



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 15-08908
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

11/24/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant's record of delinquency includes now resolved state tax liens of \$1,481 and \$6,639 from 2013 and a \$36,174 mortgage delinquency. He has been repaying a federal tax delinquency totaling \$51,669 for tax years 2006 through 2013 under an installment agreement since October 2016, but more progress is needed to fully mitigate the security concerns raised by his failure to pay his taxes on time for several years. Clearance is denied.

Statement of the Case

On October 3, 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 October 15, 2016, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On January 25, 2017, the case was assigned to a DOHA Administrative Judge, who on April 3, 2017, scheduled a hearing for May 16, 2017.

While Applicant's case was pending hearing, 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 supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017.¹

On May 11, 2017, the then assigned administrative judge provided Applicant with a copy of the new AG and advised him of their potential applicability because a decision would not likely be issued in his case before June 8, 2017. On May 15, 2017, Applicant's hearing was cancelled. On June 6, 2017, 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 June 28, 2017, I scheduled a hearing for August 3, 2017. On July 17, 2017, due to an opening in the schedule and with the agreement of both parties, I rescheduled Applicant's hearing for August 2, 2017.

At the hearing, four Government exhibits (GEs 1-4) and 13 Applicant exhibits (AEs A-M) were admitted into evidence without objection. Applicant testified, as reflected in a transcript (Tr.) received on August 10, 2017.

I held the record open for one month after the hearing for Applicant to submit additional documentation. On August 31, 2017, Applicant submitted 13 additional exhibits, which were entered into the record as AEs N-Z without objection. The record closed on September 6, 2017, when Department Counsel responded to Applicant's post-hearing exhibits.

Summary of Pleadings

The SOR alleges under Guideline F that, as of October 3, 2016, Applicant had not resolved state tax liens of \$1,481 from December 2013 (SOR ¶ 1.a) and \$6,639 from July 2013 (SOR ¶ 1.b); a federal tax lien for \$8,767 from December 2008 (SOR ¶ 1.c); and delinquent federal income taxes of \$6,741 for 2013 (SOR ¶ 1.e), \$5,935 for 2011 (SOR ¶ 1.f), \$8,978 for 2010 (SOR ¶ 1.g), and \$883 for 2008 (SOR ¶ 1.h). Additionally, Applicant was allegedly past due \$36,174 on his mortgage loan (SOR ¶ 1.d). When he responded to the SOR, Applicant admitted the allegations but indicated that he had documentation showing that the \$6,639 tax lien (SOR ¶ 1.b) had been released. He also indicated that he

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

had a repayment plan in place to resolve the \$1,481 state tax lien (SOR ¶ 1.a), the \$8,767 federal tax lien (SOR ¶ 1.c), and his \$6,741 federal income tax debt for tax year 2013 (SOR ¶ 1.e). Concerning his mortgage delinquency, Applicant indicated that he was awaiting documentation showing that he had modified his mortgage loan.

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 46-year-old computer network administrator, who has worked for his defense contractor employer since June or July 2015.² He has been married since February 1998 and has three children now ages 20, 16, and 14. (GEs 1-2.) He requires a DOD secret clearance to manage a classified network for his employer's military customer. (AEs K-L.)

Applicant earned an associate's degree in April 2000 and a bachelor's degree in April 2003. (GE 1.) He obtained student loans totaling \$50,653 that were in collection as of February 2012. As of April 2015, the lender holding those loans was reporting a balance of \$104,105. (GE 3.)

Applicant and his spouse owned and operated a cleaning business from August 2005 to approximately January 2008.³ Because of the business, they were able to purchase their home in April 2006 with a mortgage loan for \$300,600. (GEs 1, 3.) After their cleaning business lost their primary contract, Applicant held part-time work or was unemployed until April 2008, when he began working for a company that serviced computers. Applicant was paid as a 1099 contractor and earned \$33,000 annually at first. His income rose to \$35,000 annually by 2013. (Tr. 41-42.) After their cleaning business closed and filed for bankruptcy, Applicant's spouse worked for the state at a correctional facility. She lost her job in 2009 when the state outsourced her job to a contractor. She was unemployed for over a year before becoming a per-diem worker at a local hospital. Applicant's spouse worked part time for a least a year before becoming a full-time employee. (Tr. 52-53.) Applicant and his spouse's household income was barely enough to make ends meet (Tr. 50), and they were chronically late making their mortgage payment. Their payment was 90 days or more past due some 29 times. They had obtained a loan modification that reduced their monthly mortgage payment from \$1,700 to \$1,400 a month around 2010, but they could not afford even that payment. (Tr. 64.) As of March 2013, their mortgage loan was 120 days or more past due. (GEs 1, 3.) They refinanced their loan

² Applicant testified that he has been with his employer since June 2015. (Tr. 44.) He gave a start date of July 2015 for his employment on his SF 86, however. (GE 1.)

³ Applicant testified discrepantly that the company lost its contract in January 2006, that the business then filed for bankruptcy, and that he held only part-time employment from 2006 to 2007. (Tr. 41.) When I asked him how he and his spouse qualified for a \$300,600 mortgage in April 2006 if they no longer had their business, Applicant indicated that they lost the business at the end of December 2006 (Tr. 86), another date that conflicts with the information provided on his SF 86.

under the Home Affordable Refinance Program, which lowered their monthly payment to \$1,200 in 2013. (Tr. 66.)

In December 2013, Applicant became employed as a systems administrator with another company. In November 2014, his position at work was eliminated and his duties were outsourced. He was on leave at the time because of knee surgery. Applicant was unemployed until June or July 2015, when he began working for his current employer. (GE 1.) Neither he nor his spouse made any mortgage payments while he was unemployed. (Tr. 67.)

In application for a DOD secret clearance, on August 28, 2015, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). In response to an inquiry concerning whether he had failed to file or pay federal, state, or other taxes when required by law in the last seven years, Applicant indicated that he owed approximately \$3,000 in federal income taxes for 2014 [sic] because of unemployment and explained, "We were put into a not collectable status and is being paid back if there is a tax return for each year that follows from 08/02/2013." He also indicated that he owed \$2,746 in state income taxes for 2014 [sic] for which he was on a repayment plan until October 2016. A lien had been filed against his home, and he was paying the debt at \$140 a month. In response to the inquiries concerning any routine delinquencies, Applicant listed \$104,000 in student loan debt, which was "[o]n a non-payment status through the Obama Rehabilitation Student relief program." Applicant listed no other delinquencies. (GE 1.)

A check of Applicant's credit in September 2015 showed three outstanding tax liens: a \$1,481 state tax lien from December 2013 (SOR ¶ 1.a), a \$6,639 state tax lien from July 2013 (SOR ¶ 1.b), and an \$8,767 federal tax lien from December 2008 (SOR ¶ 1.c). His \$104,105 in student loan debt was rated as current as was a joint car loan for \$14,238 obtained in August 2014. The car loan was being repaid at \$388 per month. However, a car loan obtained in August 2010 for \$16,481 was \$700 past due. Applicant and his spouse's mortgage loan was \$36,174 past due on a balance of \$320,631 (SOR ¶ 1.d), although they were reportedly making partial payments under an arrangement with the mortgage servicer. (GE 3.)

On October 21, 2015, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). When asked about his reported failure to pay his federal income taxes for 2014, Applicant responded that he had not paid his federal or state income taxes for 2008, 2010, 2011, and 2013. He listed federal and state income tax debts for 2014 on his SF 86 because his tax debts carried over into 2014. He had estimated his federal income tax debt at \$3,000 and his state income tax debt at \$2,746. He attributed his income tax debts to his spouse's unemployment and to living expenses that took priority. Applicant explained that he contacted a tax resolution company in December 2012 seeking assistance in resolving his income tax delinquency. He asserted that he entered into an agreement with the IRS in February 2015 to address his federal tax debts under which his income tax refunds for 2014 and subsequent tax years would be taken and applied to his tax liabilities. Applicant indicated that he had agreements in place with the IRS and the state in effect until 2020 and October 2016, respectively. As for his delinquent

car and mortgage loans, Applicant indicated that he had entered into a loan modification agreement in August 2015 to become current on the loan. Applicant did not dispute that he had been delinquent on about \$105,000 in student loan debt. However, he claimed that he had brought his student loans current before he completed his SF 86. (GE 2.)

On December 20, 2015, Applicant and his spouse contractually agreed to repay a new principal mortgage balance of \$340,918 under a loan modification agreement. Under their modified loan, \$172,918 of the principal balance was placed in forbearance with \$99,418 of the deferred principal eligible for forgiveness provided Applicant and his spouse made their payments according to terms. Starting January 1, 2016, Applicant and his spouse's monthly mortgage payment became \$919 per month for the next 60 months. Their monthly payment is scheduled to increase to \$1,002 in December 2020 and to \$1,077 in December 2021 with a final balloon payment on the interest-bearing principal balance of \$109,369 due at maturity on May 1, 2036. (AE I.)

Applicant and his spouse were behind in the payments on their modified mortgage in June 2016, July 2016, and October 2016 (\$966 past due). As of July 2017, they owed \$15 in unpaid late charges on a mortgage balance of \$304,050. Their loan had a deferred principal balance of \$140,698. (AE J.) They were routinely late in making the payments on a car loan obtained in August 2010. Applicant's student loan balance of \$108,736 was in hardship deferment. Applicant and his spouse were making timely payments of \$388 per month on a car loan obtained in August 2014. (GE 4; Tr. 88.)

A November 21, 2016 check of Applicant's credit revealed a recent state tax lien of \$2,748 filed in March 2015. On December 9, 2015, the IRS filed a tax lien against Applicant and his spouse for \$38,148 in income taxes owed for tax years 2008 through 2013.⁴ (GE 4; AE D.) Applicant did not pay his income taxes while he was a 1099 contract employee between 2008 and 2013. He claims that he did not understand that he would have to pay his taxes on his income (Tr. 43), but he also testified that he kept the funds that he should have paid in taxes because of insufficient income to meet his expenses. (Tr. 50.) Applicant admitted at his hearing that the IRS sent him bills for his tax debts "every once in a while," but did not otherwise contact him about his unpaid taxes. (Tr. 51.)

Applicant gave priority to addressing his state tax liabilities over his past-due federal income taxes because the IRS was more accommodating. (Tr. 88-89.) Available tax records show that Applicant and his spouse entered into an installment agreement with their state's tax authority to pay \$400 a month starting August 28, 2013, to address the \$6,639 tax lien filed in July 2013. Applicant testified that he paid off that state tax lien in 2013. (Tr. 54.) Available records show that the lien was released on August 2, 2016. (AE A.) They paid \$120 a month to resolve the \$1,481 state tax debt (SOR ¶ 1.a). (Tr. 55-56.) The March 2015 state tax lien for \$2,746 was satisfied in part by the state taking and applying their \$292 income tax refund for tax year 2016. (AEs N-O.) As of August 2017, Applicant was in good standing with respect to his state taxes. (AE C; Tr. 45.)

⁴ Applicant and his spouse also owed federal income taxes for 2005 through 2007, which had not been satisfied. It is unclear why they were not included in the lien.

On August 10, 2016, Applicant retained the services of a tax resolution firm to engage the IRS on his behalf in return for a fee of \$1,295 payable in installments. (AEs B, F.) On September 6, 2016, Applicant and his spouse contacted the IRS about an installment agreement to address their federal tax delinquency for tax years 2005 through 2013.⁵ On September 16, 2016, the IRS established an installment agreement requiring them to pay \$100 per month with their first payment due on October 28, 2016; to pay all federal taxes due during the term of the agreement on time; to file timely federal income tax returns; and to pay all installment agreement user fees.⁶ (AE B.) IRS records show that Applicant and his spouse paid \$120 on October 31, 2016, which was applied to tax year 2005. They made their \$100 monthly installment payment for November 2016 on December 2, 2016, and their December 2016 payment on January 3, 2017. (AEs G-H; Tr. 59.) On January 9, 2017, the IRS withdrew the tax lien issued in December 2015, relinquishing the lien priority obtained by the IRS but not affecting the statutory lien in favor of the United States on all property, real or personal, because of Applicant's and his spouse's unpaid taxes.⁷ (AE D.) They made their January 2017 installment payment on January 30, 2017, and their February 2017 payment on March 7, 2017. They missed their March and April 2017 payments, which Applicant claims was with the agreement of the IRS because their income tax refund of \$838 for tax year 2016 was intercepted in May 2017 and applied to their federal tax delinquency. They made their May 2017 payment on June 5, 2017, and their June 2017 payment on July 3, 2017. (AE H; Tr. 35, 60.) As of July 2017, they owed the IRS \$51,669, inclusive of penalties and interest, for tax years 2006 through 2013. (AEs G-H.) They were in compliance with their installment agreement as of August 2017. (AEs E, Q.) On August 4, 2017, Applicant and his spouse executed a new installment agreement with the IRS to repay their outstanding \$51,757 in outstanding income tax debt at \$150 a month starting August 28, 2017. (AE R.)

Applicant borrowed \$8,000 from his 401(k) in July 2017 that he is repaying at \$100 a month. He obtained the loan to get caught up on bills and make an \$800 payment to bring his spouse's student loans out of default status. (Tr. 71, 79.) Tax record information reflects that Applicant and his spouse reported \$103,811 in adjusted gross income on their 2016 tax returns. (AE N.) Applicant's gross earnings are approximately \$5,452 per month. (AE M.) He takes home \$839 per week. (Tr. 71.) His spouse earns approximately \$2,834 per month from which she takes home \$2,400. They estimated about \$7,977 in monthly expenses and debt payments, including \$1,125 in tax payments and \$1,811 in student loan payments, but they were not making those student loan payments. (Tr. 82.) Applicant has only about \$200 in bank deposits. (AE M; Tr. 73.)

