditor; he said he paid the debt; and he disputed the continued entry of this collection account on his credit report. (Tr1. 26-27; Tr2. 100-106, 132-141; GE 3 at 13; AE G; AE U) Applicant's April 5, 2014 combined credit report shows that an account owed to this creditor was "legally paid in full for less than full amount"; the account is closed; and the balance is zero. (Tr2. 86, 106-107; GE 2 at 4) The entry for the collection credit card account does not appear on Applicant's 2015 credit reports as having a delinquent balance. (Tr2. 135-136; AE T; AE CC; AE WW)

SOR ¶ 1.f alleges a collection account for \$4,931—**Paid**. On August 13, 2015, he paid the creditor \$2,000, resolving the debt. (Tr2. 107-108; AE H; AE V; AE QQ)

²Department Counsel provided information from the IRS showing Applicant's AGI was in the top four percent of U.S. taxpayers. (GE 4)

³In September 2014, Applicant paid the IRS \$7,500. (Tr1. 51; Tr2. 93, 171-172; AE R; AE TT) In September 2015, Applicant paid the IRS \$26,680. (Tr1. 51-52) The funds paid in September 2015 were from Applicant's savings and his retirement account. (Tr1. 52)

SOR ¶¶ 1.g to 1.i allege three government collection accounts for \$250, \$2,029, and \$1,245—**Paid**. The three debts resulted from the Department of Veterans Affairs (VA) making payments for college credits, and then Applicant failed to complete the courses. On September 14, 2015, and October 1, 2015, he made payments resolving the three debts to the VA. (Tr1. 28-30; Tr2. 87, 109-112, 141-146; GE 2 at 10; GE 3 at 2, 14-15; AE T at 12; AE O; AE CC at 14; AE W; AE WW at 9-10)

SOR ¶ 1.j alleges a collection account for \$312—**Paid**. On August 13, 2015, Applicant paid \$12 bringing his account to a zero balance and resolving the debt. (Tr2. 112-114, 146-148; AE X)

SOR ¶ 1.k alleges a collection account for \$68—**Paid**. On August 14, 2015, Applicant paid the creditor \$69 resolving the debt. (Tr1. 30; Tr2. 114; GE 3 at 9; AE I)

SOR ¶ 1.l alleges a telecommunications collection account for \$544—**Paid**. On August 17, 2015, Applicant paid the creditor \$218 and settled the debt. (Tr1. 30-31; Tr2. 115; GE 2 at 15; GE 3 at 5; AE J)

SOR ¶ 1.m alleges a bank collection account for \$4,446—**Payment Plan**. On September 9, 2015, he paid the creditor \$697. (AE K; AE Z) On October 15, 2015, he paid the creditor \$400. (AE Z) Applicant has an October 23, 2015 payment plan to resolve this debt by paying \$4,697 no later than August 31, 2016. (Tr2. 31-32; Tr2. 115-119, 150-151; AE UU) He assures he will comply with the payment plan. (Tr. 115-119)

SOR ¶ 1.n alleges a collection account for \$1,330—**Paid**. Applicant said this debt resulted from attendance at a university. The university debt is paid. (Tr2. 108-109; GE 3 at 32; AE H; AE V; AE CC at 14; AE QQ; AE WW at 25) Applicant said this debt is a part of the debt in SOR ¶ 1.f. (Tr2. 119)

SOR ¶ 1.o alleges a collection-credit account for \$14,411, which resulted from a vehicle debt—**Paid**. His credit report indicates in June 2013, the debt was “paid in full for less than full balance.” (Tr2. 87-88, 119-120, 148-150, 189-190; GE 2 at 15; AE CC at 8; AE WW at 5, 17-18)

SOR ¶ 1.p alleges a collection account for \$374—**Paid**. On August 17, 2015, the Applicant paid the creditor \$374. (Tr2. 120-121; AE L)

Applicant chose to send his sons to expensive private high schools, which cost \$16,000 dollars each year. (Tr2. 156-157) College tuition for both sons totals \$48,000 annually. (Tr2. 161) He and his family also went on some vacations, using money that could have been spent to pay his creditors.

