



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



In the matter of:)	
)	
(Redacted))	ISCR Case No. 15-02761
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

07/03/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

As of February 2016, Applicant owed delinquent debt totaling \$15,077 on five accounts. Alimony paid to his ex-wife caused financial strain. Applicant recently settled the debts, and he is repaying \$15,000 in back taxes to the IRS. Clearance is granted.

Statement of the Case

On February 10, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On February 29, 2016, Applicant answered the SOR allegations. On March 10, 2016, he forwarded his response to the DOD CAF and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On September 20, 2016, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On September 26, 2016, I scheduled a hearing for October 18, 2016.

I convened the hearing as scheduled. Four Government exhibits (GEs 1-4) and five Applicant exhibits (AE A-E) were admitted into evidence without objection. Applicant and his girlfriend testified, as reflected in a transcript (Tr.) received on October 26, 2016.

The record was held open for 30 days for post-hearing submissions from Applicant. On November 7, 2016, Applicant submitted AEs F-K, which were admitted into evidence without any objections from the Government.

On December 19, 2016, Applicant submitted an additional document (AE L) for my consideration. On December 21, 2016, I reopened the record for comment from the Government. Department Counsel indicated that he had no objection. I accepted the document in evidence.

Due to a workload-related delay in issuing a decision in Applicant's case, I reopened the record on June 8, 2017, for a status update of his past-due federal income tax debt. On June 13, 2017, Applicant submitted payment records that were admitted as AE M. Department Counsel filed no objection by the June 20, 2017 deadline for comment.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersedes the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.¹

Findings of Fact

The SOR alleges under Guideline F that, as of February 10, 2016, Applicant owed a charged-off credit card debt of \$1,133 (SOR ¶ 1.a) and four collection debts of \$650 (SOR ¶ 1.b), \$2,214 (SOR ¶ 1.c), \$606 (SOR ¶ 1.d), and \$10,474 (SOR ¶ 1.e). Applicant admitted the debts when he answered the SOR allegations. He explained that the debts were incurred because of his divorce, but that his financial situation has improved. He had repayment plans in place for the debts. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

Applicant is a 49-year-old analyst with an associate degree earned while he was on active duty in the U.S. military. He retired from the military in October 2006 after 20 years of honorable service. While he was finishing out his leave entitlement, Applicant began working for his defense contractor employer in August 2006. He has held a DOD secret clearance for most of his military career, and his clearance was renewed most recently in December 2002. (GEs 1, 2; Tr. 30.)

Applicant was married from November 1987 to November 2009. He and his ex-wife had two sons, who are now ages 29 and 27. (GE 1; Tr. 40.) During their marriage, his ex-wife, an accountant, handled all the family's finances. Applicant lacked insight into their bills. (AE A; Tr. 48.)

At the time of their divorce, Applicant agreed to pay his ex-wife \$2,084 in alimony every two weeks and an additional \$1,000 monthly from his military retirement pay. (AE A; Tr. 36.) At the time of their divorce, she was working as a GS-11 federal employee (Tr. 43), but their older son was in his first year of college in a five-year program. Their younger son had recently graduated from high school. Applicant was not required to pay child support, but he wanted to ensure that his sons had an opportunity to succeed. (Tr. 30, 34.) He did not have his own lawyer in the divorce, and in hindsight realizes that he could not afford the alimony, which left him with approximately \$500 from each paycheck for his monthly expenses. (Tr. 41-42.) He volunteered for hazardous duty assignments for the income needed to pay his debts, and he traveled on official business about eight months a year. He began to struggle financially around 2010 as overtime and hazardous duty pay became less available. His income suffered as a result, and he began to juggle bill payments, paying some routine expenses one month and other bills the next month. (GE 2; AE A.)

In mid-2010, Applicant stopped paying on two credit cards opened with a retailer, and the accounts were charged off in February 2011 for \$650 (SOR ¶ 1.b) and in approximately January 2011 for \$9,000 (SOR ¶ 1.e). (GEs 1-4.) A credit account opened with a furniture retailer was charged off for \$1,763 in January 2011 due to inactivity since August 2010 (SOR ¶ 1.c). (GEs 3, 4; AE E.) He was paying almost \$60,000 in alimony before taxes each year, which left him between \$25,000 and \$30,000 for his rent, utilities, car payment, and other living expenses. (Tr. 40.)

To renew his security clearance eligibility, Applicant completed a Questionnaire for National Security Positions (SF 86) on October 2, 2012. In response to inquiries concerning any delinquency involving routine accounts, Applicant disclosed that a credit card debt was in collection for approximately \$9,000 (SOR ¶ 1.e) because of his divorce, but that he was trying to arrange a repayment plan. (GE 1.)

On December 6, 2012, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant explained that before the previously disclosed account (SOR ¶ 1.e) went to collections, he had made repeated attempts to arrange for repayment. The creditor offered to settle the debt for a lump-sum payment of \$8,500, which Applicant could not afford. He countered with an offer to pay \$100 a month until 2015, when he would increase his monthly payment to \$500 because of a scheduled

decrease by half in his alimony obligation, but his offer was rejected. He made a similar offer after it was placed for collection, but he received no response. He estimated the debt at \$9,000 but did not dispute information showing a current balance of \$10,474. When asked whether there were any other accounts that should have been included on his SF 86, Applicant explained that he purchased a bed from a furniture retailer on credit and stopped making payments on the debt around 2009 (SOR ¶ 1.c). He did not know whether the debt was in collection. He recalled no other accounts, but he did not dispute the debt in SOR ¶ 1.b, which he thought had been included in the debt in SOR ¶ 1.e. Applicant attributed his financial problems to his divorce and to a reduction in temporary duty opportunities at work. He indicated that he would attempt to arrange for monthly affordable payments on his debts, with a plan to double his payments in 2015 once his alimony was reduced. (GE 2.)

Applicant spent 6.5 months on temporary duty overseas in 2014. (Tr. 34.) In April 2014, Applicant's credit card account opened in September 2013 was charged off for \$1,133 (SOR ¶ 1.a). In August 2014, another credit card lender placed a \$606 balance for collection (SOR ¶ 1.d). As of September 2015, Equifax was reporting that Applicant owed past-due balances of \$1,133 (SOR ¶ 1.a), \$650 (SOR ¶ 1.b), \$2,214 (SOR ¶ 1.c), and \$606 (SOR ¶ 1.d). The debt in SOR ¶ 1.e was not on his credit report. Applicant was making timely payments on an automobile loan obtained in October 2012 for \$19,827 (balance \$10,391). A \$10,000 loan obtained in August 2009 had been delinquent 90 days in the past, but Applicant had been current on his payments since August 2013. (GE 4.)

In 2015, Applicant's employer was successful in bidding to continue its contract for the U.S. military, but it meant a reduction in wages team-wide and some employee dismissals. Applicant's base pay was reduced by 14% under his employer's new contract with the military. Applicant kept his financial struggles from co-workers until it became an issue for his clearance. Applicant did not allow the stress of his personal finances to adversely affect his work. (AE A; Tr. 82.)

In November 2015, Applicant learned that his ex-wife had recently remarried. On January 1, 2016, one year after his younger son graduated from college, Applicant's alimony payments decreased to \$1,500 every two weeks per his divorce decree. (AE A; Tr. 36, 44.) Under the divorce decree, his alimony obligation continues at \$1,500 every two weeks plus \$1,000 a month from his military retirement for ten years after January 1, 2016, or until his ex-wife remarried, whichever occurred last.² (Tr. 45.) Because of his ex-wife's remarriage and her salary as a federal employee of almost \$100,000 a year (Tr. 36-37), Applicant petitioned the court to terminate his alimony obligation. It became a priority for him with the thought that he could repay all of his debts if he no longer had to pay alimony. (Tr. 92-94.) In September 2016, a judge ruled that alimony was not reviewable. (AE A; Tr. 44-47.) Applicant appealed the ruling, and on December 9, 2016, his appeal was accepted for oral argument before his state's supreme court. Applicant was granted a stay of his alimony obligation pending a decision on his appeal. (AE L.) Applicant retained a family court attorney at a fee of almost \$11,000, of which he has paid almost \$9,000, to represent

² Applicant, who was not represented by a lawyer in his divorce, admitted that he did not catch that his ex-wife's attorney had substituted "last" for "first" when he consented to the alimony provision. (Tr. 46.)

him in the alimony case. He paid her \$3,000 upfront and then \$500 every two weeks starting in May 2016. For his appeal, he retained an appellate attorney at a fee of \$5,000, half of which has been paid. (Tr. 62-65.)

Applicant's military retirement income is \$1,500 per month, of which \$1,000 goes to his ex-wife. (Tr. 66.) After Applicant shared with his supervisor some of the details about his alimony and the financial impact of his salary reduction, his employer gave him a significant raise in the summer of 2016 to keep him at the company. (AE A.) His annual salary increased from \$86,000 to almost \$102,000 because of his work performance, although he did not see the increase in his pay until September 2016. (Tr. 38, 61.)

Between October 8, 2016, and October 11, 2016, Applicant made payments to fully settle the debts in the SOR, as follows: \$730 (SOR ¶ 1.a), \$390 (SOR ¶ 1.b), \$664 (SOR ¶ 1.c), \$363 (SOR ¶ 1.d), and \$3,100 (SOR ¶ 1.e). (AEs C-D, F-J.) The funds to pay the debts were paid out of his girlfriend's account, but gifted to him by a wealthy friend. (Tr. 61, 66-67.) This friend gave him almost \$20,000 to pay off the debts in the SOR and some other debt obligations not alleged. (Tr. 67.) A former colleague, she has no concerns about his good character or his trustworthiness and believes he was "dealt some very bad cards in life." (AE B.)

As of October 2016, Applicant had three accounts with outstanding balances. He was making timely payments of \$250 per month directly from his military retirement income on a credit card balance of \$3,300; of \$45 per month on a credit card balance of \$1,676; and of \$372 per month on a vehicle loan balance of \$6,109. (AE C; Tr. 52-53.) He is still driving a 2006 model-year vehicle, but he had refinanced his loan. (Tr. 53.)

Applicant's ex-wife handled their income tax returns during their marriage and for tax years 2009 through 2011. After Applicant took over responsibility for his own tax filing obligations, he attempted to prepare them himself but "couldn't do it." He had no income to pay his taxes, but he also testified that it was overwhelming. He filed his delinquent federal income tax returns in 2015 or 2016.³ (Tr. 70-74.) There is no evidence that he filed any state income tax returns. He resides in a state that does not have a personal income tax obligation.⁴ He explained that he was motivated to file his delinquent tax returns by the improvement in his financial situation with the decrease in his alimony obligation in January 2016. He has been in negotiations with the IRS since late 2014, when the IRS demanded all taxes owed. He retained a tax attorney in early 2016. On October 4, 2016, the IRS established an installment agreement for Applicant to pay \$340 per month toward his approximately \$15,000 in total tax liability for tax years 2011 through 2015. His first payment was due on October 28, 2016. (AE K; Tr. 55-57.) Applicant paid the tax attorney \$3,000 for his services. (Tr. 62.) He admitted that the tax issue worked out to his benefit in

³ Applicant testified that he filed his delinquent tax returns in 2015. (Tr. 71.) However, when asked about what prompted him to file them, Applicant indicated that he was in a better position in January 2016 with the decrease in his alimony obligation, and on the advice of a couple of people, he hired a tax attorney who managed to get the IRS to waive "penalties and everything else." (Tr. 73.)

⁴ Applicant works on a military base located in a state that has an income tax filing obligation. No evidence was presented about whether Applicant is required to file state returns as a non-resident.

that the IRS waived interests and penalties. Applicant testified that he is not proud of his failure to comply with his income tax filing obligation, but that “he did the best [he] could with what [he] had.” (Tr. 73.)

Applicant testified that he can afford the IRS payment (Tr. 59), and after his hearing, he presented monthly payment receipts for January 2017 through May 2017. (AE M.). His rent is \$1,000 a month with utilities included. (Tr. 89.) He estimated his monthly discretionary income at \$1,500 after the IRS payment and monthly expenses, but excluding the \$500 monthly payment to his family law attorney. With the agreement of the attorney, Applicant recently suspended his payments to his divorce attorney pending resolution of his appeal on the alimony issue. (Tr. 68-69.)

Character References

Applicant has been dating a co-worker since about 2010. His girlfriend described him “as the most respected person in [their] office,” and as an asset in the field. In contrast to some of his colleagues, Applicant has been willing to accept assignments in some dangerous places and in deplorable conditions. Applicant’s girlfriend has known about his financial issues since they began dating. Their friends and colleagues want him to succeed, as evidenced by the money gifted to him by one of her best friends to address his debts. Applicant has expressed to his girlfriend his intention to repay the funds gifted to him by their mutual friend. Concerning his tax filing issues, each tax season, Applicant discussed with his girlfriend preparing his own returns and possibly filing for an extension, but he did not ask her for assistance in preparing his returns, and she was unaware of his tax noncompliance at the time. (AE B; Tr. 81-87.)

Several of Applicant’s former and current colleagues strongly endorse continuation of his security clearance eligibility. Applicant serves as his team’s designated security expert. Applicant showed selfless dedication in fulfilling his duties; “unrivaled passion” for the security of U.S. personnel, equipment, and operations in environments with zero tolerance for failure, and willingness to place himself in positions of great hardship. He handled sensitive and classified information for several years without any indication of compromise. A first lieutenant with first-hand observations of Applicant’s performance between January 2014 and August 2016 stated that he has not met anyone who cares more deeply about the safety and security of deployed personnel than Applicant. The former program manager, a captain in the U.S. military, attested to Applicant being his first choice for assignments in hostile security environments if he needed work done effectively, efficiently, and with no room for failure. The supervisor who advocated for Applicant’s recent raise, which he indicated was “rare and difficult to support given the contract cost constraints,” reported that Applicant has consistently received superior performance reviews and was selected as employee of the quarter three times. A retired lieutenant colonel, now a GS-13 senior security specialist responsible for oversight of the military organization’s contracted specialists that install security systems in the field, described Applicant as “a critical member of that team.” Aware that Applicant’s divorce has been a financial burden for Applicant, he “wholeheartedly” supports renewal of Applicant’s security clearance eligibility. Military and civilian personnel alike respect and admire Applicant.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has 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). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant’s eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concerns about financial considerations are articulated in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

An applicant is not required to be debt free, but is required to manage his finances in a way as to exhibit sound judgment and responsibility. The Government met its burden of establishing by substantial evidence a record of financial delinquency which raises security concerns under disqualifying conditions AG ¶ 19(a), "inability to satisfy debts;" and AG ¶ 19(c), "a history of not meeting financial obligations." Available credit reports and Applicant's admissions indicate that he owed approximately \$15,077 in delinquent consumer credit debt as of February 2016, as alleged in the SOR.

Applicant has the burden of presenting evidence of explanation, extenuation, or mitigation to overcome the security concerns raised by his record of delinquency. Under the AGs effective for any adjudication on or after June 8, 2017, a record of consumer credit delinquency may be mitigated under one or more of the following conditions under AG ¶ 20:

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service,

and there are clear indications that the problem is being resolved or is under control; and

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

Applicant's financial problems stem largely from an onerous, but consensual alimony obligation under which he paid his ex-wife approximately \$5,168 per month for six years, until January 2016, when his alimony obligation decreased to \$1,500 every two weeks under his divorce settlement. AG ¶ 20(a) applies in part in that his divorce is a circumstance that is not likely to reoccur. The dissolution of his marriage also triggers AG ¶ 20(b). To the extent that financial judgment concerns arise because he agreed to the divorce settlement, he could not have foreseen, and had no control over, the loss of hazardous duty availability or the economic constraints under which his employer kept its contract with the military that led the company to reduce his salary by 14%.

AG ¶ 20(b) requires that an applicant act responsibly. Apart from offering to pay a credit card lender installment payments in 2012, Applicant made no effort to address the debts at issue in the SOR until October 2016, despite the reduction in his alimony obligation effective January 1, 2016, from \$2,048 every two weeks to \$1,500 every two weeks. Applicant may not have had the full \$2,168 in funds no longer allotted to alimony because of the cut in his pay, but he still had an obligation to contact his creditors in an effort to arrange repayment terms within his means.

Applicant understandably gave priority to negotiating through an attorney an installment payment plan to address a sizeable federal income tax delinquency of \$15,000 owed for tax years 2011 through 2015. He paid the tax attorney \$3,000 for his services. He also sought a court order terminating his alimony obligation so that he could pay off the debts in the SOR. As of October 2016, he had paid almost \$9,000 to the family law attorney, \$3,000 upfront in the fall of 2015 and then \$500 payments in 2016.

With his recent salary increase, Applicant reported net monthly discretionary income of \$1,500 since September 2016 after calculating in his monthly commitment of \$340 to the IRS, but with his monthly payment of \$500 to the family law attorney suspended. Applicant settled the debts in the SOR for less than their full balances in October 2016 with funds gifted to him by a friend. Applicant's belated resolution of the debts in the SOR implicates AG ¶ 20(c) and AG ¶ 20(d) in some aspects. Applicant testified that he has taken a couple of financial classes, although he provided no evidence of financial counseling from a legitimate and credible source, which is required under AG ¶ 20(c). In considering AG ¶ 20(d), I cannot ignore Appeal Board precedent, which requires that "a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation."⁵ His

⁵ The DOHA Appeal Board stated in ISCR Case No. 07-06482, decided on May 21, 2008, in part:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007).

case for full mitigation under AG ¶ 20(d) is difficult to establish in light of the very recent, post-SOR settlements.

In Applicant's favor, he has closed his consumer credit card accounts and is making timely payments on his outstanding balances. By all accounts, he lives modestly, and his financial situation is improving. Applicant's \$15,000 federal income tax delinquency was apparently unknown to the Government before his security clearance hearing. He had yet to make any payments in that his installment repayment plan had only just been established. Department Counsel did not seek to amend the SOR to add the tax issues under AG ¶ E3.1.17 of the Directive. Debts not alleged cannot provide a basis for disqualification, but they can be considered for other purposes, such as whether Applicant has shown sufficient reform and whether he can be counted on to fulfill his legal obligations under a whole-person assessment.⁶ Apparently, his tax problems worked out in his favor in that the IRS agreed to waive penalties and interest. Given Applicant's income tax delinquency impacts his financial situation, I gave him the opportunity to present proof that his tax issues are being resolved. In that regard, Applicant submitted documentation of timely installment payments from January 2017 through May 2017.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).⁷ The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

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. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate[s] that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006).

⁶ Under AG ¶ 19(f), "failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required," raises security concerns that may be disqualifying. The Appeal Board has long held that an administrative judge may consider non-alleged conduct to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrate successful rehabilitation; to decide whether a particular provision of the AGs is applicable; or to provide evidence for a whole-person analysis under Section 6.3 of the Directive. See, e.g., ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012).

⁷ The factors under AG ¶ 2(d) are as follows:

(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.

Applicant assented to a sizeable alimony obligation out of a desire to support his two sons, and that decision caused him to struggle financially, especially after hazardous duty pay declined and his employer cut his salary. Selflessness is most evident in his unassailable dedication to his work in ensuring the safety and security of U.S. personnel in dangerous environments. There is an element of unfairness in his ex-wife continuing to collect alimony despite her remarriage and promotions at work. All of those factors weigh in Applicant's favor.

Some judgment concerns arise because of Applicant's credit card defaults and his failure to comply with his income tax filing obligations for several years. The stress of his alimony obligation did not relieve him of his legal obligation to file timely returns. He was clearly aware of his obligation as he had discussed tax return preparation and filing extensions with his girlfriend. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990).

However, security clearance decisions are not intended to punish applicants for past transgressions. The security clearance adjudication involves an evaluation of an applicant's current judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). After the IRS demanded payment of his tax delinquency. Applicant filed his delinquent tax returns, and he is in compliance with an installment plan acceptable to the IRS. His reputation for high personal integrity among his co-workers and friends and his track record of consistent alimony payments indicate that he can be counted on to continue to make his tax payments. For the reasons noted above, I conclude that it is clearly consistent with the national interest to continue Applicant's security clearance eligibility.

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-1.e: For Applicant

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Elizabeth M. Matchinski
Administrative Judge