



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-11111
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert E. Coacher, Esquire, Department Counsel  
For Applicant: *Pro Se*

June 12, 2008

**Decision**

---

GALES, Robert Robinson, Chief Administrative Judge:

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

**Statement of the Case**

On February 20, 2006, Applicant applied for a security clearance and submitted an e-QIP version of a Security Clearance Application (hereinafter SF 86). On December 21, 2007, the Defense Office of Hearings and Appeals (DOHA) 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; and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why DOHA 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, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

It should be noted that on December 29, 2005, the President promulgated revised *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information*, and on August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing implementation of those revised Adjudicative Guidelines (hereinafter AG) for all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended and modified (Regulation), in which the SOR was issued on or after September 1, 2006. The AG are applicable to Applicant's case because his SOR was issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on January 16, 2008.<sup>1</sup> In a sworn, written statement, notarized February 2, 2008, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. However, on February 13, 2008, pursuant to ¶ E3.1.7., Enclosure 3 of the Directive, *Additional Procedural Guidance*, Department Counsel requested a hearing before an Administrative Judge. Department Counsel indicated the Government was prepared to proceed on February 14, 2008, and the case was assigned to me on February 15, 2008. Applicant was unavailable to attend a hearing tentatively scheduled for mid-March 2008, so a Notice of Hearing was issued on March 31, 2008, and I convened the hearing, as scheduled, on May 7, 2008.

During the hearing, nine Government exhibits and seven Applicant exhibits were received without objection, and Applicant testified. The transcript of the hearing (Tr.) was received on May 16, 2008.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted seven of the factual allegations in ¶¶ 1.g. through 1.m. of the SOR. He denied all other allegations with explanations.

Applicant is a 49-year-old employee of a defense contractor, and he is seeking to obtain a security clearance. He was previously granted a SECRET clearance in December 1981, and access to Sensitive Compartmented Information (SCI) in September 1992,<sup>2</sup> and has retained his clearance and access through periodic reinvestigations. He was married to his first wife from 1986 until her death in 2003, and married his current spouse in 2004. He has two children and two step-children.

Applicant earned a B.S. in Electronic Engineering in 1982, and as of February 2006, was still entered in a program leading to an M.S. in Engineering Management, although he has not taken a class since late 2002. From March 1994 until the present, Applicant has been gainfully employed, initially as a software engineer and currently as a senior staff software engineer, by a major defense contractor and its successor.<sup>3</sup> He

---

<sup>1</sup> Applicant erroneously wrote the date as 2007.

<sup>2</sup> Government Exhibit 1 (Security Clearance Application, dated Feb. 20, 2006), at 8-9.

<sup>3</sup> *Id.* at 3.

is highly respected by management and co-workers for his character, trustworthiness, and integrity.

Without his knowledge, Applicant's financial difficulties actually commenced when he followed his father's recommendation to invest in a limited partnership business venture involving genetic engineering of cattle in about 1982.<sup>4</sup> At the time he entered into the venture, the U.S. Government was offering tax incentives for such investments.<sup>5</sup> Applicant believes there were approximately 4,000 initial investors in the venture.<sup>6</sup> He invested several thousand dollars on an annual basis, and when he filed his state and federal income tax returns, reviewed by both an accountant and an attorney,<sup>7</sup> claimed the appropriate business deductions, resulting in tax credits or business losses.<sup>8</sup> Those credits and losses off set income taxes on his other sources of income, including his salary, and he received refunds of all taxes previously withheld based on his salary.<sup>9</sup> For an unspecified period, Applicant claimed to be exempt and that claim resulted in having no income taxes withheld from his salary.<sup>10</sup> However, at some point, believed by Applicant to have been in about 1986-87, the Internal Revenue Service (IRS) informed him that the claim of exemption was not appropriate so he increased his exemptions.<sup>11</sup>

The IRS eventually notified the investors that it would disallow all partnership deductions.<sup>12</sup> That notice was followed up by investigations of the venture by the Federal Bureau of Investigation (FBI).<sup>13</sup> Despite the controversy, he was advised by persons unspecified that the partnership attorneys and the IRS would eventually settle

---

<sup>4</sup> Government Exhibit 8 (Statement of Subject, dated Jul. 19, 1995), at 1; But see also Answer to SOR, dated Jan. 29, 2008, at 1, wherein Applicant claims he started investing in 1978, while still in college. During the hearing, Applicant stated his father had started investing in the venture in the mid-1970s. (Tr. at 27) While the specific date is not material, the facts supporting the later date are: (1) Applicant furnished the 1982 date in 1995, which was only 13 years after the fact, while the 1978 date was furnished in 2008, or approximately 30 years after the fact; and (2) in 1995, the IRS challenged the business deductions commencing in 1982, and did not go back to an earlier date.

<sup>5</sup> Government Exhibit 8, *supra* note 4, at 1.

<sup>6</sup> *Id.* at 2; Tr. at 28.

<sup>7</sup> Answer to SOR, *supra* note 4, at 1.

<sup>8</sup> Government Exhibit 8, *supra* note 4, at 1-2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

the matter.<sup>14</sup> Nevertheless, litigation ensued involving other partners, but Applicant was not a party. Based on the advice of Applicant's attorney, both Applicant and his father ceased their respective investments in the venture in about 1991-92.<sup>15</sup>

Tax audits conducted by the IRS resulted in all of Applicant's previous venture-related deductions being denied, and he was assessed large accumulated interest and penalty balances for the tax years 1982 through 1986.<sup>16</sup> Large deficiencies were also proposed for the tax years 1987 through 1995.<sup>17</sup> In 1995, federal and state tax liens were placed against his property on several occasions, and the IRS levied his wages and a savings account.<sup>18</sup> Because of the loss of salary and savings, through garnishment or levy, to offset his tax deficiencies, he began to experience substantial financial difficulties and used credit cards to meet living expenses.<sup>19</sup>

Applicant subsequently sold stock to pay off some credit cards<sup>20</sup> and, to resolve a tax issue with the state, voluntarily agreed to the sale of a timeshare to satisfy the balance.<sup>21</sup> He also cooperated with the IRS, and by a combination of agreed payment arrangements, and relatively recent overpaid income taxes which would be applied to his unpaid balances, he has been addressing them as well.<sup>22</sup> Despite his financial difficulties, Applicant has managed to remain current in all his other accounts.<sup>23</sup>

Although some of the issues regarding the limited partnership were before the U.S. Tax Court, the matter was subsequently dismissed. Applicant's attorney advised him the IRS had decided not to pursue the matter any further, and the liens had expired.<sup>24</sup>

The SOR identified 13 allegations, including 10 which purportedly refer to continuing delinquencies. Applicant contends several of the allegations refer to tax liens

---

<sup>14</sup> Government Exhibit 8, *supra* note 4, at 1.

<sup>15</sup> Answer to SOR, *supra* note 4, at 1; Tr. at 28.

<sup>16</sup> Government Exhibit 9 (Statement, dated Aug. 8, 1996), at 1.

<sup>17</sup> Government Exhibit 8, *supra* note 4, at 3.

<sup>18</sup> Government Exhibit 2 (Attachments 1-4 Notices of Federal Tax Lien, various dates), Answers to Interrogatories, dated Oct. 1, 2007); Government Exhibit 7 (State Notification of Tax Lien, dated Mar. 7, 1995); Government Exhibit 9, *supra* note 16, at 2; Answer to SOR, *supra* note 4, at 1.

<sup>19</sup> Government Exhibit 9, *supra* note 16, at 2-3.

<sup>20</sup> *Id.* at 2.

<sup>21</sup> Answer to SOR, *supra* note 4, at 2.

<sup>22</sup> *Id.* at 1.

<sup>23</sup> *Id.* at 2.

<sup>24</sup> *Id.* at 1.

which were, in his opinion, not legitimate because the lien had expired or the balance had been paid off. Some of his contentions have merit. The evidence and information offered by the Government consists of two written statements by Applicant, his answers to SOR and to the interrogatories, two credit reports, and notices and correspondence from the IRS and the state taxing authority. The 13 debts listed in the SOR, and their respective purported current status, according to the totality of the combined evidence, as well as Applicant's comments regarding same, are described below:

SOR ¶	TYPE DEBT	AMOUNT	STATUS
1.a.	IRS tax lien – years unspecified (determined to be 1982-85) <sup>25</sup>	\$159,621	unpaid – lien refiled Dec. 17, 1998 <sup>26</sup>
1.b.	IRS tax lien - years unspecified (determined to be 1993-94) <sup>27</sup>	\$3,285	paid and lien released Aug. 2, 2006 <sup>28</sup>
1.c.	IRS tax lien - years unspecified (determined to be 1982) <sup>29</sup>	\$31,129	unpaid – lien included in lien refiled in Dec. 1998 <sup>30</sup>
1.d.	IRS tax lien - years unspecified (determined to be 1983-85) <sup>31</sup>	\$76,216	unpaid – lien included in lien refiled in Dec. 1998 <sup>32</sup>
1.e.	IRS tax lien - years unspecified (determined to be 1986) <sup>33</sup>	\$12,361	paid and lien released Aug. 2, 2006 <sup>34</sup>
1.f.	state tax lien – years unspecified (determined to be 1983-86) <sup>35</sup>	\$22,883	wage garnishment - lien released 1999-2000 <sup>36</sup>

<sup>25</sup> Applicant Exhibit B (Notice of Federal Tax Lien, dated Dec. 17, 1998), referring to tax periods ending 1982, 1983, 1984, and 1985.

<sup>26</sup> *Id.*

<sup>27</sup> Government Exhibit 2 (Attachment 4 – Notice of Federal Tax Lien, dated Feb. 27, 1996), *supra* note 18, referring to tax periods ending 1993 and 1994.

<sup>28</sup> *Id.* Attachment 5 – Certificate of Release of Federal Tax Lien, dated Aug. 2, 2006, referring to tax periods ending 1993, and 1994, as well as 1986.

<sup>29</sup> *Id.* Attachment 3 – Notice of Federal Tax Lien, dated May 5, 1995, referring to tax period ending 1982.

<sup>30</sup> Applicant Exhibit B, *supra* note 25.

<sup>31</sup> *Id.* Attachment 1 – Notice of Federal Tax Lien, dated Feb. 22, 1995, referring to tax periods ending 1983, 1984, and 1985.

<sup>32</sup> *Id.*; Applicant Exhibit B, *supra* note 25.

<sup>33</sup> Government Exhibit 2 (Attachment 2 – Notice of Federal Tax Lien, dated Feb. 22, 1995), *supra* note 18, referring to tax period ending 1986.

<sup>34</sup> *Id.* Attachment 5 – Certificate of Release of Federal Tax Lien, dated Aug. 2, 2006), referring to tax periods ending in 1986, as well as 1993 and 1994.

<sup>35</sup> Government Exhibit 7 (State Taxing Authority Notification of Tax Lien, dated Mar. 7, 1995) referring to tax periods ending in 1983, 1984, 1985, and 1986.

SOR ¶	TYPE DEBT	AMOUNT	STATUS
1.g.	state tax deficiency for timeshare – years unspecified	unspecified	paid through sale of timeshare <sup>37</sup>
1.h.	state tax deficiency – years unspecified (believed to be identical to 1.f.)	\$32,857	wage garnishment – paid off 1999-2000 <sup>38</sup>
1.i.	IRS tax deficiency – years unspecified (determined to be 1983-86) <sup>39</sup>	\$112,450	wage garnishment – duplicates liens filed by IRS, but only \$1,000 actually taken <sup>40</sup>
1.j.	IRS tax deficiency - 1999	\$6,164	paid by overpayment – 2006 <sup>41</sup>
1.k.	IRS tax deficiency - 1993	\$697	paid by overpayment – 2006 <sup>42</sup>
1.l.	IRS tax deficiency - 1992	\$8,021	paid by overpayment – 2006 <sup>43</sup>
1.m.	IRS tax deficiency - 1994	\$2,492	paid by overpayment – 2006 <sup>44</sup>

Thus, it appears that Applicant has satisfied, either through direct payments, garnished wages, or tax overpayments, before the SOR was issued, the delinquencies identified in each of the allegations set forth in the SOR except for those in SOR ¶¶ 1.a., 1.c., and 1.d. They refer to the refiled (in December 1998) federal tax liens covering the tax periods 1982-85, which Applicant contends have expired, and a wage garnishment for a period covered by some of those liens (under 1.i.). In fact, the federal tax lien for 1982-85 continues in force until December 2008, unless it is released prior thereto. As

<sup>36</sup> Answer to SOR, *supra* note 4, at 2-3.

<sup>37</sup> *Id.* at 2

<sup>38</sup> Answer to SOR, *supra* note 4, at 2-3.

<sup>39</sup> Government Exhibit 8, *supra* note 4, at 2.

<sup>40</sup> Tr. at 40.

<sup>41</sup> Applicant Exhibit H (IRS Notice of Overpaid Tax Applied to Other Taxes You Owe, dated Aug. 14, 2006 and Nov. 20, 2006), at 2-3, referring to overpaid tax on 2004 and 2005 tax returns being applied to deficiency for period ending 1999. In this regard, Applicant was apparently confused when he stated in his Answer to SOR that he had not yet satisfied the balance. See, *Id.* at 3.

<sup>42</sup> *Id.* Applicant Exhibit H (IRS Notice of Overpaid Tax Applied to Other Taxes You Owe, dated Nov. 20, 2006), at 3, referring to overpaid tax on 2005 tax return being applied to deficiency for period ending 1993. Applicant was apparently confused when he stated in his Answer to SOR that he had not yet satisfied the balance.

<sup>43</sup> *Id.* Applicant Exhibit H (two IRS Notices of Overpaid Tax Applied to Other Taxes You Owe, dated Aug. 14, 2006), at 1-2, referring to overpaid tax on 2004 tax return being applied to deficiency for period ending 1992. Applicant was apparently confused when he stated in his Answer to SOR that he had not yet satisfied the balance.

<sup>44</sup> *Id.* Applicant Exhibit H (IRS Notice of Overpaid Tax Applied to Other Taxes You Owe, dated Aug. 14, 2006), at 1, referring to overpaid tax on 2003 tax return being applied to deficiency for period ending 1994. Applicant was apparently confused when he stated in his Answer to SOR that he had not yet satisfied the balance.

for the alleged garnishment in SOR ¶ 1.i., the Government evidence seemingly duplicates the evidence pertaining to federal tax liens covering the same period.

The Government has relied, in part, on two credit reports and a LexisNexis® Internet search,<sup>45</sup> as well as upon documents requested of Applicant in response to interrogatories pertaining to some tax liens which had allegedly been filed 12-15 years ago. Equifax furnished a 2007 Credit Report<sup>46</sup> and a 2008 Credit Report.<sup>47</sup> While both credit reports list the same five “current” liens and one released lien, the information appearing in the credit reports is inaccurate and incomplete. Moreover, the LexisNexis® Internet search revealed only the most superficial information about five federal tax liens, but fails to furnish the most salient of information: (1) what was the basis for the lien, and (2) what is the current status of the lien.

Applicant remains within a budget,<sup>48</sup> and generally has a monthly balance of about \$3,126.00 in discretionary funds available for his use.<sup>49</sup> His most recent federal income tax filing is anticipated to result in a refund of about \$9,000.<sup>50</sup>

### **Policies**

When evaluating an Applicant’s suitability for a security clearance, the Administrative Judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept.” The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

Since the protection of the national security is the paramount consideration, AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this

---

<sup>45</sup> Government Exhibit 3 (LexisNexis® Internet Search, dated Dec. 12, 2007).

<sup>46</sup> Government Exhibit 5, dated Dec. 11, 2007).

<sup>47</sup> Government Exhibit 4, dated Feb. 14, 2008.

<sup>48</sup> Government Exhibit 2 (Attachment 10 – Personal Financial Statement, undated), *supra* note 18,

<sup>49</sup> *Id.*

<sup>50</sup> Applicant Exhibit G (U.S. Individual Income Tax Return 2007 (Form 1040), undated), at 2.

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.

In the decision-making process, facts must be established by “substantial evidence.”<sup>51</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive. 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.

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 protect or 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.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Accordingly, 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.

## **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. . . .

---

<sup>51</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).



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. Also, AG ¶ 19(d), “deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust,” (emphasis supplied) and AG ¶ 19(g), “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of same” may raise security concerns as well. The evidence is sufficient to substantiate the debts and delinquencies set forth in each of the SOR allegations.

Without much warning, following tax audits, the IRS “hit” Applicant with substantial income tax, penalties, and interest because of his involvement in a previously approved investment in a limited partnership business venture which the IRS subsequently disallowed. Because of a dispute as to the IRS action, and listening to the legal advice of his attorney, the investment advice of the managing partners, and awaiting a decision by the U.S. Tax Court – a decision which never materialized because the litigation was dismissed – Applicant initially took no action in addressing the IRS actions. As a result of his initial inaction, the balances grew, wage garnishments were executed, and tax liens were filed. In one instance during this entire situation, but unrelated to it, Applicant overlooked the taxes on a timeshare. When it became apparent the IRS position would not change, Applicant was not immediately able to satisfy the demanded balances, and his delay in commencing to make payments on those balances constitute both an inability or unwillingness to satisfy debts and a history of not meeting financial obligations. The above actions are sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The issue pertaining to the federal and state tax liens is a different matter. The federal and state tax liens were filed against Applicant by the IRS in 1995-96, and some of the federal tax liens were refiled in 1998. There is no evidence to establish a failure by Applicant to file annual income tax returns as required in AG ¶ 19(g), and the evidence supports the opposite conclusion. Likewise, in the absence of a scintilla of evidence indicating any criminal action by Applicant, his actions in taking the business deductions, resulting in tax credits or business losses, and setting off income taxes on his other sources of income, does not constitute a “fraudulent filing” of income tax returns or “income tax evasion.” Moreover, the state income tax liens covering 1983-86, and the state tax deficiency for the timeshare were released or otherwise satisfied in 1999-2000. The federal tax liens covering 1986, 1993, and 1994, as well as the tax deficiencies covering 1992-94, and 1999, were all satisfied in 2006. The federal tax liens covering 1982-85 were to have expired several years ago and Applicant was convinced they had expired so he took no action on them. They were actually refiled in 1998. Applicant has now realized his error and is prepared to continue his efforts to satisfy those liens, but he has been advised by his attorney that the IRS is expected to allow the liens to expire in December 2008 without further action. I find AG ¶¶ 19(a) and 19(c) apply in this case.

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), “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” may raise security concerns as well.

Applicant’s initial participation in the business venture commenced because of the advice and guidance he had received from his father and an attorney, as well as based on the information he had received from the managing partners. Finally, after the IRS had altered its original position regarding the venture, and once again relying on the advice he received from his father and an attorney, his participation ceased in about 1991-92, and has not been resumed. Given Applicant’s harsh lesson learned, and the money his investments have cost him, I find the behavior is unlikely to recur, and it does not raise concerns about his current reliability, trustworthiness, or good judgment. I find AG ¶¶ 20(a) and 20(b) apply in this case.

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). In this instance, there is clear evidence of Applicant having received counseling for his financial issues from his father and his attorney, as well as experience gathered from the IRS interpretation and guidance of the law. Moreover, based on his actions, and elimination of the business venture from his continuing activities, there are clear indications that his financial issues have been resolved, are being resolved, or are under control. He no longer has anything to do with the venture and has tried to put the experience behind him.

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>52</sup> As noted above, Applicant sold stock to pay off some credit cards and, to resolve a tax issue with the state, sold a timeshare to generate enough money to satisfy the balance owed. He

---

<sup>52</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].

(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)).

also cooperated with the IRS, and by a combination of agreed payment arrangements, and overpaid income taxes to be applied to his unpaid balances, he began addressing them as well. To his credit, despite his investment-related financial difficulties, Applicant has managed to remain current in all his other accounts, and currently generally has a monthly balance of about \$3,126 in discretionary funds available for his use. He anticipated a \$9,000 refund from his most recent income tax filing. While there is still a pending federal tax lien covering the years 1982-85, he is clearly on his way to resolving his financial delinquencies and has made tremendous strides in doing so. His actions in addressing his debts indicate good-faith efforts on his part as well as showing clear indications the problem is now largely under control. I find AG ¶¶ 20(c) and 20(d) apply in this case.

Under AG ¶ 20(e), financial security concerns may be mitigated where “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 taken to resolve the issue.” What was once a legally acceptable business venture in the eyes of the IRS became an unacceptable business venture. The U.S. Tax Court became involved, but the litigation was dismissed. Applicant was advised that the venture was legal, and then advised the controversy would be settled. Consistent with the guidance he received from various quarters, Applicant believed the tax liens were not legitimate, and he stood his ground. However, he has now accepted the newly revised reality. He has provided written statements and testimony describing his actions and the result of those actions. I have considered his oral and written statements and examined his demeanor, and consider him to be candid, truthful, and credible. In these particular circumstances, he acted responsibly. I find AG ¶ 20(e) applies in this case.

It appears several of the SOR allegations duplicate other allegations. SOR ¶ 1.a. (\$159,621) refers to the tax years 1982-85. SOR ¶ 1.c. (\$31,129) refers to the tax year 1982, which is also part of the other lien. SOR ¶ 1.d. (\$76,216) refers to 1983-85, which is also included in the first lien. SOR ¶ 1.i. (\$112,450) refers to a federal wage garnishment on the large amount covering several of the same tax years, plus 1986, but the garnishment was cancelled after \$1,000 was taken. By alleging each of the above amounts separately, without specifying the individual tax years involved, or by failing to acknowledge payments already made or resulting official actions already taken, such as release of liens or cancellation of garnishments, the balance owed is made to appear considerably larger than the true balance. Furthermore, the general lack of specificity or accuracy in the allegations fail to furnish full notice to Applicant and merely serve to confuse the issues.

### **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) 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. On the recommendations of his father, counseling by an attorney, and with the guidance that the investment was legitimate, Applicant participated in the venture. (See AG ¶ 2(a)(2).) Upon learning of the revised IRS position regarding the investment, and with the advice of an attorney, Applicant ceased his participation in the venture in about 1991-92. (See AG ¶ 2(a)(3).) Since undergoing tax audits, and having federal and state tax liens filed and garnishments established, he has taken affirmative action and made substantial good-faith efforts to pay off or resolve his debts. (See AG ¶ 2(a)(6).) While it is true there are still liens covering the tax years 1982-85, those liens did not result in a current levy and, while the liens were refiled in 1998, they are expected to expire in December 2008 without further IRS action, making the amounts specified uncollectible. (See AG ¶ 2(a)(8).) Thus, these debts cannot be sources of improper pressure or duress. Finally, because of the lessons learned, and considering his monetary losses, the behavior is unlikely to recur. (See AG ¶ 2(a)(9).)

The issue is not simply whether all his debts are resolved; it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. I have evaluated the various aspects of this case in light of the totality of the record evidence.<sup>53</sup> Considering his continuing good-faith efforts, the circumstances behind the liens and garnishments, the duplication of some of those debts in the SOR, his continuing to receive and hold a security clearance and access to SCI throughout this entire financial situation without cause for alarm, and his current financial status regarding other accounts which never fell into delinquency, his past financial situation, and to a degree, the present federal tax liens which are about to expire, is insufficient to raise continuing security concerns. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations.

---

<sup>53</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)

## 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
Subparagraph 1.h.:	For Applicant
Subparagraph 1.i.:	For Applicant
Subparagraph 1.j.:	For Applicant
Subparagraph 1.k.:	For Applicant
Subparagraph 1.l.:	For Applicant
Subparagraph 1.m.:	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 Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

---

ROBERT ROBINSON GALES  
Chief Administrative Judge