Applicant does not use credit cards. (Tr2. 79) His only debts are his federal income tax debt, his \$4,700 debt in SOR ¶ 1.m, and a \$420 monthly car loan debt. (Tr1. 33; Tr2. 123) He uses debit cards for purchases. (Tr2. 79) Applicant paid numerous debts as agreed in loan agreements over the years. (Tr2. 84-85, 88; GE 3; AE NN) He

has a net financial remainder each month of \$3,000. (Tr2. 121) He promised to timely file and pay his state and federal income taxes. (Tr2. 124) In 2010 or 2011, he received financial counseling. (Tr2. 186, 195-197)

Character Evidence

A friend and colleague, who has been working with Applicant since 2008 and held a security clearance since 1987, described Applicant as a respected professional. (Tr2. 15-17, 30) Applicant volunteers for his church. (Tr2. 17-18) He takes responsibility for his conduct, and he is candid, forthright, and honest. (Tr2. 21, 23) His integrity is beyond reproach. (Tr2. 23-26) His innovation, leadership, and energy enable him to make great contributions to mission accomplishment. (Tr2. 27, 34) He recommended reinstatement of Applicant's security clearance. (Tr2. 26)

Applicant provided seven character statements from friends, colleagues, supervisors, and his pastor. (AE HH-AE MM; AE RR) The authors of the statements have known Applicant from a few years to decades, and include statements from high-level Navy officials and senior officers who have held security clearances for many years. The statements laud Applicant's duty performance, leadership, trustworthiness, integrity, and important contributions to the national defense. The seven statements support continuation of his security clearance.

Applicant's awards are listed in his DD Form 214 and are as follows: one Armed Forces Expeditionary Medal (AFEM); four Sea Service Deployment Ribbons (SSDR); six Good Conduct Medals (GCM); two National Defense Service Medals (NDSM); five Battle "E" Ribbons (BER); one Southeast Asia Service Medal (SASM); three Navy and Marine Corps Achievement Medals (NMCAM); and one Navy Commendation Medal (NCM). (AE EE; AE FF) He also received numerous other lesser awards, such as, Sailor of Year, and he completed several training courses. (Tr2. 63; AE FF) Applicant provided several superlative enlisted performance evaluation reports, establishing his outstanding duty performance over many years. (Tr2. 63; AE GG)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines. These guidelines are not

inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(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." Applicant's history of delinquent debt is documented in his credit reports, SF 86, SOR response, and hearing record. Applicant's SOR alleges, and the evidence establishes Applicant had one judgment and 13 collection accounts totaling \$50,663. He also failed to timely file his state and federal tax returns for tax years 2010 to 2014. Failure to file tax returns may be a federal criminal offense as such conduct can violate 26 U.S.C. § 7203.⁴ The judgment for \$6,378 in SOR ¶ 1.c was satisfied in 2013; the debt in SOR ¶ 1.e for \$14,135 was resolved before the SOR was issued, and the debt in SOR ¶ 1.o for \$14,411 was also resolved in 2013, leaving about \$16,000 in debt to be explained or resolved. The Government established the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(g) requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

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

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(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;

⁴ 26 U.S.C. § 7203, willful failure to file return, supply information, or pay tax, provides:

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$25,000 (\$100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution.

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;⁵ and

(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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 20(a) through 20(d) apply, and 20(e) applies to the debt in SOR ¶ 1.e for \$14,135. When Applicant left active duty, he needed to move from state C to state V for employment reasons. The housing bubble burst, and the fair market value of his property became substantially less than his mortgage. His negative cash flow averaged about \$25,000 per year. Applicant's spouse suffered from bipolar disease, and she spent money on unnecessary items. Applicant's brother and his family moved in with Applicant when his brother became unemployed. These are all circumstances beyond his control which adversely affected his finances. He received financial counseling. All of his SOR debts are resolved, except for one debt totaling about \$4,700, which is in a payment plan, and a federal income tax debt of about \$13,000, which is in an

⁵The 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) in order to claim the benefit of [the "good faith" mitigating condition].

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

established payment plan. Applicant made some payments to address the debt in SOR ¶ 1.e; the debt was transferred several times; Applicant disputed the debt, and it was removed from his credit report.

Applicant's AGI was in the top four percent of U.S. taxpayers. This statistic does not take into account situations such as a large negative cash flow from a property or a spouse's mental and emotional problems. Applicant chose to send his sons to expensive private high schools instead of using his income to timely pay his income taxes, and the family took expensive vacations. He admitted he made some poor financial decisions. Applicant made excellent progress bringing his debts to current status.

Applicant's failure to timely file his tax returns and pay his taxes raises the most significant security concern. For tax years 2010 to 2014, Applicant paid the IRS \$195,000, and has a federal debt for interest and penalties of \$13,000. He filed his tax returns, and he has a payment plan to resolve his \$13,000 federal tax debt. He expressed sincere remorse and assured he will timely file and pay his federal and state taxes in the future. Based on his credible and sincere promise to timely file his tax returns and to pay his taxes, such conduct "is unlikely to recur and does not cast doubt on [Applicant's] current reliability, trustworthiness, or good judgment," and "there are clear indications that the problem is being resolved or is under control." His filing and payment of his taxes and other debts showed good faith. His efforts are sufficient to fully mitigate financial considerations security concerns. Even if Applicant provided insufficient information to mitigate security concerns under AG ¶ 20, he mitigated security concerns under the whole-person concept, *infra*.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

Applicant is a 51-year-old retired Navy chief petty officer. He served 11 years of sea duty and was awarded numerous medals, ribbons, and certificates during his active service. He has been employed by the same government contractor since 2007. He received a bachelor of science degree, and he completed half of a master's degree. Seven character statements and two witnesses laud Applicant's dedication to his family and church, duty performance, leadership, trustworthiness, integrity, and important contributions to the national defense. There is no evidence of any security or employment rule violations, alcohol abuse, use of illegal drugs, or criminal conduct.

Applicant's credit reports and SOR showed one judgment and 13 collection accounts totaling \$50,663. The judgment and his two largest debts were resolved before the SOR was issued, leaving him with about \$16,000 in unresolved debt. He also failed to timely file his state and federal tax returns for tax years 2010 to 2014. He filed his tax returns before his hearing, and he has a payment plan to resolve his \$13,000 federal tax debt.⁶ When an issue of delinquent taxes is involved, an administrative judge is required to consider how long the applicant waits after a tax debt arises to begin making payments and whether payments begin before or after a tax lien or levy is filed.⁷ There were no tax liens or levies filed against Applicant. All of his SOR debts are resolved, except for one debt totaling about \$4,700, which is in a payment plan.

Applicant acted responsibly under the circumstances by aggressively working to resolve his debts. His three 2015 credit reports indicate he has numerous paid and resolved accounts. He understands that he needs to pay his debts, and the conduct required to retain his security clearance. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . 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 has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past

⁶See ISCR Case No. 14-03358 at 3, 5 (App. Bd. Oct. 9, 2015) (reversing grant of a security clearance, noting \$150,000 owed to the federal government, and stating "A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information.").

⁷See ISCR Case No. 14-01894 at 2-6 (App. Bd. Aug. 18, 2015) (reversing grant of a security clearance, discussing lack of detailed corroboration of circumstances beyond applicant's control adversely affecting finances, noting two tax liens totaling \$175,000 and garnishment of Applicant's wages, and emphasizing the applicant's failure to timely file and pay taxes); ISCR Case No. 12-05053 at 4 (App. Bd. Oct. 30, 2014) (reversing grant of a security clearance, noting not all tax returns filed, and insufficient discussion of Applicant's efforts to resolve tax liens).

and present, favorable and unfavorable, should be considered in reaching a determination.) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant has established a “meaningful track record” of debt re-payment, and I am confident he will maintain his financial responsibility.⁸

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations concerns are mitigated.

Formal Findings

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

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.p: For Applicant

Conclusion

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

MARK HARVEY
Administrative Judge

⁸The Government has the option of following-up with more questions about Applicant’s finances. The Government can re-validate Applicant’s financial status at any time through credit reports, investigation, and interrogatories. Approval of a clearance now does not bar the Government from subsequently revoking it, if warranted. “The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance.” ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E, and may support future revocation of a security clearance. An administrative judge does not have “authority to grant an interim, conditional, or probationary clearance.” ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, “The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow her the opportunity to have a security clearance while she works on her financial problems.”). This footnote does not imply that this decision to grant Applicant’s security clearance is conditional.