



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



In the matter of:)
)
 ---) ISCR Case No. 16-00945
)
 Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esquire, Department Counsel
For Applicant: *Pro se*

10/31/2017

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance is denied.

Statement of the Case

On June 15, 2015, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a set of interrogatories. He responded to those interrogatories on September 14, 2016. On October 29, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, 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) applicable to all adjudications and

other determinations made under the Directive, effective September 1, 2006.¹ The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the interests of national security 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.

It is unclear when Applicant received the SOR as there is no receipt in the case file. In a sworn statement, dated December 5, 2016, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. Following Applicant's Response to the SOR, the Government, pursuant to ¶ E.3.1.13, Directive, amended the SOR by deleting a portion of SOR ¶ 1.j. and substituting new dates and figures. He was advised to provide an answer to the revised allegation in his Response to the FORM, and if he failed to do so, his silence would be treated as a denial of the amended allegation. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by DOHA on January 30, 2017, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the previous Adjudicative Guidelines applicable to his case. Applicant received the FORM on February 14, 2017. Applicant's response was due on March 16, 2017. As of October 1, 2017, Applicant had not submitted any response to the FORM. The case was assigned to me on October 1, 2017.

Findings of Fact

In his Answer to the SOR, Applicant admitted with comments nearly all of the factual allegations pertaining to financial considerations (¶¶ 1.a. and 1.b., and 1.d. through 1.i.) of the SOR. Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 58-year-old employee of a defense contractor. He has served in an unspecified business operation position since June 1979. He is a 1977 high school graduate. Although he attended a university for several years, he did not obtain a degree. Applicant has never served in the U.S. military. Applicant was granted a SECRET security clearance in 1999; access to Sensitive Compartmented Information (SCI) in 2006; and a TOP SECRET security clearance in 2006. Although Applicant indicated that his security clearance and SCI access was lowered to a SECRET security clearance in 2013, it was actually revoked in 2010, and he was permitted to retain his SECRET security clearance in 2013, following a favorable decision on his eligibility issued by DOHA in August 2013.

¹ Effective June 8, 2017, by Directive 4 of the Security Executive Agent (SEAD 4), dated December 10, 2016, *National Security Adjudicative Guidelines* (AG) 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.

Applicant was married in 1996. He has a son, born in 2000, and a stepdaughter, born in 1990.

Financial Considerations²

Applicant has a lengthy history of financial problems which he attributed, in part, to “[p]oor money and debt management and failure to live within means.”³ In addition, in June 2015, he stated:⁴

Subject: Explanation of Derogatory Credit from early 2000 thru approximately mid-2007, [Applicant] was working between 25-30% overtime. This equal[s] about an extra paycheck a month. During this period our spending and credit accumulation was at a level of our combined income. We purchased two vehicles, took out a second mortgage to complete almost \$100,000 remodeling to our house, which included credit for major appliances. With the added income, meeting our credit obligation and monthly house[hold] expenses was attainable. Around October 2007, [Applicant’s] [overtime] was reduced to zero without any prior notice. With spending to the level of our income, not budgeting, and/or putting away savings, it did not take long before credit cards were maxed out to pay monthly expenses, and shortly thereafter falling behind credit cards and other credits obligations. By the middle of 2008, we were . . . starting to fall behind on our house payments and [were] not making regular payments [on] our obligation[s] and soon thereafter [we] stop[ped] making payments on some creditors altogether. Around the beginning of 2009 we were falling further behind on our house payment. We [requested] relief from our mortgage company, and relief was denied. With denial of relief from our mortgage company, and foreclosure the only remaining option, house payment[s] were stopped. Many creditors had close[d] accounts, charge[d] off the accounts, and/or turned over accounts . . . to collections. Our house foreclosed in August 2009. Since August of 2009, we have paid off creditors who were actively seeking payments, both cars, and [we] [are] now working on paying off all creditors that have balances on our credit reports. We have hired a company to help negotiate settlement offers and clean up our credit scores. Our goal is to have all credit balances paid off around January 2016 and credit scores increased to above 640. I am current on all payments to creditors and household items.

Applicant’s description of events is not complete for it omits several significant details. On June 16, 1995, he filed for bankruptcy as an individual under Chapter 13 of

² General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 3 (e-QIP, dated June 15, 2015); Item 4 (Answers to Interrogatories, dated September 14, 2016); Item 4 (Personal Subject Interview, dated December 14, 2015); Item 2 (Answer to the SOR, dated December 5, 2016).

³ Item 3, *supra* note 2, at 40-59.

⁴ Item 3, *supra* note 2, at 61-62., in that it omits several significant details

the U.S. Bankruptcy Code. On June 10, 1998, an “Order Approving Account Discharging Trustee and Closing Estate Chapter 7” was entered.⁵ It is unclear what the reference to Chapter 7 is meant to convey. On April 15, 1998, Applicant and his wife filed a joint petition for bankruptcy under Chapter 13 of the U.S. Bankruptcy Code. A Chapter 7 Trustees meeting of creditors was held in May 1998, but the Chapter 13 plan was approved in June 1998. On November 28, 2000 another “Order Approving Account Discharging Trustee and Closing Estate Chapter 7” was entered.⁶ On February 22, 2013, an SOR was issued to Applicant alleging 22 continuing delinquencies totaling \$41,075.⁷ It was determined that Applicant had paid creditors, either through garnishments or settlements, \$15,642, of which \$10,000 was paid to non-SOR creditors. That SOR did not address federal and state income tax returns or federal tax liens. On August 2, 2013, a favorable decision was issued by the administrative judge in which the administrative judge noted:⁸

[Applicant and his wife], however, accepted responsibility for their actions and created a plan to resolve their debts. They changed their spending habits and now live within their income. They are resolving all their old debts, a few at a time. Their budget reflects that they have dedicated a sum of money each month to pay old debts, a few at a time. Their budget reflects that they have dedicated a sum of money each month to pay old debts.

Applicant’s current SOR as supplemented alleges the two bankruptcy filings (SOR ¶¶ 1.a. and 1.b.); and it alleges that he had failed to timely file his federal and state income tax returns for the tax years 1999, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, and 2013, as required (SOR ¶ 1.c.);⁹ his continuing indebtedness to the

⁵ Item 7 (PACER Chapter 13 History, dated July 11, 2016). It is unclear why the PACER Chapter 13 History refers to Chapter 7, for, other than in the PACER records, there are no references to Chapter 7 elsewhere in the case file.

⁶ Item 6 (PACER Chapter 13 History, dated July 11, 2016). The PACER Chapter 13 History again refers to Chapter 7 for reasons that are not explained.

⁷ Unalleged conduct can be considered for certain purposes, as discussed by the DOHA Appeal Board. Conduct not alleged in an SOR may be considered: (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 § 6.3. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006); (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)). Applicant’s financial issues as raised in the previous DOHA security clearance eligibility decision will be considered only for the five purposes listed above.

⁸ See ISCR Case No. 11-07202, at 9 (Aug. 2, 2013).

⁹ The legal requirement to file a federal income tax return is based upon certain conditions, including an individual’s gross income and other enumerated conditions. Once it is determined that there is an obligation to so file, the following applies:

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$25,000 (\$100,000 in the case of a corporation), or imprisoned not more than 1

Federal Government for delinquent income taxes for a variety of years (SOR ¶¶ 1.c. through 1.i.); and his continuing indebtedness to the Federal Government for a tax lien in the approximate amount of \$20,900 (SOR ¶ 1.j.). In his Answer to the SOR, Applicant stated that all of his tax returns have been filed, and that he was working with a tax attorney to arrive at a settlement and payment plan with the Internal Revenue Service (IRS). Those debts, totaling approximately \$30,396.88, and his filing issues, their current status, according to the evidence submitted by the Government and Applicant, are described as follows:

(SOR ¶ 1.c.): Applicant failed to timely file his federal and state income tax returns for the tax year 1999, as required: The information submitted by Applicant is inconsistent. He submitted a U.S. Individual Income Tax Return (Form 1040) prepared by his tax preparer on April 15, 2003, and signed by Applicant and his wife that same date – three years after they were due. However, according to the IRS, Applicant filed the Form 1040 on April 17, 2006 – approximately six years after they were due.¹⁰

(SOR ¶ 1.c.): Applicant failed to timely file his federal and state income tax returns for the tax year 2003, as required: He submitted a Form 1040 prepared by his tax preparer on May 16, 2016, and signed by Applicant and his wife on May 21, 2016 – 12 years after they were due.¹¹

(SOR ¶ 1.c.): Applicant failed to timely file his federal and state income tax returns for the tax year 2004, as required: The information submitted by Applicant is inconsistent. He submitted a Form 1040 prepared by his tax preparer, and signed by Applicant and his wife on August 23 and 26, 2014 – nine years after they were due. However, according to the IRS, Applicant filed the Form 1040 on April 10, 2006 – approximately one year after they were due.¹² A note from the tax preparer indicates that the 2004 tax return was prepared on October 25, 2011.

(SOR ¶ 1.c.): Applicant failed to timely file his federal and state income tax returns for the tax year 2005, as required: Applicant's tax preparer prepared the Form 1040 on September 24, 2007 – approximately one year after they were due.¹³ There is no

year, or both, together with the costs of prosecution. In the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure. In the case of a willful violation of any provision of section 60501, the first sentence of this section shall be applied by substituting "felony" for "misdemeanor" and "5 years" for "1 year."

26 U.S.C. § 7203, *Willful failure to file return, supply information, or pay tax.*

¹⁰ Item 4 (Form 1040 (1999), dated April 15, 2003), attached to Applicant's Response to Interrogatories; Item 4 (IRS Explanation of the Delinquency Penalty, dated April 17, 2006), attached to Applicant's Response to Interrogatories.

¹¹ Item 4 (Form 1040 (2003), dated May 21, 2016), attached to Applicant's Response to Interrogatories.

¹² Item 4 (Form 1040 (2004), dated August 23 and 26, 2014), attached to Applicant's Response to Interrogatories; Item 4 (IRS Explanation of the Delinquency Penalty, dated April 10, 2006), attached to Applicant's Response to Interrogatories.

¹³ Item 4 (Form 1040 (2005), dated May 21, 2016), attached to Applicant's Response to Interrogatories

indication that Applicant and his wife signed the Form 1040, or if an extension request had been filed.

(SOR ¶ 1.c.): Applicant failed to timely file his federal and state income tax returns for the tax year 2006, as required: An IRS Account Transcript for 2006 indicates that Applicant was assessed a penalty for filing his Form 1040 after the due date.¹⁴

(SOR ¶ 1.c.): Applicant failed to timely file his federal and state income tax returns for the tax year 2007, as required: An IRS Account Transcript for 2007 indicates that, as of April 24, 2014, his Form 1040 had not been filed.¹⁵

(SOR ¶ 1.c.): Applicant failed to timely file his federal and state income tax returns for the tax year 2008, as required: An IRS Account Transcript for 2008 indicates that Applicant was assessed a penalty for filing his Form 1040 after the due date.¹⁶

(SOR ¶ 1.c.): Applicant failed to timely file his federal and state income tax returns for the tax year 2009, as required: An IRS Account Transcript for 2009 indicates that Applicant was assessed a penalty for filing his Form 1040 after the due date.¹⁷

(SOR ¶ 1.c.): Applicant failed to timely file his federal and state income tax returns for the tax year 2010, as required: An IRS Account Transcript for 2010 indicates that Applicant was assessed a penalty for filing his Form 1040 after the due date.¹⁸

(SOR ¶ 1.c.): Applicant failed to timely file his federal and state income tax returns for the tax year 2011, as required: An IRS Account Transcript for 2011 indicates that Applicant was assessed a penalty for filing his Form 1040 after the due date.¹⁹

(SOR ¶ 1.c.): Applicant failed to timely file his federal and state income tax returns for the tax year 2012: An IRS Account Transcript for 2012 indicates that Applicant's Form

¹⁴ Item 4 (Account Transcript (2006), dated August 9, 2016), attached to Applicant's Response to Interrogatories.

¹⁵ Item 4 (Account Transcript (2007), dated August 9, 2016), attached to Applicant's Response to Interrogatories.

¹⁶ Item 4 (Account Transcript (2008), dated August 9, 2016), attached to Applicant's Response to Interrogatories.

¹⁷ Item 4 (Account Transcript (2009), dated August 9, 2016), attached to Applicant's Response to Interrogatories.

¹⁸ Item 4 (Account Transcript (2010), dated August 9, 2016), attached to Applicant's Response to Interrogatories.

¹⁹ Item 4 (Account Transcript (2011), dated August 9, 2016), attached to Applicant's Response to Interrogatories.

1040 was received on June 27, 2013, but it is unclear if an extension request had been filed.²⁰

(SOR ¶ 1.c.): Applicant failed to timely file his federal and state income tax returns for the tax year 2013, as required: An IRS Account Transcript for 2013 indicates that Applicant was assessed a penalty for filing his Form 1040 after the due date.²¹

(SOR ¶ 1.d.): Applicant is indebted to the federal government for delinquent taxes in the approximate amount of \$4,378.89 for the tax year 2006. As of October 29, 2016, the taxes remain unpaid: In his Answer to the SOR, Applicant admitted the allegation, stated that he was working with a tax attorney to arrive at a settlement and payment plan, and he added that the IRS had terminated an installment plan on December 7, 2015. The IRS placed a lien on Applicant's assets on April 1, 2016.²² There is no evidence of any payments associated with the tax year 2006. The account has not been resolved.

(SOR ¶ 1.e.): Applicant is indebted to the federal government for delinquent taxes in the approximate amount of \$1,688.85 for the tax year 2008. As of October 29, 2016, the taxes remain unpaid: In his Answer to the SOR, Applicant admitted the allegation, stated that he was working with a tax attorney to arrive at a settlement and payment plan, and he added that the IRS had terminated an installment plan on December 7, 2015. The IRS placed a lien on Applicant's assets on April 1, 2016.²³ There is no evidence of any payments associated with the tax year 2008. The account has not been resolved.

(SOR ¶ 1.f.): Applicant is indebted to the federal government for delinquent taxes in the approximate amount of \$629.25 for the tax year 2009. As of October 29, 2016, the taxes remain unpaid: The IRS placed a lien on Applicant's assets on April 1, 2016.²⁴ In his Answer to the SOR, Applicant admitted the allegation, but indicated that he had made a payment for \$629.25 on November 4, 2016. A copy of the check was submitted to corroborate his contention.²⁵ The account has been resolved.

(SOR ¶ 1.g.): Applicant is indebted to the federal government for delinquent taxes in the approximate amount of \$661.98 for the tax year 2010. As of October 29, 2016, the taxes remain unpaid: In his Answer to the SOR, Applicant admitted the allegation, stated that he has scheduled a payment on or for February 2017, and he added that the IRS had terminated an installment plan on December 7, 2015. The IRS placed a lien on

²⁰ Item 4 (Account Transcript (2012), dated August 9, 2016), attached to Applicant's Response to Interrogatories.

²¹ Item 4 (Account Transcript (2013), dated August 9, 2016), attached to Applicant's Response to Interrogatories.

²² Item 4 (Account Transcript (2006), *supra* note 14, at 2.

²³ Item 4 (Account Transcript (2008), *supra* note 16, at 2.

²⁴ Item 4 (Account Transcript (2009), *supra* note 17, at 2.

²⁵ Item 2, *supra* note 2; Item 2 (Check, dated November 4, 2016).

Applicant's assets on April 1, 2016.²⁶ There is no evidence of any payments associated with the tax year 2010. The account has not been resolved.

(SOR ¶ 1.h.): Applicant is indebted to the federal government for delinquent taxes in the approximate amount of \$844.78 for the tax year 2011. As of October 29, 2016, the taxes remain unpaid: In his Answer to the SOR, Applicant admitted the allegation, stated that he has scheduled a payment on or for April 2017, and he added that the IRS had terminated an installment plan on December 7, 2015. The IRS placed a lien on Applicant's assets on April 1, 2016.²⁷ There is no evidence of any payments associated with the tax year 2011. The account has not been resolved.

(SOR ¶ 1.i.): Applicant is indebted to the federal government for delinquent taxes in the approximate amount of \$1,293.13 for the tax year 2014. As of October 29, 2016, the taxes remain unpaid: In his Answer to the SOR, Applicant admitted the allegation, stated that he has scheduled a payment on or for July 2017, and he added that the IRS had terminated an installment plan on December 7, 2015. The IRS added his unpaid taxes for the year to the amount owed for 2011 when it placed the lien on Applicant's assets on April 1, 2016.²⁸ There is no evidence of any payments associated with the tax year 2014. The account has not been resolved.

(SOR ¶ 1.j.): Applicant is indebted to the federal government for a tax lien filed against him in April 2016 in the approximate amount of \$20,900. The IRS filed the lien on April 4, 2016.²⁹ In his Answer to the SOR, Applicant denied the allegation but failed to actually address the facts in the allegation. He stated:³⁰

According to my filed tax returns for 1999, 2003 and 2004 I owe \$5,691 which does not include any penalties or interest. The IRS just applied my 2015 tax return of \$4,100 to my 2003 balance. . . . IRS terminated installment plan on [December 7, 2015].

Applicant failed to address his repeated failures to file state income taxes for a multi-year period. It is not known what Applicant's financial resources may be because he did not submit a Personal Financial Statement to reflect his net monthly income; monthly expenses; and any monthly remainder that might be available for discretionary spending or savings. His IRS Account Transcript reflects an adjusted gross income for 2015 of \$202,865.00, and a taxable income of \$161,396.³¹ While there are references to

²⁶ Item 4 (Account Transcript (2010), *supra* note 18, at 2.

²⁷ Item 4 (Account Transcript (2011), *supra* note 19, at 2.

²⁸ Item 4 (Account Transcript (2014, dated August 9, 2016), at 2, attached to Applicant's Response to Interrogatories.

²⁹ Item 5 (Judgment and Lien Filings, dated April 4, 2016).

³⁰ Item 2, *supra* note 2.

³¹ Item 2 (Account Transcript (2015), dated December 6, 2016), attached to Applicant's Answer to the SOR.

a law firm working on credit restoration, a tax preparer to prepare Applicant's income tax returns, and efforts to establish installment agreements with the IRS, there is no documentation to support those contentions. There is no evidence of a budget or any financial counseling. Applicant offered no explanations to indicate why he failed to timely file his federal and state income tax returns over a multi-year period, and he has failed to prove that his financial situation is now 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."³² 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."³³

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 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."³⁴ 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

³² *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³³ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

³⁴ "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).

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.³⁵

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."³⁶

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."³⁷ 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a

³⁵ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

³⁶ *Egan*, 484 U.S. at 531.

³⁷ See Exec. Or. 10865 § 7.

security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability to satisfy debts” is potentially disqualifying. In addition, AG ¶ 19(b) may apply if there is an “unwillingness to satisfy debts regardless of the ability to do so.” Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise concerns. In addition, AG ¶ 19(f) may apply for “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 failed to timely file his federal and state income tax returns for the tax years 1999, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, and 2013, as required. As a result, he incurred indebtedness to the IRS totaling approximately \$30,396.88, including a tax lien. AG ¶¶ 19(a), 19(b), 19(c), and 19(f) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 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.”³⁸ Also, under AG ¶ 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 AG ¶ 20(c). Similarly, AG ¶ 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.”³⁹ In addition, AG ¶ 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

³⁸ 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. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sep. 13, 2016)).

³⁹ 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)).

documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.” Under AG ¶ 20(g), it is potentially mitigating if “the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.”

AG ¶ 20(b) minimally applies, but none of the remaining mitigating conditions apply. The nature, frequency, and recency of Applicant’s continuing financial difficulties since 2003, or before, make it difficult to conclude that it occurred “so long ago” or “was so infrequent,” or that it is “unlikely to recur.” Applicant acknowledged that poor money and debt management and failure to live within means were, associated with the loss of overtime earnings, the reasons for his financial difficulties, but he offered no explanations for his failures to file his federal and state income tax returns, or pay his federal and state income taxes, over a multi-year period. With an adjusted gross income for 2015 of \$202,865, and a taxable income of \$161,396, it appears that Applicant simply chose to ignore his filing responsibilities and paying obligations. Instead, he delayed and avoided his obligations, and he eventually relied on garnishments of his wages and offsets of refunds to pay his federal taxes. There is no evidence that Applicant ever addressed his state income tax return filing obligations.

Clearance decisions are aimed at evaluating an applicant’s judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of each and every debt alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in an SOR be paid first. Rather, a reasonable plan and concomitant conduct in furtherance of the plan may provide for the payment of such debts one at a time. Mere promises to pay debts in the future, without further confirmed action, are insufficient.

There is little evidence of an ongoing good-faith effort to contact the IRS or the state revenue departments to resolve Applicant’s delinquent federal and state income tax accounts.⁴⁰ There is little evidence that the conditions that may have resulted in the financial issues after the period 2000 to 2007 were largely beyond Applicant’s control. There is no evidence of financial counseling, a budget, or any disputes. Applicant offered no evidence to indicate that his financial situation is now under control. Equally as important, there is no evidence that Applicant acted responsibly under the circumstances, and that failure to do so continues to cast doubt on his current reliability, trustworthiness, and good judgment.⁴¹

⁴⁰ “Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

⁴¹ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

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.⁴²

There is some evidence mitigating Applicant's conduct. There is no evidence of misuse of information technology systems, or mishandling protected information. Applicant has been employed fulltime by the same employer since June 1979.

The disqualifying evidence under the whole-person concept is simply more substantial. Applicant failed to timely file his federal and state income tax returns over a lengthy multi-year period, commencing as far back as the tax year 1999 – nearly two decades. He failed to fully pay his federal income taxes over a multi-year period, and simply relied on garnishments and offsets by the IRS to address his federal debts. Eventually a federal tax lien was filed in the approximate amount of \$20,900. He failed to address his failure to file his state income tax returns over a multi-year period. In June 2015, Applicant stated “our goal is to have all credit balances paid off around January 2016 and credit scores increased to above 640. I am current on all payments to creditors and household items.” That statement was not accurate for he omitted any references to his delinquent income taxes from as early as 1999.

Considering Applicant's multiple failures to timely file his federal and state income tax returns over a lengthy multi-year period, the absence of his responses with respect to his state income tax returns, the lack of evidence, more current than 2015, regarding his current finances, and the absence of character evidence regarding Applicant's honesty,

⁴² 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).

integrity, and trustworthiness, I am unable to reach a positive conclusion pertaining to Applicant's eligibility for a security clearance.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁴³

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 a poor track record of debt reduction and elimination efforts. He avoided the federal and state income tax debts in his name, and failed to fulfill his promises to take timely corrective actions. Overall, the evidence leaves me with substantial 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 his 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.e.:	Against Applicant
Subparagraph 1.f.:	For Applicant
Subparagraphs 1.g. through 1.j.:	Against Applicant

⁴³ 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