



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



In the matter of:)
)
 ---) ISCR Case No. 15-02816
)
 Applicant for Security Clearance)

Appearances

For Government: Douglas R. Velvel, Esquire, Department Counsel
For Applicant: *Pro se*

07/31/2017

Remand 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 September 2, 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 October 31, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to her, 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 *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

¹ GE 1 (e-QIP, dated September 2, 2014).

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 November 6, 2015. On November 23, 2015, she responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on January 21, 2016. The case was assigned to another administrative judge on March 24, 2016, and reassigned to me on June 6, 2016. A Notice of Hearing was issued on June 28, 2016. I convened the hearing as scheduled on July 11, 2016.

During the hearing, Government exhibits (GE) 1 through GE 4 were admitted into evidence without objection. Applicant testified. Applicant did not submit any exhibits. The transcript (Tr.) was received on July 25, 2016. I kept the record open to enable Applicant to supplement it. She seemingly failed to take advantage of that opportunity and did not submit any documents. The record closed on August 8, 2016.

On March 27, 2017, after having considered all of the evidence, I issued a decision in the case that it was not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Accordingly, her eligibility for access to classified information was denied. Applicant subsequently appealed that decision.

On July 24, 2017, the Defense Office of Hearings and Appeals (DOHA) Appeal Board issued a decision, remanding the case for the following reason:

Applicant raised the following issues on appeal: whether Applicant submitted documentary evidence that was not included in the record. Consistent with the following, we remand the case to the Judge.

At the hearing, the Judge left the record open until August 8, 2016, for Applicant to submit documents. . . . In the decision, the Judge noted that Applicant did not submit any documents. In her appeal brief, Applicant asserted she submitted documents to Department Counsel on August 8, 2016, and provided a copy of the email that she sent to Department Counsel along with its five purported attachments.

Applicant's assertions on appeal constitute new evidence, which we are generally prohibited from considering. However, we will consider new evidence insofar as it bears upon threshold issues such as due process. . . . Under the facts of this case, we conclude that Applicant's assertions are sufficient to raise a *prima facie* case that she submitted documents to Department Counsel that either did not arrive at DOHA or were not sent to the Judge. We cannot resolve this issue based upon the facts before us. Accordingly, we conclude that the best resolution of this case is to remand it to the Judge for further processing consistent with the Directive. . . .

At the time the record closed on August 8, 2016, I had not received any documentation from Applicant or Department Counsel, and my decision noted that fact. However, it appears that on August 8, 2016, Applicant did submit documents to Department Counsel.² Those documents were never forwarded to me. Upon investigation, I learned that Department Counsel Velvel separated from DOHA in November 2016, without forwarding the documents or commenting on them. In the absence of objections, I have marked those documents and admitted them as Applicant exhibits (AE) A through AE F.

Findings of Fact

In her Answer to the SOR, Applicant admitted five (¶¶ 1.a., and 1.c. through 1.f.) of the factual allegations pertaining to financial considerations. Applicant's admissions and comments are incorporated herein as findings of fact. After a new complete and thorough review of the evidence now in the record, and upon due consideration of same, I make the following additional findings of fact:³

Applicant is a 56-year-old employee of a defense contractor. She has been a supply specialist with the company since June 2016, having served as a material coordinator with another federal contractor from October 2010 until May 2016. She is a May 1979 high school graduate. Applicant enlisted in the U.S. Navy in April 1980, switched over to the U.S. Naval Reserve in June 1985, went back to the U.S. Navy in November 1986, and retired honorably as an E-6 in October 2002. She held a confidential security clearance associated with her military service. Applicant was married to her first husband in March 1980 and divorced in November 1989. She married a second time in December 1989. Applicant has three children (a daughter born in 1983 and two sons born in 1988 and 1994), as well as a stepson (born in 1982).

Military Service, and Awards and Decorations

During her military career, Applicant was deployed to unspecified locations on three separate occasions. She was awarded the Navy and Marine Corps Commendation Medal, the Navy and Marine Corps Achievement Medal (four awards), the Marine Corps Good Conduct Medal (five awards), the National Defense Service Medal, the Navy Unit Commendation, the Navy and Marine Corps Overseas Service Ribbon (seven awards); the Sea Service Deployment Ribbon (three awards); the Southwest Asia Service Medal; the Kosovo Campaign Medal (with bronze star); the NATO Medal; and the Armed Force Expeditionary Medal.⁴

² AE B (Screenshot of e-mail to Department Counsel, dated August 8, 2016).

³ Effective June 8, 2017, by Directive 4 of the Security Executive Agent (SEAD 4), dated December 10, 2016, *National Security Adjudicative Guidelines* for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, were established to supersede all previously issued national security adjudicative criteria or guidelines. Accordingly, those guidelines previously implemented on September 1, 2006, under which this security clearance review case was initiated, no longer apply. In comparing the two versions, there is no substantial difference that might have a negative effect on Applicant in this case.

⁴ AE C (Certificate of Release or Discharge from Active Duty (DD Form 214), dated October 31, 2002).

Financial Considerations⁵

There was nothing unusual about Applicant's finances until 1998 or 1999. Applicant's history of timely filing federal income tax returns is haphazard at best. In 1998 or 1999, for reasons not recalled, other than she was scared, she failed to timely file her federal income returns or pay her owed income taxes. That practice continued until 2001. She claimed that all income tax returns were filed in 2002, and that she paid the Internal Revenue Service (IRS) all of her delinquent taxes. She failed to timely file her federal income tax return for the tax year 2002, but finally did so in about 2004. She was unable to recall if she timely filed her federal income tax return for 2004. She did not pay her delinquent income taxes for that year. In 2008, the IRS contacted Applicant about her delinquent income taxes, estimated at that point to be between \$25,000 and \$30,000. A tax lien was filed against her, and \$600 to \$800 per month was garnished from her paycheck. After about ten months, the lien was removed.

Applicant did not recall if she timely filed her federal income tax return for the tax year 2009, but she acknowledged that she failed to timely file the returns for 2010 and 2011. Because she was afraid of making a mistake on her returns, she decided not to file her income tax returns. In 2012, Applicant engaged the professional services of a tax preparer. Applicant contended that her delinquent federal income tax returns going back to 2002 were then filed, and that she entered into an installment agreement with the IRS to have a monthly payment of \$200 withdrawn from her paycheck. She also contended that the payments were increased to \$400 in January 2013. In November 2013, Applicant estimated she still owed the IRS \$20,000 in delinquent income taxes. Applicant failed to submit any documentation to support her contentions that her federal income tax returns were filed; that she had hired a professional income tax preparer; that she had entered into an installment agreement with the IRS; that a garnishment took place; or that any delinquent taxes had been paid.

In addition to her federal income tax difficulties, in about 2012 or 2013, Applicant began experiencing other financial problems. She claimed that over the next few years, she provided unspecified financial support for her mother and paid for her daughter's wedding. She also periodically assists her son and grandchildren. In addition, because of her son's previous actions in trashing a vacant residence next to the family home, Applicant purportedly had to pay \$30,000 in restitution. Also, she noted that there were Christmas expenditures. Those factors created financial discomfort for her, as she was unable to maintain all of her accounts in a current status. With insufficient funds to do so, Applicant had to prioritize her financial obligations, leaving some bills unpaid. As a result, accounts became delinquent, were placed for collection, and in some cases, were charged off. Applicant acknowledged that she was remiss in giving her financial situation her full attention because of her family obligations. She also acknowledged complacency

⁵ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated September 19, 2014); GE 2 (Equifax Credit Report, dated October 20, 2015); GE 1, *supra* note 1; GE 4 (Personal Subject Interview, dated November 12, 2014).

on her part, and that she was wrong to let events and situations divert her from her personal responsibilities.⁶

In addition to the delinquent income taxes, the SOR identified four purportedly delinquent debts that had been placed for collection or charged off, as generally reflected by the September 2014 credit report or the October 2015 credit report. Those debts, including the income taxes, totaling approximately \$28,639, and their respective current status, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below:

There is a debt to the federal Government in the amount of \$25,737.63 for delinquent taxes for the tax years 2006, 2008, 2009, 2010, 2011, and 2013, that Applicant contends she is in the process of paying off at the rate of \$400 per month (SOR ¶ 1.a.). Applicant failed to submit any documentation, such as receipts and cancelled checks, to support her contentions that she had entered into an installment agreement with the IRS, or that any delinquent taxes had been paid. In the absence of such documentation, the account has not been resolved.

There is a bank credit card with an unpaid balance of \$782 that was placed for collection when Applicant was unable to make monthly payments for the laptop and video games she had previously purchased (SOR ¶ 1.c.).⁷ In her interview conducted by an investigator with the U.S. Office of Personnel Management (OPM) in November 2014, Applicant stated she would contact the collection agent to make payment arrangements.⁸ In her November 2015 Answer to the SOR – one year later – she said she was in the process of contacting the collection agent. During her hearing, Applicant contended that the account had been paid off in May or June 2016.⁹ Although she said she would do so, Applicant failed to submit any documentation, such as a receipt or cancelled check, to support her contentions that the account had been paid off. In the absence of such documentation, the account has not been resolved.

There is a medical account with an unpaid balance of \$75 that was placed for collection (SOR ¶ 1.d.).¹⁰ In November 2014, Applicant stated she would contact the collection agent to make payment arrangements if the account is her account.¹¹ In her November 2015 Answer to the SOR, she said she was in the process of contacting the collection agent. During her hearing, Applicant stated that she thought she had paid the account, but acknowledged that the account had not yet been paid off.¹² Applicant paid

⁶ AE A (Letter, dated August 2, 2016).

⁷ GE 3, *supra* note 5, at 11; GE 2, *supra* note 5, at 2; GE 4, *supra* note 5, at 5-6.

⁸ GE 4, *supra* note 5, at 6.

⁹ Tr. at 34.

¹⁰ GE 3, *supra* note 5, at 11; GE 2, *supra* note 5, at 2; GE 4, *supra* note 5, at 5-6.

¹¹ GE 4, *supra* note 5, at 6.

¹² Tr. at 35.

the collection agent \$83.12 on August 4, 2016, to cover both the \$75 charge and another outstanding charge of \$8.12.¹³ The account has been resolved.

There is a charge account with a clothing store (where Applicant purchased some bridal clothing) with a credit limit of \$1,500 and an unpaid balance of \$1,235 that was placed for collection and charged off (SOR ¶ 1.e.).¹⁴ In her November 2015 Answer to the SOR, she said she was in the process of contacting the collection agent. During her hearing, Applicant contended that she had been making payments by automatic withdrawal from her salary for the last three or four months before the hearing, and that she had only one more payment due.¹⁵ On July 25, 2016, Applicant paid the collection agent \$142.52.¹⁶ The account has been resolved.

There is a charge account with a clothing store with a credit limit of \$400 that was placed for collection and charged off in the amount of \$809 (SOR ¶ 1.f.).¹⁷ In November 2014, Applicant stated that she had made some \$50 payments in an effort to settle the account.¹⁸ However, in her November 2015 Answer to the SOR, she said she was in the process of contacting the collection agent. During her hearing, Applicant acknowledged that she had not yet addressed the account.¹⁹ On August 5, 2016, Applicant paid the creditor \$659.69.²⁰ The account has not been resolved.

Applicant has been gainfully employed for a substantial number of years, first in the U.S. Navy, and subsequently with government contractors. Applicant contends that she has sufficient funds available to pay all of her debts.²¹ Although she failed to submit a Personal Financial Statement, she did estimate the essential aspects of such a document. She claimed that the combined family monthly income, including military retirements and current salaries for both Applicant and her husband, is about \$6,000. After paying the monthly bills, she claimed to have a remainder of over \$1,000. She offered no excuse for failing to pay off her delinquent debts with her monthly remainder. She said she has \$6,000 in a savings account, \$600 in a checking account, and \$33,000 in a 401(k) retirement account.²² Although she used to keep a budget for a while,

¹³ AE E (Account Details, Payment, and Comment, dated August 4, 2016).

¹⁴ GE 3, *supra* note 2, at 8; GE 2, *supra* note 2, at 3.

¹⁵ Tr. at 35-36.

¹⁶ AE F (Account Details, Payment, and Comment, dated July 25, 2016).

¹⁷ GE 3, *supra* note 2, at 7; GE 2, *supra* note 2, at 4.

¹⁸ GE 4, *supra* note 2, at 5.

¹⁹ Tr. at 36.

²⁰ AE D (Account Details, Payment, and Comment, dated August 5, 2016).

²¹ Tr. at 50.

²² Tr. at 36-38.

Applicant acknowledged that she no longer does so.²³ The record reflects that Applicant made payments totaling \$877.21 for three of her delinquent accounts in July and August 2016, and those payments are confirmed by documentation. There is no documentation to support her contentions about her delinquent federal income taxes or her delinquent bank-issued credit card account.

In the absence of documentary evidence to the contrary, I must conclude that Applicant has made relatively minimal efforts to resolve her delinquent accounts. Applicant has generally removed herself from the monthly bill-paying budget process, allowing new “family” expenditures to take priority over her long-standing delinquent tax debts to the Federal Government and delinquent accounts to various vendors who provided her with services and merchandise. Although she claimed to have \$1,000 remaining each month, she failed to explain why she failed to make more timely efforts to resolve her debts. Moreover, although Applicant was advised as to what documents she should obtain and submit, such as a written Personal Financial Statement, and tax-related documents, including repayment plans and agreements, and evidence of payments, she still failed to do so. Applicant never received any financial counseling. In the absence of documentation pertaining to the federal tax issues, the bank-issued credit card account, and Applicant’s current financial situation, it still remains unclear if Applicant’s financial status has improved, or if her finances are under control.

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.”²⁴ 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.”²⁵

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines 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

²³ Tr. at 39-40.

²⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁵ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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."²⁶ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, 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.²⁷

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."²⁸

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."²⁹ 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.

²⁶ "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).

²⁷ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

²⁸ *Egan*, 484 U.S. at 531.

²⁹ See Exec. Or. 10865 § 7.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in ¶ 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.

The guideline notes several conditions that could raise security concerns. Under ¶ 19(a), an "inability to satisfy debts" is potentially disqualifying. In addition, ¶ 19(b) may apply if there is an "unwillingness to satisfy debts regardless of the ability to do so." Similarly, under ¶ 19(c), "a history of not meeting financial obligations" may raise concerns. "Consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators" may raise concerns under ¶ 19(e). In addition, under ¶ 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" may raise concerns. Applicant's financial problems initially arose in 1998 or 1999, and increased during the ensuing years. Federal income tax returns were not timely filed for various tax years between 1998 and 2013. In addition, in about 2012 or 2013, accounts became delinquent. Some accounts were charged off. Tax liens were filed in 2008. Because of the lack of documentation to support her contentions that income tax returns, though late, were eventually filed, or that unpaid taxes and at least one other delinquent account have been paid or are in the process of being paid, there is little persuasive evidence that her delinquencies have been resolved or are in the process of being resolved. ¶¶ 19(a), 19(c), 19(e), and 19(f) apply. ¶ 19(b) does not apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under ¶ 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 ¶ 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances." Evidence that "the individual has received or is receiving financial 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" is potentially mitigating under ¶ 20(c). Similarly, ¶ 20(d) applies where the evidence shows "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts."³⁰ In addition, ¶ 20(e) may apply if "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." In those instances where "the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements," ¶ 20(g), may apply.

I have concluded that AG ¶¶ 20(a), 20(b), 20(c), 20(d), 20(e), and 20(g) do not apply. Applicant's financial problems were initially associated with her failure to timely file federal income tax returns for the tax years 1998 or 1999 because she was scared and for other reasons she could not recall. Over the ensuing years, other tax returns were not timely filed. The SOR alleged that Applicant failed to timely file her federal income tax return for the tax year 2004. She failed to submit evidence that the tax return for that tax year was actually filed. Applicant initially could not recall timely filing the federal income tax return for 2009, but she also admitted her failure. Applicant contended she eventually filed her delinquent tax returns, but she offered no documentary evidence to support her contentions. It should be noted that while the SOR alleged a failure to timely file her federal income tax return for 2004, it failed to allege Applicant's failure to timely file income tax returns for the other years.³¹ In 2012 or 2013, rather than addressing her delinquent

³⁰ 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)).

³¹ 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.

debts, Applicant purportedly provided financial support for her mother, her daughter, her son, and her grandchildren. Christmas expenditures also took priority over delinquent accounts and taxes. Although she contended that most of her delinquent accounts were either in repayment plans, being paid, or were paid off, with the exception of three relatively minor accounts, she failed to submit documentation to support her contentions.

The record establishes that Applicant failed to timely file her federal income tax return for the tax year 2004, as alleged in the SOR. The DOHA Appeal Board has commented:³²

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 has procrastinated over an extensive multi-year period to resolve her delinquent debts. She offered no documentary evidence of a good-faith effort to resolve her income tax issues or one credit card account. There are no receipts, cancelled checks, account records, etc., to support her contentions. With the exception of the three relatively minor accounts, there is no evidence that Applicant took any positive or timely actions to resolve her accounts either before or since her November 2014 OPM interview. There is no documentary evidence of a budget, financial counseling, or that her finances are under control. There is simply her verbal estimate that after she pays her bills, she has a monthly remainder in excess of \$1,000. In failing to timely file her various federal income tax returns and resolve some of her long-standing delinquent debts, Applicant

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)). These non-SOR allegations will not be considered except for the five purposes listed above.

³² 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 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).

appears to have acted imprudently and irresponsibly. Applicant's actions, or inactions, under the circumstances confronting her, continue to cast doubt on her current reliability, trustworthiness, and good judgment.³³

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 SEAD 4, App. A, ¶ 2(d):

(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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful 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.³⁴

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. She is an honorably retired former member of the U.S. Navy. She candidly acknowledged having some financial difficulties when she completed his e-QIP. She is a loving, caring daughter, mother, and grandmother.

The disqualifying evidence under the whole-person concept is simply more substantial. As noted above, in addition to her federal income tax return for the tax year 2004, Applicant failed to timely file her federal income tax returns for tax years 2006, 2008, 2009, 2010, 2011, and 2013. Applicant's explanation for her long-standing failure to comply with the law related to the timely filing of her federal income tax returns is too simplistic. Being scared of making mistakes, without more extensive explanations, is insufficient. Her moment of truth was when she said she was remiss in not giving her debts her full attention because of her family obligations. Applicant prioritized her debts and more recent accounts, and she simply chose to spend her available funds for family purposes, basically to the exclusion of her delinquent debts and taxes. She offered no

³³ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

³⁴ 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).

meaningful explanations for her continuous failures to timely file her federal income tax returns, pay her taxes, or maintain her accounts in a current status. Based on the evidence presented, Applicant failed to take positive action to resolve most of her accounts. There is no evidence of a budget, financial counseling, or that her finances are under control.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:³⁵

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. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has “. . . established a plan to resolve his [or her] 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 [or her] 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.

Applicant has demonstrated an extremely poor track record of debt reduction and elimination efforts, seemingly avoiding most of the long-standing debts in her name. Overall, the evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from her financial considerations. See SEAD 4, App. A, ¶ 2(d)(1) through AG ¶ 2(d)(9).

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.c.:	Against Applicant
Subparagraphs 1.d. through 1.f.:	For Applicant

³⁵ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge