



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



In the matter of:

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ISCR Case No. 15-04014

Applicant for Security Clearance

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel

For Applicant: *Pro se*

09/13/2017

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant provided insufficient evidence of resolution of his financial issues, and financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 16, 2014, Applicant completed and signed his Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On August 24, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under 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 for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006 (Sept. 1, 2006 AGs).

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

On November 15, 2016, Applicant responded to the SOR. (HE 3) On December 20, 2016, Department Counsel was ready to proceed. On February 15, 2017, the case was assigned to an administrative judge. On April 24, 2017, the case was reassigned to me for administrative reasons. On May 8, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for June 13, 2017. (Tr. 13-14; HE 1) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered 12 exhibits; Applicant offered 8 exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 15-20; GE 1-12; Applicant Exhibit (AE) A-AE H) On June 21, 2017, DOHA received a copy of the hearing transcript. On July 13, 2017, Applicant provided eight exhibits, which were admitted without objection. (Tr. 45; AE I-AE P)

While this case was pending a decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.<sup>1</sup>

### **Findings of Fact<sup>2</sup>**

In Applicant's SOR response, he admitted the SOR allegations in ¶ 1.a, 1.b, 1.c, 1.e, 1.n, 1.o, and 1.p. He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact. Additional findings of fact follow.

Applicant is 56 years old, and he has been employed as a lead test engineer since 1996 for the same employer. (Tr. 6, 8-9, 23; GE 1) He has held a security clearance since 1996, and there is no evidence of security violations. (Tr. 23) In 1978, he graduated from high school. (Tr. 7) He needs 30 units to receive a bachelor's degree. (Tr. 7) He has not served in the military. (Tr. 7) In 1984, Applicant married, and in 1991, he divorced. (Tr. 8, 21) In 2002, he married, and in 2007, he divorced. (Tr. 8) His children are ages 23, 29, and 32. (Tr. 8)

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<sup>1</sup> Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at [http://ogc.osd.mil/doha/5220-6\\_R20170608.pdf](http://ogc.osd.mil/doha/5220-6_R20170608.pdf).

<sup>2</sup> Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

## Financial Considerations

Applicant's SOR lists the following allegations and their status is as follows:

SOR ¶ 1.a alleges Applicant filed a Chapter 13 bankruptcy in June 2008, and his nonpriority unsecured debts were discharged in December 2013. Applicant attributed his need to file bankruptcy to divorce, and the decline in the real estate market. (Tr. 26-27) He was unable to sell his home when he was transferred to a different state. (Tr. 27)

SOR ¶ 1.b alleges Applicant filed a Chapter 13 bankruptcy in May 1998, and his nonpriority unsecured debts were discharged in April 2002. Applicant had financial problems because of state tax wage garnishments relating to a dispute over whether he was paying his \$800 monthly child support payments. (Tr. 24, 29-31)

SOR ¶ 1.c alleges Applicant filed a Chapter 13 bankruptcy in June 1995. He missed two payments, and his bankruptcy was dismissed in May 1988. (Tr. 31) He refiled his bankruptcy as indicated in SOR ¶ 1.b.

SOR ¶¶ 1.d and 1.e allege two student loan debts placed for collection for \$7,205 and \$14,641. Applicant attended school in 1992 and 1993. (Tr. 32) He stopped making payments after his first bankruptcy because he thought the bankruptcy in the 1990s took care of the debt. (Tr. 32-33) When the creditor sought resumption of payments, he did a "mild protest," and showed "bad judgment" and did not resume payments. (Tr. 33) In December 2016, he entered into a nine-month loan rehabilitation program. (Tr. 33; AE C) He said he is paying \$322 monthly, and he said he completed the loan rehabilitation program in August 2017. (Tr. 33) He said he estimates his student loans total \$22,000. (Tr. 33) Actually, his student loan balance is \$28,308. (AE B) He plans to continue his payments after his student loans are rehabilitated. (Tr. 34) I asked him to provide proof of the payments to address his student loan accounts; however, he did not provide the requested documentation. (Tr. 43-44)

SOR ¶¶ 1.f through 1.i allege four debts for his son's medical treatment owed to the same creditor placed for collection for \$130, \$120, \$120, and \$117. (Tr. 35) His son was receiving treatment on Applicant's medical insurance policy. (Tr. 35) Applicant said he paid these debts in October 2016. (Tr. 36) On June 17, 2017, Applicant paid \$652 and resolved these four debts. (AE L)

SOR ¶¶ 1.j through 1.m allege four debts owed to a college for parking tickets placed for collection for \$76 each. Applicant said he paid these four debts about 30 months ago. (Tr. 36) He provided proof that he paid the four debts in October 2014. (AE J-AE K)

SOR ¶¶ 1.n through 1.p allege three federal income tax debts owed for the following tax years: 2013 for \$1,702; 2012 for \$4,595; and 2011 for \$3,610. Applicant timely filed his tax returns. (Tr. 29, 36) Applicant previously owed delinquent taxes for tax years 1991 to 1994 of about \$1,500, according to his bankruptcy documentation, and federal tax debt beginning in 2007 for \$15,000, according to his May 16, 2014 SCA. (GE

1; GE 5)<sup>3</sup> Those tax debts were resolved before the SOR was issued. More recently, he failed to withhold sufficient funds from his paychecks to fully pay his income taxes in 2009, 2011, 2012, and 2013. (Tr. 36-38) In 2009, he underpaid his taxes by about \$4,500. (GE 7) After 2009, he knew he was not withholding enough from his paycheck to pay his federal income taxes, and he chose to give a higher priority to paying for his son's college education than to paying his federal income taxes. (Tr. 38, 51) In 2014, he was due a tax refund, and that refund was intercepted to pay his federal income tax debt. (Tr. 38)

Applicant has been making \$260 or \$265 monthly payments since 2013 to the IRS. (AE G; GE 7) His payments have been addressing tax debts for tax years 2009 and 2011. (Tr. 28; AE G; GE 7) In January 2016, he completed payments for tax year 2009, and his \$260 monthly payments were then used to address his tax debt for 2011. (GE 7, tax transcript for tax year 2009) Applicant sold his motorcycle, and on July 11, 2017, Applicant paid \$8,000 to the IRS to address his tax debt for tax year 2011. (AE I; AE M)<sup>4</sup> On July 28, 2017, Applicant paid \$5,815 to address his tax debt for tax year 2013. (AE P)

Applicant's federal income tax transcript for tax year 2011 shows: adjusted gross income of \$101,659; tax per return of \$16,211; tax withheld of \$12,838; and tax due including penalties and interest of \$3,610. (GE 7)

Applicant's federal income tax transcript for tax year 2012 shows: adjusted gross income of \$106,476; tax per return of \$17,189; tax withheld of \$13,403; and tax due including penalties and interest of \$4,595. (GE 7)

Applicant's federal income tax transcript for tax year 2013 shows: adjusted gross income of \$104,072; tax per return of \$18,542; tax withheld of \$17,047; and tax due including penalties and interest of \$1,702. (GE 7)

Applicant's federal income tax transcript for tax year 2014 shows: adjusted gross income of \$119,572; tax per return of \$23,207; tax withheld of \$25,658; and tax refund of \$2,451, which was applied to tax year 2009. (GE 7)

At his hearing, Applicant said in 2015 he received a refund, and it was intercepted and used to pay his tax debt from previous years. (Tr. 50) His statement conflicts with his IRS tax transcript for the 2015 tax year, which shows: wages of \$125,365; adjusted gross income of \$125,995; tax liability of \$24,947; tax withheld of \$21,605; and amount owed of \$3,342. (AE N) With a gross salary of \$125,995, his overall tax rate is 19.8%. Applicant's June 9, 2017 pay statement shows taxable income year to date of \$52,639

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<sup>3</sup> In Applicant's May 16, 2014 his Questionnaire for National Security Positions (SF 86) or security clearance application, he disclosed that he reached an agreement with the IRS in August 2013, and he is paying \$260 monthly to address a federal tax debt beginning in 2007 for \$15,000. (GE 1)

<sup>4</sup> Applicant's receipt from the IRS shows the \$8,000 was applied for delinquent taxes under an installment plan for tax year 2011. (AE M) Applicant said he paid all of his federal income taxes, and I presume the excess over the \$3,610 due for tax year 2011 was applied to pay other federal income tax debt. (AE I)

and federal tax withholding of \$8,896. (AE H) If his income is taxed for 2017 at 19.8%, he should have withheld \$10,442. (AE H)

Applicant's monthly gross pay is \$10,000. (Tr. 41) He saves \$2,000 a month. (Tr. 41)<sup>5</sup> Applicant is putting \$500 monthly into a 401(k) account, and he is saving to purchase a home. (Tr. 22) He wanted to purchase a home so that he would have deductible mortgage interest, which would reduce his federal income taxes. (Tr. 21) Applicant pays about \$12,000 annually to his son's college, and his son is a senior. (Tr. 23) I advised Applicant that it was essential that he provide proof of payments in order to mitigate the debts in the SOR. (Tr. 43-46)<sup>6</sup> Applicant's April 24, 2017 credit report shows only two delinquent accounts, and that is, the student loan debts in SOR ¶¶ 1.d and 1.e. (AE K) On April 20, 2017, he was approved to borrow \$650,000 to purchase a home. (AE D) Applicant's May 30, 2017 employer-related 401(k) account has a balance of \$124,190. (AE E)

Applicant received excellent ratings from his employer. (AE A) From 2004 to 2016, he received 12 cash awards from his employer ranging from \$250 to \$1,000. (AE A) On March 31, 2017, Applicant's employer wrote advising him of a promotion with an annual salary of \$134,382, and that pay is shown on his current pay statement. (AE F; AE H)

## 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.

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<sup>5</sup> Applicant's SOR alleges in SOR ¶¶ 1.n, 1.o, and 1.p that he owed federal income taxes for tax years 2011, 2012, and 2013. There is some evidence that at one time he owed delinquent federal income taxes for tax years 1991, 1992, 1993, 1994, 2007, 2009, 2011, 2012, 2013, and 2015. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

*Id.* (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). *See also* ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). Failure to timely pay federal income taxes for tax years 1991, 1992, 1993, 1994, 2007, 2009, and 2015 will not be considered except for the five purposes listed above.

<sup>6</sup> Because of the overall state of Applicant's finances, it was particularly important that Applicant establish with corroborating documentation that his tax debts were paid or in an established payment plan, and that his student loans were rehabilitated or at least on the path to rehabilitation. *See Oshodi v. Holder*, 729 F.3d 883, 899 (9th Cir. 2013) (Kozinski, C.J., Rawlinson & Bybee, JJ., dissenting) ("[F]eedback about what's going on in the judicial mind is helpful. . . . Giving litigants . . . guidance . . . is an important part of the job . . ."). Of course, the DOHA Appeal Board can grant or deny access to classified information as they deem appropriate within the legal limitations of the references on pages 1-2, *supra*. (Tr. 53-54)

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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the 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 in this decision should be construed to suggest that it is based, 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, Secretary of Defense, and DNI 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 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 for financial problems:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts;" "(b) unwillingness to satisfy debts regardless of the ability to do so;" "(c) a history of not meeting financial obligations;" and "(f) . . . failure to pay annual Federal . . . income tax as required." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

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

(internal citation omitted). The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Seven financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(a) the behavior happened so long ago,<sup>7</sup> 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 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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;<sup>8</sup>

(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;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

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<sup>7</sup> A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. February 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sep. 13, 2016)).

<sup>8</sup> 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) 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)).



The DOHA 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 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).

Applicant provided some mitigating information. He was divorced in 1991 and 2007. He was transferred to a different state, and he was unable to sell his home due to the decline in the real estate market. These are circumstances beyond his control that harmed his finances. He received some financial counseling in connection with his bankruptcies. He is credited with mitigating the allegations in SOR ¶¶ 1.a, 1.b, and 1.c, because of these circumstances beyond his control. He provided documentation showing the debts in SOR ¶¶ 1.f through 1.p were paid.

The evidence against mitigating financial considerations security concerns is more substantial. Applicant did not provide enough details with documentary corroboration about what he did to address his delinquent student loan debts in SOR ¶¶ 1.d and 1.e. He made some uncorroborated claims of payments. He did not provide proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditors in SOR ¶¶ 1.d and 1.e.

There is insufficient evidence about why Applicant was unable to make greater documented progress resolving the debts in SOR ¶¶ 1.d and 1.e, which currently total \$28,308. There is not enough assurance that his financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, he failed to establish that financial considerations security concerns are mitigated.

### **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(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 AG ¶ 2(c), “[t]he 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. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is 56 years old, and he has been employed as a lead test engineer since 1996 for the same employer. He has held a security clearance since 1996, and there is no evidence of security violations. He needs 30 units to receive a bachelor's degree. In 1991 and 2007, he was divorced. His children are ages 23, 29, and 32. Divorce and the decline in the real estate market are circumstance beyond his control that adversely affected his finances. He is credited with mitigating the allegations in SOR ¶¶ 1.a, 1.b, and 1.c because his bankruptcies were due to circumstances beyond his control. He mitigated SOR ¶¶ 1.f through 1.p because he provided documentation showing all of those debts were paid. Applicant is an excellent employee as shown by his cash awards, evaluations, and increases in pay. His pay increases the last two years are especially impressive.

The evidence against mitigation of financial considerations is more substantial. Applicant erroneously stated that he received a federal income tax refund for tax year 2015; however, his tax transcript shows he owes \$3,342. He established a payment plan with the IRS in 2013 in which he was supposed to pay \$260 or \$265 monthly and he made the required payments; however, he did not provide a copy of the payment agreement. Most IRS payment agreements indicate that future taxes must be timely paid. It is unclear whether Applicant has been in complete compliance with his payment plan because of the under withholding of federal income taxes from his pay for tax year 2015. His federal income tax debts in SOR ¶¶ 1.n, 1.o, and 1.p are mitigated because they are paid; however, lingering concerns remain about his history of delinquent federal taxes. See *supra* note 5.

Applicant has owed student loan debts since the mid-1990s. He said he did not pay his student loans for some time because of a “mild protest” and due to “bad judgment.” At his hearing, he said he was making his payments as agreed to address his delinquent student loans in SOR ¶¶ 1.d and 1.e under a loan rehabilitation program, and I asked him to provide proof of payments. He did not provide the requested proof of payments. His failure to act more aggressively to establish his financial responsibility indicates “poor self-control, lack of judgment, or unwillingness to abide by rules and regulations” and this conduct “raise[s] questions about [his] reliability, trustworthiness, and ability to protect classified or sensitive information.” See AG ¶ 18.

It is well settled that once a concern arises regarding an Applicant 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). Applicant made excellent progress resolving his delinquent tax debts in July 2017; however, lingering financial considerations concerns relating to his student loans lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

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 security concerns are not 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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	For Applicant
Subparagraphs 1.d and 1.e:	Against Applicant
Subparagraphs 1.f through 1.p:	For Applicant

### **Conclusion**

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

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Mark Harvey  
Administrative Judge