DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
---	)	ISCR Case No. 15-00989
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: Anthony J. Kuhn, Esquire

01/26/2017

_____

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 May 15, 2014, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.[1] On July 6, 2015, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to those interrogatories on August 19, 2015.[2] On October 10, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to him, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the

[1] GE 1 (e-QIP, dated May 15, 2014).

[2] GE 2 (Applicant's Answer to Interrogatories, dated August 19, 2015).

Adjudicative Guidelines for Determining Eligibility For Access to Classified Information (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on October 22, 2015. On November 12, 2015, he responded to the SOR and requested a hearing before an administrative judge.[3] Department Counsel indicated the Government was prepared to proceed on March 16, 2016. The case was assigned to me on March 28, 2016. A Notice of Hearing was issued on April 7, 2016. On April 15, 2016, Applicant's attorney filed an Entry of Appearance and indicated he would furnish his proposed exhibits to Department Counsel early the following week. On April 18, 2016, Applicant's attorney filed a Motion to Continue based on insufficient time to obtain investigative files and prepare for the hearing. The investigative file had already been furnished to Applicant, and I agreed to hold the record open to enable Applicant to supplement it. After conferring with both attorneys, the Motion was effectively withdrawn. I convened the hearing as scheduled on April 25, 2016.

During the hearing, Government exhibits (GE) 1 through GE 5 and Applicant exhibits (AE) A through AE L were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on May 4, 2016. I kept the record open until May 23, 2016 to enable Applicant to supplement it. Upon Applicant's Motion to Continue, and without objection being interposed by Department Counsel, the record was kept open until June 27, 2016. Applicant took advantage of those opportunities and he submitted various additional documents, some of which duplicated other documents previously submitted.[4] There being no objection, AE M through AE Q were admitted. The record closed on June 27, 2016.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with comments, two (¶¶ 1.a. and 1.b.) of the factual allegations pertaining to financial considerations. Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

[3] Applicant's Answer to the SOR, dated November 12, 2015.

[4] Applicant's subsequent submissions were marked by him as proposed exhibits 1 (two separate groups), 2 (two separate groups), 3 (two separate groups), 4, and 5. Adding to the confusion, the documents with the same group designations were not identical. Accordingly, those groups of documents were remarked by me and given new designations.

Applicant is a 48-year-old employee of a defense contractor. He has been a software engineer with the company since December 2013.[5] He is a June 1986 high school graduate, with a May 1991 bachelor of science degree in electrical engineering.[6] Applicant has never served in the U.S. military.[7] He has never held a security clearance.[8] Applicant was married in October 2006.[9] Applicant has two children, born in 2011 and 2014.[10]

Financial Considerations[11]

There was nothing unusual about Applicant's finances until June 2010 when he left his full-time job as a senior software engineer, where he had been employed since December 2002, to pursue other opportunities, with a focus on missionary work. He spent his time completing the application and accompanying requirements for missionary work, but did not follow through sufficiently to start raising funds for foreign field work or to obtain an actual position. He remained in an unemployed status until December 2013. During that entire period, he dealt with his son's autism spectrum disorder medical issues, renovated a condominium he owned, and caught up on some computer programing. He did not collect unemployment compensation, and he was supported financially by his wife.[12] For a variety of reasons, including losing track of, or forgetting, certain bills; disputing charges on an account; an inability to pay a bill because of his unemployment; and issuing an insufficient check, accounts became delinquent.[13]

Applicant did not timely file his federal and state income tax returns for the tax years 2010, 2011, 2012, 2013, and 2014. The 2010 and 2011 federal tax returns were both filed in April 2013; the 2012 federal tax return was filed in May 2013; and the 2013 and 2014 state and federal tax returns were both filed in November 2015 – one month after the SOR was issued.[14] He did not timely file for automatic extensions of time to file

[5] GE 1, *supra* note 1, at 11.

[6] GE 2 (Personal Subject Interview, dated July 14, 2014), at 3; GE 1, *supra* note 1, at 9-10.

[7] GE 1, *supra* note 1, at 14.

[8] GE 1, *supra* note 1, at 42.

[9] GE 1, *supra* note 1, at 10.

[10] GE 1, *supra* note 1, at 24; GE 2 (Personal Subject Interview), *supra* note 6, at 4.

[11] General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1, supra note 1; GE 2 (Personal Subject Interview), *supra* note 6; GE 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated June 3, 2014); GE 4 (Equifax Credit Report, dated January 15, 2015); GE 3 (Equifax Credit Report, dated July 6, 2015). More recent information can be found in the exhibits furnished and individually identified.

[12] GE 1, *supra* note 1, at 11-13; GE 2 (Personal Subject Interview), *supra* note 6, at 3.

[13] GE 2 (Personal Subject Interview), *supra* note 6, at 7-10.

[14] AE E (2013 Internal Revenue Service (IRS) Account Transcript, dated April 4, 2016); AE O (State Income Tax Return, dated November 12, 2015); AE F (2013 IRS Account Transcript, dated April 4, 2016); AE P (State Income Tax Return, dated November 12, 2015).

any of those income tax returns, but he did timely file a request for an automatic extension of time to file his 2015 federal tax return, and that return was filed in April 2016.[15] Applicant received a refund for each of the tax years filed.

Applicant attributed several factors for his failure to timely file his 2013 and 2014 tax returns: (a) some complications arose with his taxes associated with exercised stock options from his employer in 2010; (b) getting the necessary tax documents together took time; (c) his son was born six weeks prematurely, requiring significant medical attention; (d) his wife had preeclampsia; (e) his son was diagnosed with autism spectrum disorder, requiring 24-hour supervision because he is nonverbal, not potty-trained, and a flight risk; (f) Applicant does his own taxes on-line, and he had computer issues preventing him from using his tax preparation software; (g) he had to relocate his residence on an emergency basis due to lead in his original residence; (h) his daughter's social security card was misplaced and it was required to claim her as a dependent; and (i) and other "life priorities."[16]

Applicant subsequently acknowledged that since the birth of his son in 2011, he spent very little time working on the home renovations or keeping current on computer education, and after he obtained his new position in 2013, his wife took care of their son during the day.[17] He also explained why he decided not to hire the professional services of a tax preparer or attorney to handle his unfiled federal and state income tax returns:[18]

> The primary consideration was that a lot of that had to do with getting the right paperwork together and my time in trying to track that down. Because it's not something that I necessary had, I would have to go and get it. And there were other issues, as well. I mentioned complications with the paperwork. I know that one of the forms was from the –from my former employer was, well, actually, the acquiring company of my former employer was amended. So getting all that together was the issue. Even if I had a tax preparer, we couldn't prepare those taxes unless I have those documents.
>
> Hiring a tax preparer wouldn't necessarily have accelerated that. It would have added to the list of things for me to do as far as getting the paperwork or the urgency for getting the paperwork together. But not having it, it wouldn't have helped me get it together any faster.

In addition to the allegations related to unfiled federal and state income tax returns for the tax years 2013 and 2014 (the income tax returns for the tax years 2010, 2011, and

---

[15] AE L (Application for Automatic Extension of Time to File U.S. Individual Income Tax Return (Form 4868), dated April 18, 2016; AE Q (2015 IRS Account Transcript, dated May 16, 2016); Tr. at 32.

[16] Tr. at 16-18; GE 2 (Personal Subject Interview), *supra* note 6, at 7; GE 2, *supra* note 2, at 20; (GE 1, *supra* note 1, at 43.

[17] Tr. at 27-28.

[18] Tr. at 28-29.

2012 were not addressed), the SOR identified one purportedly delinquent debt that had been placed for collection or charged off, as generally reflected by the June 2014 credit report,[19] the January 2015 credit report,[20] the July 2015 credit report,[21] and an April 2016 credit report.[22] That debt, totaling $342, its current status, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, is described below.

(SOR ¶ 1.c.): This is a bank credit card with a $27,500 credit limit and a past due amount of $342 that was placed for collection and charged off. Applicant stated that the bank notified him of a possible suspicious transaction. When he viewed his monthly statement he found a December 2010 charge in the amount of $80.99 that he did not recognize. He filled out various forms for the bank and submitted them in 2011, but the bank claimed they were never received. Nevertheless, the credit card was closed, and Applicant was issued a new card with another account number. When he received the statement for the new card, he saw a $3 charge for life insurance which was automatically charged to his card. He disputed the new charge as well. He contends the remaining balance is comprised of the unauthorized charges, accumulated interest, and fees. The bank was steadfast, and nothing was accomplished. Applicant indicated an intention to hire an attorney in September 2014, but he did not do so until April 2016. [23] Although Applicant's meeting with the attorney was scheduled for May 3, 2016, he subsequently offered no updated status of the delinquent account or any plans to resolve it. The account remains unresolved.

Applicant contends that he has sufficient funds available to pay off his only delinquent debt. He submitted several documents indicating income and expenses, but the numbers reflected are somewhat inconsistent. According to earning statements, his net monthly income as of March 25, 2016, was approximately $4,362.74 (or $2,181.37 twice per month). His gross income for the same period was $8,930.78 (or $4,464.39 twice per month).[24] His wife's net monthly income, as of April 4, 2016, was approximately $4,192.56 (or $2,096.28 twice per month). Her gross income for the same period was $5,581.76 (or $2,790.88 twice per month).[25] His monthly budget reflects a combined gross income of $12,740 along with discretionary savings of $3,049.30.[26] Another budget, pertaining to his salary, without reference to his wife's salary, reflects his income as $7,

[19] GE 5, *supra* note 11, at 4.

[20] GE 4, *supra* note 11, at 2.

[21] GE 3, *supra* note 11, at 2.

[22] AE A (Experian Credit Report, dated April 19, 2016), at 11.

[23] AE I (Correspondence, various dates); GE 2 (Personal Subject Interview), *supra* note 6, at 8; Applicant's Answer to the SOR, *supra* note 3; AE J (Letter, dated April 6, 2016).

[24] AE B Earnings Statement, dated March 25, 2016).

[25] AE C Earnings Statement, dated April 8, 2016).

[26] AE D (Budget, dated April 20, 2016).

267, with expenses of $7,289, leaving a deficit of minus $22.[27] On an unspecified date, Applicant met with a financial advisor with the Consumer Credit Counseling Service (CCCS), and the budget with the deficiency was prepared.[28] Applicant did not reveal whether he received any financial guidance on matters other than the budget.

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."[29] 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."[30]

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."[31] 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

---

[27] AE K (Budget, undated).

[28] AE K, *supra* note 27.

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

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

[31] "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).

substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.[32]

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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."[33]

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."[34] 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 or 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. . . .

[32] *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

[33] *Egan*, 484 U.S. at 531.

[34] *See* Exec. Or. 10865 § 7.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts*"* is potentially disqualifying. Similarly, under AG ¶ 19(c), *"*a history of not meeting financial obligations*"* may raise security concerns. Under AG ¶ 19(g), security concerns may be raised when there is a "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same." Applicant's financial problems initially arose in June 2010, and increased during the ensuing years. Accounts became delinquent. At least one account was charged off. He failed to timely file his federal and state income tax returns for the tax years 2013 and 2014.[35] AG ¶¶ 19(a), 19(c), 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."[36] In addition, it

[35] Applicant's SOR does not allege that he did not timely file his federal and state tax returns for tax years 2010 through 2012. 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.

Id. (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)). *See also* ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). Consideration that Applicant did not timely file his federal and state tax returns for tax years 2010 through 2012 will not be considered except for the five purposes listed above.

[36] 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)).

is potentially mitigating under AG ¶ 20(e) where "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue."

AG ¶ 20(b) minimally applies. AG ¶¶ 20(a), 20(c), 20(d), and 20(e) do not apply. As noted above, Applicant's financial problems were attributed to a variety of factors. The 2013 and 2014 state and federal tax returns were not filed until November 2015 – one month after the SOR was issued, because: (a) some complications arose with his taxes associated with exercised stock options from his employer in 2010; (b) getting the necessary tax documents together took time; (c) his son was born six weeks prematurely, requiring significant medical attention; (d) his wife had preeclampsia; (e) his son was diagnosed with autism spectrum disorder, requiring 24-hour supervision because he is nonverbal, not potty-trained, and a flight risk; (f) Applicant does his own taxes on-line, and he had computer issues preventing him from using his tax preparation software; (g) he had to relocate his residence on an emergency basis due to lead in his original residence; (h) his daughter's social security card was misplaced and it was required to claim her as a dependent; and (i) and other "life priorities." His explanations for the multi-year delay in obtaining the necessary documentation are difficult to accept, and his reasons for failing to accept professional guidance is unreasonable. Furthermore, some of those factors were effectively minimized when Applicant acknowledged that some of those factors did not occur over extended periods. Applicant's chosen status of unemployment while anticipating a prospective move into a mission responsibility, as with many of the other factors addressed above, was of his own doing, and not largely beyond his control.

A willful failure to timely file a federal income tax return is a misdemeanor-level federal criminal offense.[37] For purposes of this decision, I am not weighing Applicant's failure to timely file his federal income tax returns against him as a federal crime.

The record establishes that Applicant failed to timely file his federal and state income tax returns for tax years 2013 and 2014. The DOHA Appeal Board has commented:[38]

---

[37]Title 26 U.S.C, § 7203, willful failure to file return, supply information, or pay tax, reads:

> Any person . . . 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 . . . 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 . . . .

A willful failure to make return, keep records, or supply information when required, is a misdemeanor without regard to existence of any tax liability. *Spies v. United States*, 317 U.S. 492 (1943); *United States v. Walker*, 479 F.2d 407 (9th Cir. 1973); *United States v. McCabe*, 416 F.2d 957 (7th Cir. 1969); *O'Brien v. United States*, 51 F.2d 193 (7th Cir. 1931).

[38] ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). *See* ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)). ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015). The Appeal Board clarified that even in instances where an "[a]pplicant has purportedly corrected [the applicant's] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant's security worthiness in light of [applicant's] longstanding prior behavior evidencing irresponsibility" including a failure to timely file federal income tax returns. *See* ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. June 15, 2016) (characterizing "no harm, no foul" approach to an Applicant's course

> Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. *See, e.g.*, ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns. Rather, it is a proceeding aimed at* evaluating an applicant's judgment and reliability. *Id*. A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. *See, e.g.*, ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). *See Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

Applicant contends that he has sufficient funds available to pay his remaining delinquent debt, but he has failed to generate efforts to do so. Instead, he has procrastinated since 2011 to resolve that $342 debt and, it was not until months after the SOR was received that he took steps to engage the services of an attorney to do so. In failing to timely file he federal and state income tax returns and resolve his long-standing delinquent debt, he appears to have acted imprudently and irresponsibly. Applicant's actions, or inactions, under the circumstances confronting him, continue to cast doubt on his current reliability, trustworthiness, and good judgment.[39]

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

---

of conduct and employed an "all's well that ends well" analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR).

[39] *See* ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

consideration of the guidelines and the whole-person concept. Moreover, 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.[40]

There is some evidence in favor of mitigating Applicant's conduct. There is no evidence of misuse of information technology systems, mishandling protected information, or substance abuse. Applicant's financial problems were primarily associated with his failure to timely file federal and state income tax returns for the tax years 2010 through 2014. The 2010 and 2011 federal tax returns were both filed in April 2013; the 2012 federal tax return was filed in May 2013; and the 2013 and 2014 state and federal tax returns were both filed in November 2015 – one month after the SOR was issued. He received a refund for each of the tax years filed. He timely filed his federal and state income tax return for 2015. While there may have been instances when Applicant encountered difficulties maintaining some accounts in a current status, he apparently was able to resolve most of them, with one noted exception. Applicant's combined family income leaves him with a substantial monthly remainder available for discretionary savings or spending.

The disqualifying evidence under the whole-person concept is simply more substantial. As noted above, Applicant's explanations for his repeated multi-year failure to comply with the law related to the timely filing his federal income tax returns are inconsistent and somewhat inflated. They were (a) some complications arose with his taxes associated with exercised stock options from his employer in 2010; (b) getting the necessary tax documents together took time; (c) his son was born six weeks prematurely, requiring significant medical attention; (d) his wife had preeclampsia; (e) his son was diagnosed with autism spectrum disorder, requiring 24-hour supervision because he is nonverbal, not potty-trained, and a flight risk; (f) Applicant does his own taxes on-line, and he had computer issues preventing him from using his tax preparation software; (g) he had to relocate his residence on an emergency basis due to lead in his original residence; (h) his daughter's social security card was misplaced and it was required to claim her as a dependent; and (i) and other "life priorities." His explanations for the multi-year delay in obtaining the necessary documentation are difficult to accept, and his reasons for failing to accept professional guidance is unreasonable. Furthermore, some of those factors were effectively minimized when Applicant acknowledged that some of those factors did not occur over extended periods. Applicant's chosen status of unemployment while anticipating a prospective move into a mission responsibility, as with many of the other factors addressed above, was of his own doing, and not largely beyond his control.

With respect to the supposedly fraudulent delinquent debt for $342, once again, Applicant's procrastination or obstinence seem to be central causes of his failure to take timelier and effective action to resolve the debt first established in 2010. Applicant previously indicated an intention to hire an attorney in September 2014, but the only evidence that a meeting had actually been scheduled was a letter acknowledging a meeting scheduled for May 3, 2016. No result of that meeting was submitted before the

[40] *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).

record closed. Applicant continues to act imprudently and irresponsibly. Applicant's actions, or inactions, under the circumstances confronting him, continue to cast doubt on his current reliability, trustworthiness, and good judgment.

Overall, the evidence leaves me with substantial questions and doubts as to Applicant's security worthiness. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations. *See* AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as amended, 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
Subparagraph 1.c.:	Against Applicant

Conclusion

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

_____
ROBERT ROBINSON GALES
Administrative Judge