DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 09-07064
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Ray T. Blank, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

August 29, 2011

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate security concerns arising under Guideline F, Financial Considerations. Clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on May 7, 2009. On May 6, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry,* dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program,* dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Applicant answered the SOR on June 4, 2010, and later requested a hearing on March 11, 2011. The case was assigned to me on May 18, 2011. DOHA issued a notice of hearing on June 2, 2011. The hearing was held as scheduled on June 22, 2011. Department Counsel offered exhibits (GE) 1 through 7 that were admitted into evidence without objection. Department Counsel's list of exhibits was marked as Hearing Exhibit (HE) 1. Applicant testified and offered exhibits (AE) A through M that were admitted into evidence without objection. Applicant's list of exhibits was marked as HE 2. The record was left open until July 5, 2011, for Applicant to submit additional matters. Applicant's Counsel timely submitted additional documents that he marked as AE M through U. Since there was already an AE M, the new documents were re-lettered as AE N through V and admitted into evidence without objection. On July 11, 2011, Applicant's Counsel submitted another document that was marked as AE W and admitted into evidence without objection. Applicant's list of supplement exhibits was marked as HE 3 and Department Counsel's email indicating he had no objection to those documents was marked as HE 4. The transcript (Tr.) of the hearing was received on July 6, 2011.

Findings of Fact

The SOR alleged that Applicant had a Chapter 7 bankruptcy dismissed in September 2004 and that he had 13 delinquent debts totaling $155,133. In his Answer, Applicant admitted with comments the allegations in SOR ¶¶ 1.a through 1.m and denied the allegation in SOR ¶ 1.n, a collection account in the amount of $4,884. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.[1]

Applicant is a 42-year-old employee who works for a defense contractor. He has worked for that contractor since April 2009. He is a high school graduate. He is divorced. The divorce proceeding was filed in September 2003 and granted in March 2004. Since May 2005, he has resided with his ex-wife and two children, ages 12 and 17. This is the first time that he has applied for a security clearance.[2]

From 1997 to 2002, Applicant and his brother operated a telecommunications business as equal partners. At first, the business prospered and they hired employees. In about 2000, the business encountered a downturn and customers began delaying payments or defaulting on their accounts. Applicant and his brother struggled to meet their financial obligations. As the business declined, they did not layoff employees, but failed to pay employee payroll taxes. This resulted in a tax deficiency amounting to

[1] Applicant's Answer to the SOR.

[2] Tr. 21-22, 32, 44-45; GE 1; AE O.

$256,000, half of which was Applicant's responsibly. The Internal Revenue Service (IRS) filed tax liens against Applicant in August 2002 for $128,000 and in November 2002 for $10,111. At the hearing, Applicant indicated that, although he and his brother did not pay the payroll taxes, they submitted the required reports to the IRS. The business closed in May 2002. Since then, Applicant started two other businesses that also failed. His last business failed in April 2009. These business failures resulted in him failing behind on a number of debts.[3]

After the debts became delinquent, Applicant did not make any payments towards them or contact the creditors for a number of years. In October 2003, he filed a petition for Chapter 13 bankruptcy protection. This proceeding was later converted to a Chapter 7 bankruptcy (SOR ¶ 1.a) and was dismissed in September 2004. In May 2010, he paid or settled-in-full four of the alleged delinquent debts. In August 2010, he filed a petition for Chapter 7 bankruptcy protection that resulted in a discharge of debts. The Chapter 7 bankruptcy petition reflected that Applicant had $15,919 in assets and $225,243 in liabilities, including his tax deficiencies. As part of that bankruptcy, he completed an approved credit counseling course in July 2010.[4]

Each of the alleged SOR debts is addressed below.

SOR 1.b – state tax lien of $344. At the hearing, Applicant indicated this tax lien was being paid by a wage garnishment until it was "satisfied" in the 2010 bankruptcy. In his post-hearing submission, he provided a Notice of Levy on Wages dated February 11, 2010, that reflected his wages were garnished for two state tax deficiencies. The first tax deficiency (totaling $5,379) was for the tax period ending December 1999. The second (totaling $418) was for the tax period ending December 2002. He also provided pay stubs covering the period from February 22, 2010, to July 11, 2010, that revealed $2,189 was garnished from his pay. Upon the filing of the bankruptcy petition, the garnishment would have been subject to the bankruptcy code's automatic stay provisions. It is not known, however, whether the state tax lien was discharged in the bankruptcy. As a general rule, state tax deficiencies are not discharged in bankruptcy, but there are exceptions. Applicant's credit report obtained after the bankruptcy discharge indicated that a state tax lien of $2,714 was released, but did not indicate whether the state tax lien of $344 (SOR ¶ 1.b) was either discharged or released. Insufficient evidence has been presented to establish this tax lien has been resolved.[5]

SOR ¶ 1.c – IRS tax lien of $128,000 and SOR ¶ 1.d – IRS tax lien of $10,111. Since incurring these federal tax liens in 2002, Applicant has not made any voluntary

[3] Tr. 22-24, 34-37, 40, 64; GE 1, 2, 3.

[4] Tr. 23, 26, 40-41, 45-47; GE 4, AE E, H, K, L, P, S, T, W. AE K indicated that the bankruptcy resulted in a discharge, but does not indicate the date of discharge.

[5] Tr. 26-27, 36, 42-44; GE 2, 4, 5, 7; AE K, L, Q. *See also* 11 U.S.C. §§ 362 (Automatic stay) and 523(a)(1) (Exceptions to discharge).

payments on them. However, his income tax refunds have been withheld and applied. In December 2010, the IRS issued a Certificate of Release of Federal Tax Lien indicating that he satisfied the IRS tax lien of $10,111 (SOR ¶ 1.d). No evidence was presented as to exactly how this tax lien was satisfied. Applicant testified that he thought the tax deficiency in SOR ¶ 1.d was included in SOR ¶ 1.c. Since he made no voluntary payments on the tax deficiencies, the tax lien in SOR ¶1.d most likely was satisfied through the withholding of his income tax refunds. In April 2011, he contacted the IRS to try to resolve the tax deficiency in SOR ¶ 1.c. On June 8, 2011, the IRS accepted Applicant's installment agreement offer to pay $200 per month on this remaining tax deficiency. Under this agreement, the first payment was due after the hearing on July 20, 2011. Thereafter, the payments are due on the 20th of each month until the full amount owed was paid. The letter from IRS indicated this agreement was tailored to Applicant's current financial condition and indicated that it could be revised if his ability to pay changes. The IRS also encouraged him to pay more than the agreed amount because penalties and interest charges continue to accrue until the account is paid in full. SOR ¶ 1.d is resolved. Insufficient evidence has been presented to establish that SOR ¶ 1.c is resolved.[6]

SOR ¶ 1.e – collection for medical debt of $192. This debt was placed for collection in January 2008. Applicant paid this debt in May 2010.[7]

SOR ¶ 1.f – collection for television service debt of $469. This debt was placed for collection in April 2009 and was discharged in the 2010 Chapter 7 bankruptcy.[8]

SOR ¶ 1.g – collection for telephone service debt of $318. This debt was placed for collection in September 2005. In May 2010, Applicant reached a settlement agreement with the collection company and paid this debt.[9]

SOR ¶ 1.h – collection for credit card debt of $630. The date of first delinquency/date of last activity for this debt was January 2006. This debt was discharged in the 2010 Chapter 7 bankruptcy.[10]

[6] Tr. 24-28, 31, 36-39, 57-59; GE 1-7; AE G, K, M, V. As noted above, Applicant claimed that the IRS tax lien of $10,111 was part of the IRS tax lien of $128,000. However, GE 7 reflects that the tax lien for $10,111 was filed after the other lien. Consequently, these were separate liens.

[7] Tr. 28, 47, 62-63; GE 2, 7, AE F, K, S, W. In AE S, the medical office indicated the debt was paid in May 2010, while the collection agency in AE W indicated it was paid in May 2011. Given the intervening bankruptcy, the medical office document would appear to contain the more accurate date.

[8] Tr. 28; GE 7, AE L.

[9] Tr. 28-30, 41-42, 54; GE 2, 7, AE H, N, P; Applicant's Answer to the SOR.

[10] Tr. 29, 47-48; GE 2, 7; AE L.

SOR ¶ 1.i – collection for jewelry store debt of $1556. The date of first delinquency/date of last activity for this debt was June 2005. In May 2010, Applicant settled this account with a payment of $305. The collection agency also issued him an IRS Form 1099-C reflecting that $627 of this debt was cancelled.[11]

SOR ¶ 1.j – collection for telephone service debt of $318. This debt is a duplicate of SOR ¶ 1.g, above. It is resolved.[12]

SOR ¶ 1.k – collection for telephone service debt of $634. The date of first delinquency/date of last activity for this debt was February 2005. Applicant reached a settlement agreement with the collection company and paid this debt in May 2010.[13]

SOR ¶ 1.l – vehicle repossession of $6,825. The date of first delinquency/date of last activity for this debt was July 2003. This debt was discharged in the 2010 Chapter 7 bankruptcy.[14]

SOR ¶ 1.m – collection for school loan of $852. Applicant obtained a school loan for an online course in 2006. Soon after he started the course, he realized that it was not what he expected and terminated the course. He disputed this debt unsuccessfully. At the hearing, he claimed this debt was discharged in bankruptcy. However, student loans are not dischargeable in bankruptcy unless that debt would impose an undue hardship on the debtor or his or her dependents. None of the exhibits reflect that this debt was discharged in the bankruptcy proceeding. Applicant's post-bankruptcy credit report indicated that this student loan is still outstanding with a balance of $1,726, and that its payment status is "Current, was past due 120 days." The payment history for this student loan indicated "ND" (no data) for the months of August through November 2010, and that $50 monthly payments were made from January to July 2010 as well as in December 2010 and January 2011. This student loan is being resolved.[15]

SOR ¶ 1.n – collection for vehicle loan of $4,884. Applicant indicated that he voluntarily returned this vehicle to the creditor when he filed his 2003 bankruptcy. At the hearing, he claimed this debt was discharged in his 2010 bankruptcy. This vehicle loan, however, was not listed in his 2010 bankruptcy petition. At the hearing, he stated that all debts on his credit report were listed in his bankruptcy petition. This vehicle loan,

[11] Tr. 29, 48-49, 63; GE 2, 7, AE T, U.

[12] Tr. 29-30, 41-42, 54; GE 2, 7, AE H, N, P; Applicant's Answer to the SOR.

[13] Tr. 29-30, 41-42, 54; GE 2, 7; AE H, N, P; Applicant's Answer to the SOR.

[14] Tr. 30, 49-50; GE 2, 7; AE L.

[15] Tr. 30, 50-51; GE 2; AE K, L. *See also* 11 U.S.C. § 523(a)(1) (Exceptions to discharge). The student loan listed in Applicant's bankruptcy petition is held by a different creditor than the one listed in the SOR. However, based on an examination of the inception date, amount, and number of student loans, these appear to be the same student loan.

however, was not listed in his credit reports dated March 16, 2010, and March 10, 2011, presumably due to the passage of time. Through no good-faith efforts by Applicant to satisfy this debt, it is no longer an ongoing debt and is considered resolved.[16]

On June 19, 2009, an investigator from the Office of Personnel Management (OPM) interviewed Applicant about his financial issues. During that interview, he acknowledged many of his delinquent debts and indicated that he was meeting his current financial obligations. Before filing his second bankruptcy, Applicant hired a debt consolidation agency to assist him in resolving his delinquent debts. In June and July 2010, he made payments to the debt consolidation agency. In responding to DOHA interrogatories, he submitted a personal financial statement dated December 9, 2009, that reflected he had a net monthly income of $2,750 and net monthly expenses of $1,850, monthly debt payments of $515, resulting in a net monthly remainder of $385. [17]

At the hearing, Applicant indicated that he was living with his ex-wife and sharing expenses with her. She is employed, but no evidence was presented about her income or exactly how they share expenses. His most recent credit report reflected that he has no open credit card accounts. In addition to his tax deficiencies (SOR ¶¶ 1.b and 1.c), this credit report reflects he has two accounts with outstanding balances, one is the student loan (SOR ¶ 1.m) and the other is a closed credit card account with a balance of $2,741. The closed credit card account, which was opened in August 2001, is listed as "current" with monthly payments of $41 having been made for the last two years and was not listed in either of his bankruptcy petitions, but was listed in his personal financial statement of December 2009.[18]

Applicant's federal income tax return for 2008 indicated that he had an adjusted gross income of $20,915 in 2008 and $18,580 in 2007. His latest bankruptcy petition indicated that his gross income from his businesses was $28,814 in 2009 and $18,434 in 2010. The petition also indicated that he had an average monthly income of $2,047 and average monthly expenses of $2,027, with a net monthly remainder of $20, and that he was laid off on June 26, 2010, and anticipated returning to work on August 9, 2010. At the hearing, he estimated he currently earned $45,000 per year.[19]

Applicant is held is high regard by his peers at work. His supervisor and coworkers submitted letters of reference that describe him as excellent technician with high degree of integrity, ambition, and responsibility. They consider him to be honest and trustworthy. His performance appraisals from his current employer reflect that he

[16] Tr. 30, 52-53; GE 2, 7; AE L.

[17] Tr.55-57, 59-62; GE 2, 3; AE F, P.

[18] Tr. 44-45; GE 2; AE K, P.

[19] Tr. 22; AE L, R.

performs at the "above expected" level. One appraisal indicated that he "is a team player, a true professional, and an asset to the [company]."[20]

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs 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 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 unfavourable, to reach his decision.

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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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. *See also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or 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.*

[20] AE A-D, I, J.

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 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 or her] 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

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18 as follows:

> 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. Two are potentially applicable in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to satisfy his financial obligations for a number of years. This evidence is sufficient to raise the above disqualifying conditions.

Several Financial Considerations 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;

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

From 1997 to 2009, Applicant operated a number of businesses that failed. Specifically, from 1997 to 2002, he and his brother were equal partners in a business that failed. During a business downturn in about 2000, they decided not to layoff employees even though they were unable to pay the payroll taxes for those employees. This decision, while compassionate, was not prudent financially and resulted in a significant tax deficiency. In 2002, two federal tax liens totaling $138,111 were filed against him. In 2003 and 2004, he also went through a divorce proceeding. The business downturn, his divorce, and his short period of unemployment in 2010 were conditions beyond his control that contributed to his financial problems. However, his decision to keep employees on the job and not pay their payroll taxes was a matter within his control. To obtain full credit under AG ¶ 20(b), both prongs of that mitigating condition, *i.e.*, conditions beyond the person's control and responsible conduct, must be established. Applicant continued to start new businesses but took no action to resolve the tax liens for almost eight years. He also took a number of years to resolve other debts. Although he had limited income from 2007 to 2009, his failure to address the alleged debts for years weighs against a determination that he acted responsibly under the circumstances. AG ¶ 20(b) partially applies.

Many of Applicant's delinquent debts have been resolved recently. In May 2010, he settled or paid the delinquent debts in SOR ¶¶ 1.e, 1.g, 1.i, and 1.k. As part of his bankruptcy requirements, he received financial counseling in July 2010. The debts in SOR ¶¶ 1.f, 1.h, and 1.l were discharged in his 2010 bankruptcy. In December 2010, the IRS indicated that he satisfied the tax deficiency in SOR ¶1.d and released him from that lien. This was most likely satisfied through an involuntary tax refund withholding. The delinquent debt in SOR ¶ 1.n apparently fell off his credit reports due to the passage of time and, therefore, was not included in his bankruptcy petition. Additionally,

although he thought the student loan in SOR ¶ 1.m was discharged in bankruptcy, this debt is still listed on his post-bankruptcy credit report as outstanding and in a "current" status. AG ¶ 20(d) applies to SOR ¶¶ 1.d, 1.e, 1.g, 1.i, 1.k, and 1.m. AG ¶ 20(c) applies to SOR ¶¶ 1.f, 1.h, 1.l, 1.m, and 1.n.

Two of Applicant's alleged debts remain unresolved. One of these is minor (SOR ¶ 1.b is for $344) and the other is major (SOR ¶ 1.c is for $128,000). Of note, the Appeal Board has stated,

> As a general rule, an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan. Depending on the facts of a given case, the fact that an applicant's debts will not be paid off for a long time, in and of itself, may be of limited security concern.[21]

In 2002, Applicant incurred the $128,000 tax lien. He neglected to take action on it until he contacted the IRS in April 2011. Two weeks before the hearing, he entered into an installment agreement with the IRS for that tax deficiency. Under that agreement, he is required to make monthly payments of $200 until the full amount owed is paid. Applicant had not made any voluntary payments on that tax deficiency. Of concern is his ability to make the agreed monthly payments. His 2010 bankruptcy petition provided the most recent information about his current financial situation. As noted in that petition, he had $20 of disposable income per month that he could apply towards the tax deficiency. Based on the record evidence, he failed to show that he is able to make the required monthly payments. Furthermore, his eight-year delay in attempting to resolve this tax deficiency casts doubt on his current reliability, trustworthiness, and good judgment. These last-minute efforts fail to mitigate the security concerns that arise from the remaining federal tax lien. Given the doubtful nature of his current plan for resolving this tax lien and his lengthy period of inaction in addressing it, I cannot find that he acted "responsibly given his circumstances and develop[ed] a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." Applicant knew in 2002 that he had tax liens yet he continued to open businesses and incurred additional delinquent debts, including two repossessed vehicles, and never contacted the IRS to address the tax liens. His only payment towards his tax liens were involuntary tax refund withholdings. I find he has failed to establish a meaningful track record for addressing this significant tax deficiency. AG ¶ 20(a) does not apply. SOR ¶ 1.c remains a security concern.

[21] ISCR Case No. 09-08462 at 3 (App. Bd. May 31, 2011).(citing ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

Applicant established that the delinquent debt in SOR ¶ 1.j was a duplicate of the one in SOR ¶ 1.g. AG ¶ 20(e) applies to SOR ¶ 1.j.

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.

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. AG ¶ 2(c).

The comments in the Analysis section of this decision are incorporated in the whole-person concept analysis. I have considered Applicant's service to his employer. He performs at the "above expected" level. His supervisor and coworkers hold him in high esteem and consider him trustworthy. Nevertheless, he accumulated a number of delinquent debts over a ten-year period that he began to resolve only after initiation of the security clearance process. Applicant and his brother consciously chose not to pay the mandated payroll taxes for their employees. He neglected this tax lien for eight years. He eventually resolved one tax lien through tax refund withholdings. Three of his delinquent debts were discharged in bankruptcy, while another apparently fell off of his credit report. Applicant has a poor history of financial responsibility. It is simply too soon to determine whether his financial problems are behind him. He has failed to establish a meaningful track record of addressing his significant tax lien in SOR ¶ 1.c. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person concept, I conclude he has not mitigated security concerns pertaining to financial considerations.

I take this position based on the law, as set forth in *Department of Navy v. Egan,* 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. Applicant has not fully mitigated or overcome the Government's case. For the reasons stated, I conclude he is not eligible for access to classified information.

Formal Findings

Formal findings 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:	For Applicant
Subparagraphs 1.b – 1.c:	Against Applicant
Subparagraphs 1.d – 1.n:	For Applicant

Decision

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Clearance is denied.

_____
James F. Duffy
Administrative Judge