⁵ IRS records (AE G) show that Applicant and his spouse owed \$6,837 for 2006 and \$2,969 for 2007 as of July 2017, in addition to the taxes owed for 2008 through 2013.

⁶ Applicant testified about his federal income tax delinquency that he tried to address his federal tax debt in 2013, but that the IRS wanted him to first file his 2013 federal return so that the taxes owed for that tax year could be included in the plan. However, for some reason, "[the taxes] never got added in. So [he] had to go back a second time." (Tr. 89.)

⁷ Applicant filed for the withdrawal of the tax lien from his credit record on October 14, 2016, on the basis that he requires a security clearance for his continued employment, and the lien had adversely affected his job status with regard to his security clearance eligibility. (AE B.)

Applicant's spouse paid \$800 on July 3, 2017, and \$420 on July 28, 2017, toward settling her defaulted federal student loan debt. (AE S.) As of August 15, 2017, her federal student loans were settled in full for \$1,411. (AEs U-V.) Applicant rehabilitated his student loans from default in November 2016 but then only made three payments before obtaining a hardship deferment for six months. (Tr. 77.) On August 3, 2017, the entity holding Applicant's student loans established a repayment schedule for his \$114,060 balance. After Applicant paid the \$164 in late fees on his account, a single payment of \$524 was due September 8, 2017. Starting in October 2017, Applicant was required to make monthly payments of \$1,172 for 132 months followed by 13 monthly payments of \$584. If he makes the payments, his student loans will be paid off in October 2028. (AE X.) Applicant paid the late fees on August 5, 2017. (AE W.) Applicant arranged to have the payments made by automatic deduction from his bank account. (AE Y.)

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(a), 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 national security eligibility will be resolved in favor of the 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.

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. Applicant and his spouse obtained a joint home loan for \$300,600 in April 2006 based on the income from their cleaning business. After their business declared bankruptcy, they were chronically late in their mortgage payments. Despite modifications that lowered their monthly payments from \$1,700 to \$1,400 and from \$1,400 to \$1,200, they were behind 120 days on their payments as of March 2013. As of September 2015, they were making partial payments on their loan, which was \$36,174 past due (SOR ¶ 1.d). Of considerable security concern, Applicant exhibited very poor judgment with regard to his income tax payment obligations for six consecutive tax years. The evidence shows that Applicant was paid as a contractor for his work from April 2008 until December 2013. Applicant paid no taxes on his income during those six years. He claims he failed to understand that he was required to file and pay taxes on his income, but he also admits that he kept the funds that he should have paid in taxes because his income was insufficient to meet his expenses.⁸ State tax liens of \$1,481 (SOR ¶ 1.a), \$6,639 (SOR ¶ 1.b), and \$2,748 (not alleged) were filed against him. The IRS filed tax liens of \$8,767 (SOR ¶ 1.c) in December 2008 and \$38,148 in December 2015 (not alleged). The latter tax lien covers the federal tax delinquencies alleged in SOR ¶¶ 1.e-1.h. The mortgage and tax delinquencies establish disqualifying conditions AG ¶ 19(a), “inability to satisfy debts,” AG ¶ 19(c), “a history of not meeting financial obligations,” and

⁸ It is unclear whether Applicant filed timely income tax returns for those tax years. The SOR alleges only the tax debts.

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.”

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 AG effective for any adjudication on or after June 8, 2017, a record of consumer credit and tax delinquency may be mitigated under one or more of the following conditions under ¶ 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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.

Applicant's mortgage loan and his tax delinquencies are too recent to favorably consider AG ¶ 20(a). AG ¶ 20(b) has some applicability to his mortgage delinquency. Applicant's financial problems arose after his and his spouse's cleaning business lost their primary customer. After they closed the business, Applicant worked part time. His spouse had a job as a state employee, but she then lost her job in 2009 when her duties were outsourced. She was unemployed for over a year before becoming a per-diem worker at a local hospital. She eventually became a full-time employee at the hospital, but even with Applicant paying no taxes on his income for some six years, they could not make their mortgage payment due to insufficient income. Applicant acted responsibly when he and his spouse refinanced their home loan in 2013, which lowered their monthly payment obligation from \$1,400 to \$1,200. Their subsequent delinquency on the modified mortgage is attributable to the unexpected loss of his employment in November 2014 and his unemployment until June or July 2015. Insufficient income was also a factor in his failure to make any income tax payments for several years. Yet it is difficult to find that Applicant

acted fully responsibly under AG ¶ 20(b) when he ignored notices from the IRS about his tax liabilities.

Both AG ¶ 20(c) and AG ¶ 20(d) have some applicability because Applicant has taken steps to address his mortgage and tax delinquencies. In December 2015, he and his spouse obtained a modification that lowered their monthly mortgage payment to \$919 for the next 60 months with minor increases thereafter, but which also requires a sizeable balloon payment from them on May 1, 2036. Some concern persists about whether they can be counted on to continue to make their mortgage payments under the terms of the modification, given they were behind on their payments on the modified loan as recently as October 2016. They were apparently late because they were repaying their state income tax delinquency. A recent mortgage billing from July 2017 shows that they owed \$15 in late charges on their modified loan. Even so, their efforts to modify their home loan are mitigating of the security concerns raised by the mortgage delinquency.

Apparently because the IRS was more willing to work with him on addressing his past-due taxes, Applicant gave priority to addressing his state tax delinquency. Applicant and his spouse entered into an installment agreement with the state tax authority to make \$400 monthly payments to address the lien in SOR ¶ 1.b, and the lien was released in August 2016. Then they repaid the \$1,481 tax lien (SOR ¶ 1.a) at \$120 a month. In May 2017, they satisfied the \$2,746 state tax lien filed in March 2015. As of August 2017, Applicant and his spouse were in good standing with regard to their state tax debts. AG ¶¶ 20(c), 20(d), and 20(g) are established with respect to the state tax debts.

Applicant testified about his federal income tax delinquency that he tried to address his federal tax debt in 2013, but that the IRS wanted him to first file his and his spouse's 2013 federal return so that the taxes owed for that tax year could be included in the plan. They had to renegotiate the installment agreement, which was established in September 2016. As of August 2017, their federal tax debt for 2005 had been resolved, but they still owed the IRS \$51,757. After his hearing, Applicant submitted a new installment agreement with the IRS that would increase their monthly payment to \$150 starting August 28, 2017. Applicant showed some good faith that would trigger AG ¶ 20(d). They made some late payments, and no payments in April or May 2017 because the IRS took their income tax refund for tax year 2016. Applicant testified that the IRS allowed them to skip the payments, and there is no evidence showing that the IRS considers them to be noncompliant with the installment agreement, so AG ¶ 20(g) weighs in his favor. However, Applicant has not made enough payments toward his and his spouse's sizeable federal tax delinquency for me to conclude that there are clear indications that his federal tax issues are likely to be resolved or are under control. Even at a new rate of \$150 a month, it is going to take years before the tax delinquency will be repaid.

The security clearance adjudication is not aimed at collecting an applicant's personal debts. Rather, it involves an evaluation of an applicant's judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. June 21, 2010). In evaluating Guideline F cases, the Appeal Board has established that an applicant is not required to pay off every debt in the SOR:

The Board has previously noted that the concept of a meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic.

See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). At the same time, Applicant reported only \$200 in bank deposits, even with his and his spouse's joint adjusted gross income of \$103,811 in 2016. He borrowed \$8,000 from his 401(k) in July 2017 to meet some expenses, which also suggests a cash-flow problem. While his spouse recently settled her defaulted student loans, Applicant is committed to paying \$1,172 per month toward his student loans starting in October 2017. He has a history of late mortgage payments as recently as October 2016, which raises some concerns about his financial judgment. The financial considerations security concerns are not fully mitigated.

Whole-Person Concept

In the whole-person evaluation, 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).⁹ Some of the factors in AG ¶ 2(d) were addressed under Guideline F, but some warrant additional comment.

Applicant's inattention to his tax payment obligations for six consecutive tax years constitutes continuing conduct over that time that raises concerns about his judgment, reliability, and trustworthiness. Even where tax problems have been corrected, and an applicant is motivated to prevent such problems in the future, the administrative judge is not precluded from considering an applicant's trustworthiness in light of prior behavior evidencing irresponsibility. See e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 2015). Applicant was either not fully candid about or was not fully aware of the extent of his tax issues when he completed his SF 86. He estimated his federal tax liability at \$3,000 when he and his spouse owed approximately \$38,000. With penalties and interest, their income tax debt now exceeds \$50,000. Applicant's efforts to address their federal taxes are too

⁹ 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.

recent to provide a sufficient track record from which I can reasonably conclude that he will continue to make the payments he has promised to the IRS. 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). For the reasons noted above, I conclude that it is not clearly consistent with the national interest to grant Applicant 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.h:	Against Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge