



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



In the matter of:)
)
)
-----) ISCR Case No. 09-08491
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: Monte L. Barton, Jr., Esquire

September 14, 2010

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On June 16, 2009, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing version of a Security Clearance Application (e-QIP).¹ On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) furnished him a set of interrogatories pertaining to his financial situation. He responded to the interrogatories on February 14, 2010.² On March 31, 2010, 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and

¹ Government Exhibit 1 (e-QIP), dated June 16, 2009.

² Government Exhibit 3 (Applicant's Answers to Interrogatories, dated February 14, 2010).

modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the Department of Defense on September 1, 2006) (AG) for all adjudications and other determinations made under the 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.

Applicant acknowledged receipt of the SOR on April 12, 2010. In a sworn, written statement, notarized on April 26, 2010, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on May 13, 2010, and the case was assigned to another administrative judge on May 20, 2010. It was reassigned to me on June 23, 2010, because Applicant had relocated to another geographical area. A Notice of Hearing was issued on July 13, 2010, and I convened the hearing, as scheduled, on July 22, 2010.

During the hearing, 4 Government exhibits and 45 Applicant Exhibits were admitted into evidence, without objection. Applicant testified. The record remained open to afford Applicant the opportunity to supplement it, and on August 5, 2010, he submitted 29 additional exhibits that were also admitted into evidence, without objection. The transcript (Tr.) was received on July 29, 2010.

Findings of Fact

In his Answer to the SOR, Applicant denied both of the factual allegations (¶¶ 1.a. and 1.b.) of the SOR.

Applicant is a 46-year-old employee of a defense contractor, currently serving as a mechanic/avionics technician,³ and he is seeking to obtain a security clearance. He had previously been granted a security clearance while serving on active duty with the United States Army, or the Army National Guard, but lost it when he retired in December 2007.⁴ Applicant was on active duty from October 1983 until October 1986; remained in the inactive reserve until October 1989;⁵ joined the Army National Guard in February 1991, and was activated in March 2006.⁶ He was deployed to Iraq in support of Operation Iraqi Freedom from August 2006 until September 2007.⁷ Among his decorations and medals, Applicant was awarded the Army Achievement Medal, Army

³ Government Exhibit 1, *supra* note 1, at 15.

⁴ Tr. at 50; *Id.* at 26.

⁵ Government Exhibit 1, *supra* note 1, at 26-27.

⁶ *Id.* at 25-26.

⁷ *Id.* at 13, 25.

Good Conduct Medal, National Defense Service medal, Global War on Terrorism Service Medal, Iraq Campaign Medal, Army Service Ribbon, Overseas Service Ribbon, and the Armed Forces Reserve Medal with "M" device.⁸ Applicant was employed by a number of employers in a variety of positions, including avionics technician, lead avionics technician, and lead technician.⁹ In November 1997, he received an associate's degree in an unspecified discipline from an aviation technical college.¹⁰ He has been with his current employer since June 2009.¹¹

Applicant was married in October 1986, and divorced in June 1993.¹² He married his second wife in June 1993.¹³ His current wife has three children.

Financial Considerations

There was nothing unusual about Applicant's finances until about 1999. At some unspecified point prior to then, Applicant's wife was ordered to pay child support to her first husband, her student loans had to be repaid, and their consumer debt became overwhelming. In 1999, Applicant and his wife, hoping to improve their financial situation, filed jointly for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code.¹⁴ An unspecified amount of consumer debt was discharged.¹⁵

The bankruptcy discharge did not permanently improve matters. Although they were both employed, in 2001, his wife's pay was garnished to pay child support.¹⁶ Financially, things did not improve the following year, for additional expenses were incurred when his stepson was hospitalized with a heart attack and had to undergo surgery, and Applicant's mother lost her home to a fire.¹⁷ Over the next few years, his mother-in-law's health issues and her needed automobile repairs, as well as the death of his nephew, resulted in additional expenditures.¹⁸ Applicant and his wife moved to different states in search of better paying jobs. Nevertheless, delinquent debt increased, and, according to a March 2010 credit report, several accounts had been charged off or

⁸ Certificate of Release or Discharge from Active Duty (DD Form 214), dated September 13, 2007, attached to Government Exhibit 3 (Applicant's Answers to Interrogatories, dated February 14, 2010).

⁹ Government Exhibit 1, *supra* note 1, at 17-19.

¹⁰ *Id.* at 14.

¹¹ *Id.* at 15.

¹² *Id.* at 32-33.

¹³ *Id.* at 31.

¹⁴ Tr. at 40, 85.

¹⁵ *Id.* at 40.

¹⁶ *Id.* at 41, 86.

¹⁷ *Id.* at 42.

¹⁸ *Id.* at 43, 45.

placed for collection.¹⁹ On January 25, 2009, Applicant submitted a personal financial statement indicating monthly net income of \$14,757,²⁰ monthly expenses of \$5,330.74,²¹ scheduled monthly debt payments of \$3,658.35,²² and a net remainder of \$5,767.91 available for discretionary spending.²³ During the hearing, Applicant disputed the accuracy of his personal financial statement, claiming that he had additional accounts to pay.²⁴ In June 2009, Applicant acknowledged having, at some point in the past seven years, including some at the present time, several delinquent accounts.²⁵

In August 2010, Applicant submitted two updated personal financial statements, one reflecting his stateside income, and the other reflecting overseas income (should he be granted his security clearance). Under the former, his monthly net income, including veteran's disability, would be \$6,115.45,²⁶ monthly expenses, including scheduled monthly debt payments, would be \$5,314.36,²⁷ leaving a net remainder of \$801.09 available for discretionary spending.²⁸ Under the proposed overseas income statement, his monthly net income, including veteran's disability, would be \$16,426.47,²⁹ monthly expenses, including scheduled monthly debt payments, would be \$5,361.90,³⁰ leaving a net remainder of \$11,064.57 available for discretionary spending.³¹

Applicant stated: "Times were hard for everybody. . . . I just got busy with trying to get my career off the ground, and I lost track of the paperwork. . . ." ³² As a result, Applicant did not timely file state or federal income tax returns during the tax years 1999 through 2007.³³ He was aware that regardless of whether or not he owes taxes, the law requires that he complete and file a return by April 15th.³⁴ He did not file the required

¹⁹ Government Exhibit 4 (Equifax Credit Report, dated March 7, 2010), at 2.

²⁰ Personal Financial Statement, dated January 25, 2009, attached to Government Exhibit 3 (Applicant's Answers to Interrogatories), at 1, *supra* note 8.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Tr. at 67-68.

²⁵ Government Exhibit 1, *supra* note 1, at 47-52.

²⁶ Applicant Exhibit I-26 (Stateside Income Statement, undated).

²⁷ *Id.*

²⁸ *Id.*

²⁹ Applicant Exhibit I-27 (Overseas Income Statement, undated).

³⁰ *Id.*

³¹ *Id.*

³² Tr. at 37.

³³ *Id.* at 37, 56, 59, 62.

returns because he saw they would owe money, and with so many other issues going on in their lives, they did not have the money to pay. Instead, they always hoped that the following year would be financially better for them.³⁵ He was also afraid that if he filed a tax return without paying any money, he would be subject to tax liens or payroll deductions or garnishments.³⁶

For example, in 2008, Applicant failed to timely file his income tax return, and explained that “It didn’t occur to me to pay my taxes. . . we were caught up with buying a home, and we were hoping that buying a home would give us a tax break, and that tax break would be put toward my tax debt.”³⁷ Another explanation for another year was that he could not find a missing Form W-2.³⁸ Still another explanation was that he was deployed to Iraq.³⁹ An alternative explanation was that someone, not further identified, told him that deployed military members were tax exempt.⁴⁰ Because “the Tax Code is so confusing,” Applicant relied on his employer to take the correct deductions from his salary to cover his taxes,⁴¹ and on his wife to figure out the taxes.⁴² He added, “mistakes were made.”⁴³ Applicant never received any financial counseling or tax counseling for either his general finances or for regarding the filing of state or federal tax returns.⁴⁴

Applicant disagreed with the Internal Revenue Service (IRS) regarding discrepancies between the IRS notices and his records pertaining to one particular tax year, thought to be 2006.⁴⁵ Because of their confusion regarding the correct amounts owed, about three months before the DOHA hearing, Applicant engaged the services of a tax attorney to reconcile the IRS records with his records for that particular year.⁴⁶

³⁴ *Id.* at 64.

³⁵ *Id.* at 63-64, 69.

³⁶ *Id.* at 83.

³⁷ *Id.* at 61.

³⁸ *Id.* at 49-50.

³⁹ *Id.* at 50.

⁴⁰ *Id.* at 59-60.

⁴¹ *Id.* at 39.

⁴² *Id.* at 60-70.

⁴³ *Id.* at 70.

⁴⁴ *Id.* at 75.

⁴⁵ Applicant’s Answer to the SOR, notarized April 26, 2010, at 1-2.

⁴⁶ *Id.*; Tr. at 81-82.

On April 20, 2010, Applicant finally filed the appropriate U.S. Individual Income Tax Return (Form 1040A or Form 1040) for the tax year 2001.⁴⁷ On May 5, 2010, Applicant finally filed Form 1040A for the tax years 1999;⁴⁸ 2000;⁴⁹ 2002;⁵⁰ 2003;⁵¹ 2004;⁵² 2005;⁵³ and 2006.⁵⁴ A Form 1040 for the tax year 2007,⁵⁵ was received by the IRS on April 17, 2009;⁵⁶ a Form 1040 for the tax year 2008, was received by the IRS on April 15, 2009;⁵⁷ and a Form 1040 for the tax year 2009, was received by the IRS on April 15, 2010.⁵⁸ As a result of Applicant's eventual tax return filings, the following data was established regarding his federal tax status:⁵⁹

TAX YEAR	TAX	TOTAL DUE⁶⁰	WITHHOLDING	TOTAL OWED⁶¹
1999	\$8,856.00	\$13,532.43	\$5,158.00	(\$4,044.96)
2000	\$16,849.00	\$23,710.03	\$10,802.10	\$7,826.86
2001	\$18,696.00	\$23,286.59	\$11,348.00	\$11,803.01
2002	\$18,373.00	\$22,751.05	\$11,815.00	\$10,588.07
2003	\$20,354.00	\$25,216.32	\$14,209.00	\$11,007.32
2004	\$17,069.00	\$21,093.78	\$11,443.11	\$9,650.67
2005	\$19,380.00	\$23,409.95	\$12,585.00	\$10,824.95
2006	\$9,167.00	\$10,787.58	\$5,703.00	\$5,044.58
2007	\$6,834.00	\$7,408.07	\$5,379.00	\$2,029.07
2008	\$5,793.00	\$5,793.00	\$13,994.00	unspecified
2009	\$11,144.00	\$11,144.00	\$16,192.00	unspecified
TOTALS →	\$152,515.00	\$188,132.80	\$118,628.21	\$64,729.57

With the assistance of the Taxpayer Advocate Service, Applicant and the IRS agreed to an installment agreement pertaining to unpaid taxes covering the tax periods

⁴⁷ Applicant Exhibit I-9 (Form 1040), dated April 20, 2010.

⁴⁸ Applicant Exhibit I-5 (Form 1040A), dated May 5, 2010.

⁴⁹ Applicant Exhibit I-7 (Form 1040), dated May 5, 2010.

⁵⁰ Applicant Exhibit I-11 (Form 1040), dated May 5, 2010.

⁵¹ Applicant Exhibit I-13 (Form 1040), dated May 5, 2010.

⁵² Applicant Exhibit I-15 (Form 1040A), dated May 5, 2010.

⁵³ Applicant Exhibit I-17 (Form 1040), dated May 5, 2010.

⁵⁴ Applicant Exhibit I-19 (Form 1040), dated May 5, 2010.

⁵⁵ Applicant Exhibit I-21 (Form 1040), undated.

⁵⁶ Applicant Exhibit I-20 (IRS Account Transcript, dated August 3, 2010, at 2.

⁵⁷ Applicant Exhibit I-22 (IRS Account Transcript, dated August 3, 2010, at 2.

⁵⁸ Applicant Exhibit I-23 (IRS Account Transcript, dated August 3, 2010, at 1.

⁵⁹ Applicant Exhibit I-3 (Schedule of Outstanding Tax Liabilities undated).

⁶⁰ The Total Due includes tax, interest, and penalties.

⁶¹ Includes amounts abated or credited by the IRS.

2000 through 2007.⁶² The agreement required an initial user fee of \$105, plus a monthly installment payment of \$1,208.24, beginning on September 24, 2010.⁶³ Applicant's first installment payment, including a convenience fee, of \$1,236.49, was made on July 25, 2010.⁶⁴ There is no evidence to indicate he has filed the required state income tax returns.

Under Title 26, United States Code, Sec. 7203, *Willful failure to file return, supply information, or pay tax*:

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. . . .

Applicant failed to comply with the filing requirements ("make a return . . . at the time or times required by law or regulations") pertaining to tax years 1999 through 2007.⁶⁵

Performance Evaluations and Character References

Applicant's military performance was generally characterized as successful, but not excellent. In his most recent evaluation, his senior rater indicated Applicant's overall performance was a "3," the third highest of five possibilities, and recommended he be promoted with his peers.⁶⁶ Supervisors, colleagues, and co-workers are very supportive and favorably characterize him using the following descriptive terms: great

⁶² Applicant Exhibit I-2 (Letter from Taxpayer Advocate Service, dated August 4, 2010).

⁶³ *Id.* at 1; Applicant Exhibit C (Letter from tax attorney, dated June 30, 2010).

⁶⁴ Applicant Exhibit I-24 (Federal IRS Payment Confirmation, dated July 25, 2010).

⁶⁵ The SOR did not allege that Applicant failed to timely file federal income tax returns for the years 1999, 2005, 2006, or 2007; that such failures were violations of Title 26, United States Code, Sec. 7203; that he had failed to timely file state or local income tax returns for the tax years 1999 through 2009; that he had his consumer debt discharged in bankruptcy in 1999; that he owed the IRS \$64,729.57 in unpaid taxes, interest, or penalties; or that he recently had delinquent accounts. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I have considered the non-SOR conduct for the five above purposes, and not for any other purpose.

⁶⁶ Applicant Exhibit E-7 (NCO Evaluation Report, dated December 2, 2006), at 2.

integrity, extremely dedicated, dependable, honest, trustworthy, respect, responsibility, good judgment, logical, motivated, conscientious, extremely reliable, and prudent.⁶⁷

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.”⁶⁸ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”⁶⁹

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

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”⁷⁰ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation,

⁶⁷ Applicant Exhibits B-1, B-2, B-3, B-4, B-5, B-6, B-7, B-8, G-1, G-2, G-3 (Various character references, various dates).

⁶⁸ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁶⁹ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁷⁰ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

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.⁷¹

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."⁷²

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."⁷³ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise

⁷¹ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁷² *Egan*, 484 U.S. at 531

⁷³ See Exec. Or. 10865 § 7.

security concerns. Also, under AG ¶ 19(e), “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis,” is potentially disqualifying. A “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same” is potentially disqualifying under AG ¶ 19(g).

As noted above, there was nothing unusual about Applicant’s finances until about 1999, when he and his wife filed for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code. An unspecified amount of unsecured debt was discharged, and his financial problems were temporarily eliminated. But not for long, for accounts became delinquent and were sent for collection. Some were charged off. Over the ensuing years, extended-family events occurred necessitating additional expenditures. Applicant did not timely file state or federal income tax returns during the tax years 1999 through 2007, and he failed to pay the necessary income taxes above those amounts withheld. He currently owes the IRS \$64,729.57, including unpaid income taxes, interest, and penalties. The record is silent regarding his unpaid state income tax balance. Applicant has submitted some documentation to support his contentions regarding payments supposedly made to a variety of non-SOR accounts, as well as one payment to the IRS. AG ¶¶ 19(a), 19(c), 19(e), and 19(g) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” Also, under AG ¶ 20(b), financial security concerns may be mitigated where “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.” Evidence that “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”⁷⁴

⁷⁴ 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)).

Applicant's financial problems commenced in 1999, and were resolved by Chapter 7 bankruptcy discharge of his debts. But they eventually re-emerged. He attributed his continuing financial difficulties to extended-family member issues (health, automobile repairs, and residence burning), and some of those issues contributed to his debts. However, they were not the primary cause of his financial problems. He earned a fair salary, and should have been able to resolve his delinquent debts, but was unable to do so. Applicant did not timely file state or federal income tax returns during the tax years 1999 through 2007. Because the financial situation is frequent and continuing in nature, AG ¶ 20(a) does not apply. Applicant's handling of his federal income tax filings, under the circumstances, casts doubt on his current reliability, trustworthiness, or good judgment.

He receives minimal application of AG ¶ 20(b), for while some of the conditions that purportedly contributed to the financial problem at some point were beyond Applicant's control (e.g., extended-family members' health, automobile repairs, and his mother's loss of her residence due to fire), Applicant failed to act responsibly under the circumstances. He failed to justify how those circumstances may have interfered with his timely filing of state and federal income tax returns for the tax years 1999 through 2007. Although Applicant offered a variety of explanations, the most significant one is that he did not file the required returns because he anticipated he would owe money and did not have the money to pay. He was afraid that if he filed a tax return without paying any money, he would be subject to tax liens or payroll deductions or garnishments. The reasons stated do not establish he acted "responsibly under the circumstances."

AG ¶ 20(c) does not apply because Applicant denied ever having received financial counseling and debt consolidation guidance, although he should have received counseling from his bankruptcy and from his tax attorney in preparing a budget.

AG ¶ 20(d) only partially applies because Applicant finally initiated what might be considered a "good-faith" effort to repay the IRS, but only after the SOR was issued. Before he received the SOR, Applicant did not address his delinquent federal or state income tax filings or federal or state tax debts. He did not pay the necessary income taxes above those amounts withheld. There is evidence of April and May 2010 federal income tax filings, a more recent IRS-approved installment agreement, and one July 2010, federal tax payment under it. There is no evidence indicating he has paid the various state income taxes as required by law.

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.

There is some evidence in favor of mitigating Applicant's conduct. Applicant finally filed his federal income tax returns for the tax years 1999 through 2007, in 2010. His supervisors, colleagues, and co-workers are very supportive of his application and characterize him in very positive terms. He was deployed and served in a combat zone.

The disqualifying evidence under the whole-person concept is substantial. Applicant has a history of financial delinquencies, and a bankruptcy. He did not timely file state or federal income tax returns during the tax years 1999 through 2007, and failed to pay the necessary income taxes above those amounts withheld. He currently owes the IRS \$64,729.57, including unpaid income taxes, interest, and penalties. The record is silent regarding his state income tax balance. By failing to timely file his federal income tax returns over nearly a decade, Applicant violated Title 26, United States Code, Sec. 7203. The variety of explanations he furnished for his lengthy period of inaction, indicate a lack of candor on his part, and reflect traits which raise concerns about his fitness to hold a security clearance.

I am mindful that while any one factor, considered in isolation, might put Applicant's credit history, with emphasis on his repeated failures to file federal and state income tax returns, in a sympathetic light, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁷⁵ His recent good-faith efforts are insufficient to mitigate continuing security concerns. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

Although there are some positive signs, such as efforts to take corrective actions, file delinquent federal income tax returns, and enter into an installment agreement, with evidence of one payment made, these steps are simply too recent and insufficient to show he can "live within [his] means, satisfy debts, and meet financial obligations." See AG ¶ 18. Overall, the record evidence leaves me with substantial questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations.

⁷⁵ 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge