



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



In the matter of:

)
)
)
)
)

ISCR Case No. 15-02636

Applicant for Security Clearance

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: Ronald P. Ackerman, Esq.

08/16/2016

Decision

HARVEY, Mark, Administrative Judge:

Applicant and her husband failed to timely file their federal and state income tax returns in 2011 and 2012; however, they were filed before the SOR was issued. Applicant's husband accepted responsibility for the failure to timely pay their property taxes for the rental business. Applicant was not aware of the delinquent property taxes for the rental business because her husband intercepted the tax notices. Most of the property taxes for the rental business were paid before the SOR was issued. Her husband paid the final property tax debt for the rental business in November 2015. Applicant has established a track record of debt payment and resolution. Financial considerations security concerns are mitigated. Access to classified information is granted.

History of the Case

On August 10, 2014, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) (SCA). (Government Exhibit (GE) 1) On October 29, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF did not find that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. (HE 2) Specifically, the SOR set forth security concerns arising under the financial considerations guideline.

On November 28, 2015, Applicant responded to the SOR, and she requested a hearing. On January 26, 2016, Department Counsel was ready to proceed. On March 21, 2016, the case was assigned to me. On June 20, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for July 13, 2016. (HE 1) The hearing was held as scheduled.

Department Counsel offered six exhibits; Applicant offered nine exhibits; and all exhibits were admitted into evidence without objection. (Transcript (Tr.) 12-17; Government Exhibit (GE) 1-6; Applicant's Exhibit (AE) A-I) On July 21, 2016, DOHA received a copy of the transcript of the hearing.

Findings of Fact

In Applicant's SOR response, she admitted in part the allegations in SOR ¶¶ 1.a, 1.c, and 1.d; admitted the allegations in SOR ¶¶ 1.b and 1.e; and she denied the remaining allegations. She also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is 46 years old, and she is the president and chief executive officer (CEO) of a company she cofounded in 2012. (Tr. 18-19) She has been employed as a staff engineer and engineering specialist since 1994. (GE 1) Her company provides engineering services to DOD and the intelligence communities. (Tr. 18-19, 60-61; GE 1) In 1993, she received a bachelor's degree in electrical engineering, and in 2003, she received a master's degree in electrical engineering. (Tr. 18) She has nine-year-old twin sons. (Tr. 22)

Financial Considerations

In 2004, Applicant and her husband began their operation of a rental business. (Tr. 19) Applicant's husband was primarily responsible for their rental business. (Tr. 19; AE G) Both Applicant and her husband were registered as owners of the rental business. (Tr. 20) The rental business's 2006 tax filing shows that she materially participated in the rental business. (Tr. 21) The rental business's 2007 tax filing shows she did not materially participate in the rental business. (Tr. 21, 43; AE G) Applicant and her husband said that in 2006, Applicant ended all participation in the rental business. (Tr. 22; AE G) She ended her participation in the rental business because she did not have time to work full time and care for her family. (Tr. 21) In February 2016, the rental business was registered as a limited liability corporation (LLC) under Applicant's husband's name alone. (Tr. 44; AE E; AE G) She is not responsible for the future property taxes assessed or levied on the rental business. (Tr. 44, 56-57) Her regret is

that she failed to fully document her separation from the rental business in 2007, and she failed to ensure her taxes were timely filed in 2011 and 2012. (Tr. 48)

Applicant's husband works out of an office at home. (Tr. 44) After 2006, he screened all of their bills, and he took all of the bills and correspondence that related to the rental business, as they agreed the rental business was his responsibility. (Tr. 44; AE G) She did not see the notices of bills for the rental business's property taxes or liens, and she was unaware of them until she was completing her SCA, when she learned about two of them from her husband. (Tr. 45) Applicant pays the family bills for utilities, their mortgages, and vehicles. (Tr. 45) She ensures all debts are timely paid. (Tr. 45) She has \$600,000 in her 401(k) account and about \$160,000 in her bank account. (Tr. 46) She and her husband have ample income to pay all of their debts. (Tr. 45-46) She has never had any security violations, arrests for criminal offenses, abuse of illegal drugs, or incidents showing alcohol abuse. (Tr. 47)

The status of the SOR allegations is as follows:

SOR ¶ 1.a alleges that Applicant failed to timely file her federal and state tax returns for 2011 and 2012 as required. The following table shows her federal and state tax status for 2011 and 2012:

Tax Return	Extension Request	Tax Owed ¹	Payments	Refunds (+) Owed (-)	Received by IRS
2011 Federal	Apr. 15, 2012	\$62,660	\$65,375	+\$2,700	Apr. 23, 2013
2011 State	N/A	\$24,698	\$ 32,443	+\$7,745	Oct. 15, 2013
2012 Federal	Apr. 15, 2013	\$44,336	\$45,267	+\$931	Aug. 11, 2014
2012 State	N/A	\$17,825	\$17,647	-\$179	Aug. 12, 2014

On April 15, 2012, Applicant and her husband timely requested a filing extension for his 2011 federal income tax return, and they provided a check for \$8,837 to the Internal Revenue Service (IRS). (Tr. 24; SOR response, Ex. A)² Their 2011 federal income tax return was due in October 2012, but was not filed until April 23, 2013. They believed they were due a refund for tax year 2011. (Tr. 23) On January 13, 2014, they received a \$9,018 refund for their 2011 federal income taxes. (SOR response, Ex. A) The IRS reassessed Applicant's 2011 federal income taxes, and on May 12, 2014, Applicant paid \$6,362 in additional taxes. (SOR response, Ex. A) The correct federal refund for the 2011 tax year should have been about \$2,700 (\$9,018 minus \$6,362). (SOR response, Ex. A) Applicant's husband told Applicant that he filed their tax returns late because he was overwhelmed with paperwork. (Tr. 25) Applicant's filing and payments on her 2011 state tax return are summarized in her SOR response at Ex. B. For Applicant's 2012 state income taxes, Applicant paid the \$179 due when the 2012 state tax return was filed. (SOR response, Ex. D) After the 2012 tax year state and

¹Tax owed in this table includes interest and penalties.

²Applicant provided Internal Revenue Service (IRS) transcripts for tax years 2011 and 2012. (SOR response, Ex. A and Ex. C)

federal tax returns were filed, all tax returns were timely filed. (Tr. 26-29; SOR response, Ex. E and Ex. F) After she completed her SCA, Applicant insisted that they employ an accountant to ensure tax returns were timely filed. (Tr. 26-28, 50-51; AE F)

The ten debts in SOR ¶¶ 1.b to 1.k relate to tax assessments and liens of the rental business's property. (Tr. 62) The following table provides specific information about the rental business's liens and assessments from 2008 to 2012.

SOR ¶	Date Lien Entered	Amount of Lien	Date and Amount Paid ³	Lien Released
1.b	Nov. 2009	\$355	Mar. 15, 2011—\$442	Nov. 13, 2015
1.c	Nov. 2011	\$7,034	Nov. 13, 2015—\$11,208	Nov. 13, 2015
1.d	Nov. 2012	\$7,391	Nov. 13, 2015—\$11,819	Invalidated ⁴
1.e	Nov. 2013	\$167	Nov. 13, 2015—\$210	Nov. 13, 2015
1.f	Nov. 2007	\$278	Mar. 8, 2008—\$208	Aug. 1, 2014
1.g	May 2008	\$570	July 8, 2008—\$71	Aug. 1, 2014
1.h	Nov. 2009	\$6,084	Mar. 15, 2011—\$7,499	Aug. 1, 2014
1.i	Nov. 2010	\$6,598	Mar. 15, 2011—\$6,965	Aug. 1, 2014
1.j	Nov. 2011	\$437	Feb. 6, 2013—\$528	Aug. 1, 2014
1.k	Nov. 2012	\$475	Feb. 6, 2013—\$505	Aug. 1, 2014

The reason for the difference between the payment date and the date the lien was released is Applicant needed to pay the \$23 lien release fee. (Tr. 30) The liens were generated through state tax property assessments of the rental business. (Tr. 31) When Applicant was completing her August 10, 2014 SCA, she asked her husband whether the rental business's property taxes were paid, and he told her about two liens, which she noted in her SCA. (Tr. 32; SOR ¶¶ 1.j and 1.k) She told him to pay the debts, and when he went to the county to pay those two liens, he discovered four additional liens. (Tr. 33) She learned about more liens during her Office of Personnel Management (OPM) personal subject interview (PSI). (Tr. 33) She confronted her husband about the debts, and he agreed to resolve them. (Tr. 33-34)

Four of the rental business's property tax debts were for more than \$6,000: 1.c—\$7,034; 1.d—\$7,391; 1.h—\$6,084; and 1.i—\$6,598. Applicant's husband attempted to dispute those four liens because he believed the assessment was greatly excessive. (Tr. 35) All of the tax liens should have been between \$400 and \$600. He paid the debt in SOR ¶ 1.d, and then he successfully disputed the SOR ¶ 1.d debt. (Tr. 35-36; AE C) The SOR ¶ 1.d debt was invalidated, and he received a credit for \$10,282. (Tr. 35-36, 54-55; AE C) Even though the other three debts were grossly exaggerated, they had to be paid because his disputes were not timely filed. (Tr. 36-37) Applicant provided receipts showing payment of all the rental business's property tax debts. (AE D)

³Proof of payment is at AE D.

⁴The lien was invalidated on May 6, 2016. (AE I)

In sum, the state and federal income tax returns were not timely filed due to Applicant's husband's failure to gather the necessary information from the rental business. (Tr. 49) All income tax issues were resolved by August 12, 2014, more than one year before the SOR was issued. All property taxes are paid. (Tr. 48-49)

Applicant expressed regret for her tax-related mistakes. (Tr. 63) She acknowledged that she had too much of a "hands-off" approach and over delegated handling of the rental business's taxes to her husband. (Tr. 64; AE G) Moreover, she should have insisted that they use professional tax preparers for their personal and business taxes. (Tr. 64)

Applicant's friends and coworkers lauded her intelligence, professionalism, diligence, financial responsibility, and contributions to DOD. (SOR response, Ex. W-Ex. Y) She has excellent potential for future contributions to DOD.

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." *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 applicant's 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines. 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, nothing should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about 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 three disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” “(c) a history of not meeting financial obligations;” and “(g) failure to file annual Federal, state, or local income tax returns as required” Applicant and her husband failed to timely file and pay their federal and state income taxes for tax years 2011 and 2012. They failed to timely pay the rental business’s property taxes. The Government established the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(g) 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;⁵ 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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for

⁵The 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)).

access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 20(a), 20(c), and 20(d) apply. Applicant and her husband filed their 2011 and 2012 federal and state income tax returns late; however, they were filed before the IRS issued any liens and before the SOR was issued. They received refunds on three of the four returns. Overall, they received \$11,197 in federal and state income tax refunds.

After 2006, Applicant’s role in the family the rental business was very limited. She relied on her husband to ensure that the rental business’s property taxes were paid. Applicant was not aware that her husband was not paying the property taxes for the rental business because her husband intercepted the notices. In the course of the security clearance investigative process, she learned about additional delinquent property taxes. Most of the property tax debts were paid before the SOR was issued. Her husband delayed paying some of the rental business’s property tax debt because he wanted to dispute the amounts of the assessments. He paid the rental business’s final property tax debt in November 2015.

According to the DOHA Appeal Board, an applicant’s failure to timely file or pay taxes raises special security concerns beyond those entailed in failing to pay other debts:

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).

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). When an issue of delinquent taxes is involved, an administrative judge is required to consider how long an applicant waits to file their tax returns, whether the IRS generates the tax returns, and how long the applicant waits after a tax debt arises to begin and complete making

payments.⁶ The Appeal Board commented 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 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).

The SOR does not allege, and Applicant did not owe any delinquent federal or state income taxes when the SOR was issued.⁷ Applicant took reasonable and responsible actions when she learned of delinquent tax debts. She and her husband filed the required tax returns and paid their taxes. They have hired an accountant to file their tax returns. Applicant has cut her ties to the rental business, eliminating the risk of responsibility for future unpaid property taxes.

All of Applicant’s non-SOR debts are paid or are in current payment plans. She is communicating with her creditors, and has assured she intends to pay her debts. She has established a track record of debt payment and resolution. I am confident that Applicant will conscientiously endeavor to maintain her financial responsibility.

⁶See ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016) (reversing grant of security clearance and stating, “His delay in taking action to resolve his tax deficiency for years and then taking action only after his security clearance was in jeopardy undercuts a determination that Applicant has rehabilitated himself and does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation’s secrets.”); ISCR Case No. 14-01894 at 2-6 (App. Bd. Aug. 18, 2015) (reversing grant of a security clearance, discussing lack of detailed corroboration of circumstances beyond applicant’s control adversely affecting finances, noting two tax liens totaling \$175,000 and garnishment of Applicant’s wages, and emphasizing the applicant’s failure to timely file and pay taxes); ISCR Case No. 12-05053 at 4 (App. Bd. Oct. 30, 2014) (reversing grant of a security clearance, noting not all tax returns filed, and insufficient discussion of Applicant’s efforts to resolve tax liens). More recently, in ISCR Case No. 14-05476 (App. Bd. Mar. 25, 2016) the Appeal Board reversed a grant of a security clearance for a retired E-9 and cited applicant’s failure to timely file state tax returns for tax years 2010 through 2013 and federal returns for tax years 2010 through 2012. Before his hearing, he filed his tax returns and paid his tax debts except for \$13,000, which was in an established payment plan. The Appeal Board highlighted his annual income of over \$200,000 and discounted his non-tax expenses, contributions to DOD, and spouse’s medical problems. The Appeal Board emphasized “the allegations regarding his failure to file tax returns in the first place stating, it is well settled that failure to file tax returns suggest that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information.” *Id.* at 5 (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002) (internal quotation marks and brackets omitted).

⁷See ISCR Case No. 14-03358 at 3, 5 (App. Bd. Oct. 9, 2015) (reversing grant of a security clearance, noting \$150,000 owed to the federal government, and stating “A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly failure to honor other obligations to the Government has a direct bearing on an applicant’s reliability, trustworthiness, and ability to protect classified information.”).

Based on Applicant's credible and sincere promise to pay her debts and timely file her tax returns, future new delinquent debt "is unlikely to recur and does not cast doubt on [Applicant's] current reliability, trustworthiness, or good judgment," and "there are clear indications that the problem is being resolved or is under control." Her payments of her debts showed good faith. She has sufficient income to keep her debts in current status and to continue making progress paying her remaining debts. Her efforts are sufficient to mitigate financial considerations security concerns. Even if Applicant provided insufficient information to mitigate security concerns under AG ¶ 20, she mitigated security concerns under the whole-person concept, *infra*.

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.

Applicant is 46 years old, and she is the president and CEO of a company she cofounded in 2012. Her company provides engineering services to DOD and the intelligence communities. In 1993, she received a bachelor's degree in electrical engineering, and in 2003, she received a master's degree in electrical engineering. Applicant's friends and coworkers praised her intelligence, professionalism, diligence, financial responsibility, and contributions to DOD. She has superb potential for future contributions to DOD.

Applicant failed to timely file her federal and state income tax returns for tax years 2011 and 2012; however, they were filed before the IRS issued any liens and before the SOR was issued. Overall, they received \$11,197 in tax refunds after the four returns were filed. Applicant was unaware that her husband was not paying the property taxes for the rental business, which he managed after 2006 without her involvement. Once she learned of the tax debt, she insisted they be paid, and she legally severed her

responsibility for any liabilities and profits resulting from the rental business. All required tax returns are filed, and all taxes are paid.

All of Applicant's non-SOR debts are paid or are in current payment plans. She is communicating with her creditors, and has assured she intends to pay her debts. She understands that she needs to pay her debts, timely file her tax returns, and the conduct required to retain her security clearance. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant has established a "meaningful track record" of debt re-payment, and I am confident she will maintain her financial responsibility.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations concerns are mitigated.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 1.k:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

MARK HARVEY
Administrative Judge