



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



In the matter of:)	
)	
XXXXXXXXXXXX, XXXXX)	ISCR Case No. 11-12704
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

06/14/2012

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has a history of delinquent debt. She did not ensure her state and federal taxes were fully paid. After being assessed several tax liens, she did not make sufficient progress resolving them. Her four delinquent tax debts total \$456,266, and she did not provide documentary evidence showing any payments to address these four debts. Financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On August 13, 2006 and April 11, 2011, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF-86). On February 14, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant, pursuant to 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* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) the President promulgated on December 29, 2005.

On March 28, 2012, DOHA issued an amended SOR, adding one additional allegation. The SOR and amended SOR alleged security concerns under Guideline F (financial considerations). The SOR detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and it recommended that her case be submitted to an administrative judge for a determination whether her clearance should be granted, continued, denied, or revoked.

On February 29, 2012, and April 6, 2012, Applicant responded to the SOR. On March 30, 2012, Department Counsel indicated she was ready to proceed on Applicant's case. On April 2, 2012, Applicant's case was assigned to me. On April 17, 2012, DOHA issued a hearing notice, setting the hearing for May 16, 2012. Applicant's hearing was held as scheduled. Department Counsel offered eight exhibits, and Applicant offered five exhibits. (Tr. 13-14; GE 1-8; AE A-E) There were no objections, and I admitted GE 1-8 and AE A-E. (Tr. 14-15) On May 29, 2012, I received the transcript. The record was held open until May 31, 2012. (Tr. 80-81) Twelve post-hearing exhibits were admitted without objection. (AE F-Q)

Findings of Fact¹

Applicant's SOR response denied all SOR allegations with explanations. She emphasized that she lacked the records to fully address the allegations; however, she said she was making good faith efforts to resolve the allegations. She said the debts resulted from circumstances beyond her control, and she acted responsibly under the circumstances. She promised to obtain credit counseling and avoid financial problems in the future. Her admissions are accepted as findings of fact.

Applicant is a 39-year-old owner of a company that is seeking defense contracts. (Tr. 24; GE 1) She is an expert in recruiting, management, and staffing, and she owns a staffing services business. (Tr. 25) She graduated from high school; however, she has not attended college. She was married from 1997 to 2011. (Tr. 48, 77-78; AE N, O, P) In 2009, she and her husband were separated. In 2009, in accordance with her separation agreement, she paid her husband \$50,000, and he kept his vehicle. (Tr. 26-27, 49, 77-78) In 2010-2011, she paid him \$1,200 a month for 12 months. (Tr. 50-51) She has custody of her three children, who are 11, 20, and 22 years old. (Tr. 46, 51) Her 11-year-old child suffers from autism. (Tr. 76)

Financial considerations

Applicant's SOR lists six delinquent debts, totaling about \$466,970. The status of the six SOR debts and her bankruptcy are described as follows:

1.a. In July 2006, Applicant filed for bankruptcy relief under Chapter 13 of the Bankruptcy Code—RESOLVED. Unemployment and under-employment of herself and

¹Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

her spouse contributed to her financial woes and to her decision to file for bankruptcy. (GE 3, July 12, 2007 Office of Personnel Management (OPM) personal subject interview (PSI)) She had about six months of unemployment from 2002 to the present. (Tr. 71) She listed assets and liabilities of about \$242,000 and about \$14,000 in unsecured debts in her bankruptcy filing. (GE 3 at 195) Most of her assets and liabilities consisted of her residence and her mortgage. (GE 7) In December 2009, her unsecured, nonpriority debts were discharged under Chapter 13 of the Bankruptcy Code. (Tr. 29, 35; GE 3 at 195; AE M) She received financial counseling in connection with her bankruptcy. (GE 3, July 12, 2007 OPM PSI)

1.b. On October 3, 2011, the Internal Revenue Service (IRS) filed a federal tax lien for \$16,976. (GE 8)—UNRESOLVED.² Applicant said this was a residual debt left over when Applicant's company was an LLC. (Tr. 36) The company accountant attempted to arrange a payment plan; however, her accountant was unsuccessful. (Tr. 36) Applicant said her attorney is working out a payment arrangement with the IRS. (Tr. 35) On December 14, 2011, Applicant's attorney offered to enter into an installment payment program with the IRS. (AE K) On December 16, 2011, the IRS wrote Applicant and explained her due process rights before executing a levy. (Tr. 45; AE E, page 1 of IRS letter) A February 27, 2012 letter from the IRS indicates a telephone conference call to discuss Applicant's tax debt for three quarters of 2009 was scheduled for March 27, 2012. (AE B) Applicant said the IRS debt in SOR ¶ 1.b was incorporated into SOR ¶ 1.g. (Tr. 44) Applicant provided a December 15, 2011 email from Applicant's lawyer to Applicant indicating there were three IRS tax debts (three employer identification numbers (EIN)). (AE H) She provided two separate offers with substantially different proposed payment plans to address two IRS liens. (AE I, J) The letters she provided did not include the total amount of the tax debt being addressed. This documentation contradicts Applicant's hearing statement that the two IRS liens were combined. She did not provide any documentation from the IRS indicating the two liens were combined.

1.c. A state filed a tax lien against Applicant for \$37,386—UNRESOLVED. Applicant said the amount of the lien was incorrect. (Tr. 37) She said her company payroll was \$100,000, and somehow after an audit, the state said she owed \$37,386. (Tr. 37, 66) Her company's payroll taxes were about \$20,000 per month. (Tr. 64) She cooperated with the state audit and provided documentation to the state. (Tr. 37) On July 25, 2011, Applicant's accountant wrote the state, asked for an audit of tax years 2006 and 2007, and provided some payroll information, including W2s, W3s, and W4s. (AE C; GE 3 at 209) She said the state "threw together" the amount she owed. (Tr. 66) On July 25, 2011, Applicant's accountant asked that "any and all credits paid in via the \$4,500 monthly payments, be applied to the tax portion only, retiring the 2006 balance due first. . . ."³ (AE C) She said she is having difficulty contesting the state tax

²Applicant's April 28, 2011 OPM PSI indicates that she learned of a federal tax debt of \$13,934 after an IRS audit in approximately 2006. (GE 3 at 192-193) She told the OPM investigator that no payments were made toward the lien due to insufficient funds. *Id.* at 193.

³Applicant said, "[w]e also wanted to try to get them to waive the 4,500 dollar amount that they were trying to get us to pay monthly, because the debt was not really our debt. It was just due to an audit assessment." (Tr. 44)

assessment because her company changed accounting systems in 2007. (Tr. 67) She said the state reduced the amount of the debt. (Tr. 38) She said the amount was disputed. (Tr. 67).

1.d. A state filed a tax lien against Applicant for \$107,821—UNRESOLVED. Applicant said this debt was a duplication of the debt in SOR 1.c. (Tr. 38)⁴ She said the lien was for 2006, 2007, and 2008, and then the years were separated. (Tr. 39) She disputed the amount of SOR 1.c and 1.d. (Tr. 39) She said the state tax was reduced through a dispute to \$50,000, and she said she provided a letter indicating the amount was reduced. (AE Q).

1.e. A state alleged a state tax debt for \$704—UNDER INVESTIGATION. Applicant was unsure of her responsibility for this debt. (Tr. 37) She suggested that it might have been part of her bankruptcy under Chapter 13. (Tr. 40) She said she would provide a written explanation of this debt; however, she did not do so. (Tr. 40).

1.f. Applicant's \$212,000 mortgage had delinquent interest of \$10,000—NOT SUBSTANTIATED. Applicant said her mortgage was included as part of her bankruptcy under Chapter 13, and her mortgage was kept current after December 2009. (Tr. 40) Any credit report showing a delinquent mortgage account may not have incorporated an update after her Chapter 13 bankruptcy discharge in December 2009.

1.g. In October 2011, the IRS filed a federal tax lien against Applicant for \$294,083. (GE 8)—UNRESOLVED. Applicant changed the character of her business from an LLC to a corporation, and the IRS determined that the LLC was “defunct” and could not pay the tax debt. (AE A) The IRS was pursuing Applicant for the debt, as she is the “sole member” of the LLC. (AE A) A November 22, 2011 letter from Applicant's accounting service to the IRS indicates the IRS is continuing to audit Applicant's business and Applicant is waiting for “additional assessments” from her corporation. (AE A; AE I; GE 3 at 205) A December 14, 2011, letter from Applicant's attorney to the IRS offers to pay \$6,500 per month beginning on December 28, 2011. (AE J) This letter acknowledges “[a]lthough we believe the willfulness and responsibility may be proven by IRS in order to assert the Trust Fund Recovery Penalty assessments, we do not believe [Applicant] has the ability to repay the already assessed Trust Fund amounts outstanding.” (AE J) On December 15, 2011, Applicant's attorney sent three installment agreements to the IRS. (AE H) Applicant said that after the IRS has made a final determination, Applicant will attempt to “negotiate final resolutions.” (AE A; GE 3 at 205) Applicant said her business recently began paying \$2,500 a week. (Tr. 41, 62-63) The restructuring under Chapter 11 of the Bankruptcy Code should assist in setting the payment plan on her tax debts. (Tr. 41, 62) She said there may have been two months of payments (\$20,000) under the Chapter 11 to the IRS. (Tr. 62-63, 69) However, she did not send any documentary proof (such as cancelled checks or acknowledgements of payments from the IRS) to corroborate her statement that she paid \$20,000 to the

⁴Applicant wrote the state on September 8, 2011 stating that the state was billing her \$34,919 for 2006 and \$100,316 for 2007, and she disputed those amounts. (GE 3 at 211)

IRS. She said her company's monthly profit after paying \$10,000 under the Chapter 11 is about \$10,000. (Tr. 68, 69, 72) She said that she offered to pay \$1,500 a week to the IRS, which she said would be "\$3,000" a month. (Tr. 70)

Applicant is engaged in filing for bankruptcy protection under Chapter 11 of the Bankruptcy Code in order to restructure her company. (Tr. 30) She may have filed the Chapter 11 in April 2012. (Tr. 63) She was unable to make her payroll because of insufficient business. (Tr. 30) She said the two state tax debts in SOR ¶¶ 1.c and 1.d and the federal tax debts in SOR ¶¶ 1.b and 1.g are not expected to be included in the Chapter 11 bankruptcy because the state is seeking the payments from Applicant personally. (Tr. 67) Applicant thought the true tax liability for the state and IRS combined would be about \$200,000. (Tr. 65)

Applicant required two corrective surgeries to address a broken ankle, and she was unable to work in her business for about nine months. (Tr. 30-31) Her business had personnel and accounting problems. (Tr. 27) Her accountant failed to send the employee's payroll withholding to the state and the IRS. (Tr. 28) Her accountant and her manager acted on her behalf in her absence. (Tr. 31) The accountant has left her business. (Tr. 31-32) The new accountants made a substantial mistake, "maybe" \$300,000. (Tr. 33) No one monitored the accountants; however, now her attorney monitors her business's accountants. (Tr. 60-61, 75) The company's client was not depositing the payment, and then the payroll taxes were not being paid. (Tr. 33, 57-58) Applicant was vague about how long she knew she had tax problems, and she indicated the numbers have not been working out right for several years. (Tr. 59)

Applicant said the bankruptcy in SOR ¶ 1.a was personal and her mortgage in SOR ¶ 1.f was a personal debt. (Tr. 42, 62) The other debts were business debts. (Tr. 42, 62) She said she first learned of the tax problems in 2008 or 2009. (Tr. 55) *But see* n. 2, *supra*. She said the tax problems were all payroll related. (Tr. 56-57) She had medical insurance. (Tr. 54) She admitted that the IRS was seeking payments from Applicant personally. (Tr. 42) She said her current annual salary is \$75,000. (Tr. 46; GE 3 at 208)⁵ She intends to pay all of her debts. (Tr. 45-46)

The branch manager of Applicant's business has known her for seven years. (Tr. 17; AE G) Applicant is his supervisor. (Tr. 20) He corroborated Applicant's statements that their business has had problems with employee turnover and accounting. (Tr. 17-18) Their accountant failed to pay some bills on time, including employee pay. (Tr. 21) He believes Applicant's business has a promising future. (Tr. 18) Profits increased by one million dollars in the last four to six months. (Tr. 19) Applicant broke her ankle in 2010, had surgery in April and November 2011, and was out of the office about half of the previous 24 months. (Tr. 19, 52-53) He believes that Applicant intends to pay her debts. (Tr. 22) He describes her as helpful, creative, honest, and goal-oriented. (AE G)

⁵Her personal financial statement showed the following entries: \$105,000 (includes a \$30,000 annual distribution spread over 12 months) for her annual pay; monthly net pay of \$6,847; monthly expenses of \$2,800; debt payments (for two credit cards) of \$1,900; and monthly remainder of positive \$2,148. (GE 3 at 208)

Applicant's daughter and employee described Applicant as being thoughtful, trustworthy, mature, helpful, responsible, and performance-oriented. (AE F)

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 that, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant 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 and modified.

Eligibility for a security clearance is predicated upon meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to 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. Adverse clearance decisions are made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the [a]pplicant concerned." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, nothing in this decision should be construed to suggest that I have based this decision 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.

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

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his 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

Financial Considerations

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

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

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant’s history of delinquent debt is documented in her credit reports, bankruptcy filings, SOR response, OPM PSIs, tax documents, and hearing record. Applicant’s SOR lists six delinquent debts, totaling about \$466,970. Some debts have been delinquent for several years. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

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

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

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;⁶ 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.

Applicant's conduct in resolving her debts does not warrant full application of any of the mitigating conditions to all SOR debts. The accounts alleged in SOR ¶¶ 1.a, 1.e, and 1.f are mitigated. SOR ¶ 1.a indicates her nonpriority, unsecured debts are discharged under the wage-payer plan or Chapter 13 of the Bankruptcy Code. This is a positive development because she made the payments, as required by the bankruptcy court for three years. It supports approval of her security clearance. SOR ¶ 1.e is a state tax debt for \$704. Applicant was unsure of her responsibility for this debt, and she suggested that it might have been part of her bankruptcy under Chapter 13. Generally, tax debts are priority debts and are not discharged through bankruptcy. This is a relatively modest debt. Compared to her other tax debts, it is understandable that she has not investigated it, and that she failed to determine her liability for it. SOR ¶ 1.f is a \$212,000 mortgage, and the payments would have been included in her Chapter 13 bankruptcy. The evidence does not establish that her mortgage is currently delinquent because her credit reports may not have been updated with the bankruptcy resolution of her delinquent interest debt.

⁶The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

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

Applicant fell behind on her debts because of the costs of daily living, her spouse's unemployment, her own unemployment, underemployment, the failure of her accountant to collect funds due and to pay required taxes, Applicant's medical problems, and her daughter's medical problems. She received financial counseling as part of the bankruptcy process.

Four SOR debts are not mitigated. Applicant has known her business's tax payments to the IRS and the state were insufficient for more than a year, and she did not provide a clear chronology describing when she learned of her tax problems and step-by-step what she has done to resolve her tax debts. On July 25, 2011, Applicant's accounting service wrote the state tax authority and asked for an audit of tax years 2006 and 2007, and provided some payroll information as well as W2s, W3s, and W4s. However, the DOHA file does not contain a clear analysis explaining why the state tax audits or the calculations of the IRS liens were incorrect. She did not provide persuasive evidence that her tax debts were overstated by the state and IRS. Her disputes are not a reasonable or responsible challenge of the amounts of her tax liability. She made some settlement offers to the state tax entity and to the IRS. She did not provide correspondence from the tax entities counteroffering or agreeing to her payment plans.

Applicant has not taken reasonable actions to resolve the debts in SOR ¶¶ 1.b, 1.c, 1.d, and 1.g, totaling over \$450,000. Financial considerations would not be mitigated even if there were only one state tax debt and one federal state tax debt, totaling about \$200,000, as Applicant claims. She did not provide sufficient documentation proving that she made good faith efforts to negotiate payment plans with the state and the IRS. There is insufficient evidence that her financial problem is being resolved and is under control. She did not establish her financial responsibility.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress;
- and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my

comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

There are some facts supporting mitigation of security concerns under the whole-person concept; however, they are insufficient to fully mitigate security concerns. Applicant is 39 years old, and I am confident that she has the ability and maturity to comply with security requirements. She wishes to contribute to national defense. She is an expert in recruiting, management, and staffing, and she owns a staffing services business, which could contribute to the national defense. She complied with her Chapter 13 payment plan, and her nonpriority, unsecured debts were discharged in December 2009. After her bankruptcy, she maintained her nontax debts in current status. She complied with her separation agreement by paying her husband \$50,000 in 2009 and \$14,400 from 2010 to 2011. She has custody of her three children, and her 11-year-old child suffers from autism, adding to her financial responsibilities. Some circumstances beyond her control, such as insufficient income, underemployment, unemployment, her accountant's failure to pay her business's taxes and to collect the bills owed to her business, Applicant's ankle injury, and her daughter's medical issues adversely affected her financial circumstances. She is an intelligent person who knows what she must do to establish her financial responsibility. There is no evidence of security violations, disloyalty, or that she would intentionally violate national security.

The evidence against approval of Applicant's clearance is more substantial at this time. Applicant failed to mitigate four delinquent SOR tax debts, totaling about \$450,000. She failed to prove that she could not have made greater progress resolving and documenting resolution of these four SOR debts. She did not provide a clear chronology explaining when she learned of her business's tax problems and when and how she attempted to resolve them. After more than a year of knowing about her tax problems, Applicant does not have a payment plan explaining what payments are acceptable to the IRS and state tax authority. Applicant said there may have been two months of payments (\$20,000) to the IRS. However, she did not provide documentary proof (such as cancelled checks or acknowledgements from the IRS) that she paid \$20,000 to the IRS. She did not provide anything from the IRS indicating the tax debt was transferred from her personal responsibility back to a business liability. The IRS and state did not find that Applicant was innocent of culpability for generating the large tax liabilities, and she did not present enough evidence to convince me that she was not responsible for generating her large tax debt.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations concerns are not mitigated. For the reasons stated, I conclude she is not eligible for access to classified information.

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
Subparagraphs 1.a:	For Applicant
Subparagraphs 1.b to 1.d:	Against Applicant
Subparagraphs 1.e and 1.f:	For Applicant
Subparagraph 1.g:	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 J. TUIDER
Administrative Judge