



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



In the matter of:)
)
 ---) ISCR Case No. 16-03850
)
 Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

11/07/2017

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 January 4, 2016, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On January 25, 2017, 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

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

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.

Applicant received the SOR on February 2, 2017. In a sworn statement, dated February 8, 2017, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on March 7, 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 March 15, 2017. Applicant's response was due on April 14, 2017. Applicant took advantage of this opportunity, and some time before March 27, 2017, Applicant submitted his response, including several documents and a written statement, 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., 1.b., 1.d., and 1.e.) 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 34-year-old employee of a defense contractor. He has served as an engineering technician since December 2015. He previously worked part-time as a plumbing worker (January 2009 until December 2015); full-time as a flooring installer (January 2012 until December 2015); as a co-owner of a plumbing company (January 2007 until January 2009); and as a plumbing worker (January 2004 until January 2007). He received a General Equivalency Diploma (GED) in approximately 2011. Applicant has never served in the U.S. military. He has never been granted a security clearance. He has never been married.

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.

Financial Considerations²

There was nothing unusual about Applicant's finances until early 2008, for until that time, he was making regular payments on his various accounts. Applicant's finances became an issue in early 2008 when the economy started deteriorating and Applicant's work slowed down. Because of a lack of business, Applicant and his partners had to shut down their plumbing company, and Applicant searched for hourly jobs. Nevertheless, some accounts became delinquent, one account was charged off, and two accounts went to judgment. There is also an allegation that a tax lien was filed against Applicant. In addition, Applicant failed to timely file his federal income tax returns for the tax years 2008 and 2010.³ Although Applicant initially considered resolving his debts by filing for bankruptcy, he rejected that option. Instead, he chose to wait until he had acquired a stable job and accumulated sufficient funds to enable him to address his debts.⁴

In addition to the one allegation regarding Applicant's failure to timely file his 2008 and 2010 federal income tax returns, the SOR identified four purportedly delinquent accounts that had been placed for collection, charged off, filed as judgments, or filed as a lien, as generally reflected by Applicant's 2014 or 2016 credit reports. Those debts, totaling approximately \$98,963, and their current status, according to the credit reports and other evidence submitted by the Government and Applicant, are described as follows:

(SOR ¶ 1.a.): This is an unspecified type of bank account with an unpaid balance that was placed for collection, and in May 2012, filed as a judgment against Applicant for \$10,940. In his Answer to the SOR, Applicant admitted that the account remains delinquent, but added that he believed the account had been written off, and he had not

² General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 5 (e-QIP, dated January 4, 2016); Item 9 (Combined Experian, TransUnion, and Equifax Credit Report, dated January 29, 2014); Item 8 (Equifax Credit Report, dated October 28, 2016); Item 10 (Personal Subject Interviews, dated May 25, 2016, and September 14, 2016); Item 4 (Answer to the SOR, dated February 8, 2017).

³ 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 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 6050I, 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*.

⁴ It should be noted that the Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

received any communication from the creditor in over four years. In February 2017, Applicant entered into a repayment arrangement with the creditor under which he agreed to make a monthly payment of \$20 until the entire balance is paid in full. He made an initial \$100 payment on February 6, 2017; a second \$100 payment on February 25, 2017; and a third \$100 payment on March 25, 2017.⁵ The account is in the process of being resolved.

(SOR ¶ 1.b.): This is an unspecified type of account with an unpaid balance that was placed for collection, and in February 2012, filed as a default judgment against Applicant for \$5,038.24. In his Answer to the SOR, Applicant admitted that the account remains delinquent, but added that he believed the account had been written off, and he had not received any communication from the creditor in over four years. In February 2017, Applicant contacted the collection agent, and he was referred to a particular law firm to set up a repayment arrangement. Under the repayment agreement, Applicant agreed to make a monthly payment of \$100 until the entire balance is paid in full. He made an initial \$100 payment on February 3, 2017; a second \$100 payment on February 25, 2017; and a third \$100 payment on March 25, 2017.⁶ The account is in the process of being resolved.

(SOR ¶ 1.c.): This is a federal tax lien in the amount of \$81,840.84 that was filed in January 2011. In his Answer to the SOR, Applicant denied that the lien was his, and he pointed out that the taxpayer identified on the Notice of Federal Tax Lien (Applicant's father) was not his name, and the Social Security Number was also not his number.⁷ Applicant disputed the item with Experian, and following the processing of the dispute, the item was deleted from Applicant's credit report.⁸ In his Response to the FORM, Applicant asked that argument by Department Counsel associated with the allegation be disregarded.⁹

Applicant has submitted documentation from the court showing that there is a lien against his father for the amount alleged in the SOR for the tax years 2003, 2004, and 2005. However, evidence of the lien against his father does

⁵ Item 4 (Letter, dated February 6, 2017); Item 4 (Check, dated February 6, 2017); Checks, various dates, attached to Applicant's Response to the FORM.

⁶ Item 4 (Check, dated February 3, 2017); Checks, various dates, attached to Applicant's Response to the FORM.

⁷ Item 4 (Notice of Federal Tax Lien, dated January 11, 2011), attached to Applicant's Answer to the SOR; Item 4, *supra* note 2, at 7.

⁸ Item 4 (Dispute Letter, dated January 27, 2017), attached to Applicant's Answer to the SOR; Dispute Results, dated February 8, 2017, attached to Applicant's response to the FORM. It should be noted that the January 2016 credit report upon which the SOR allegation was based, reflects variations of both Applicant's name and his father's name, but only Applicant's Social Security Number under the Subject Information section. Neither the U.S. Office of Personnel Management (OPM) investigator nor the DOD CAF obtained a copy of the original source document, choosing instead to rely only on the credit report to confirm the existence of the lien.

⁹ FORM, at 6.

not necessarily negate the Government's evidence that there is also a lien in the same amount against Applicant.

Department Counsel's argument is weak at best. As noted above, neither the OPM investigator nor the DOD CAF obtained a copy of the original source document, choosing instead to relay only on the credit report to confirm the existence of the lien. As correctly stated by Department Counsel, "the Government has the burden of proving only controverted facts." In this instance, Applicant denied the allegation, and furnished evidence that the lien was not his, thereby returning the burden of proof back to the Government. Arguing that "evidence of the lien against his father does not necessarily negate the Government's evidence that there is also a lien in the same amount against Applicant, is a rather meaningless declaration, for there is only disputed and ultimately discredited evidence of a lien against Applicant, and zero evidence of two separate liens. The overwhelming evidence regarding the lien is that Applicant has favorably resolved the issue.

(SOR ¶ 1.d.): This is a bank-issued credit card account with a \$1,400 credit limit and unpaid and past-due balance of \$1,145 that was placed for collection and charged off in May 2010. In his Answer to the SOR, Applicant admitted that the account remains delinquent, but added that he had contacted the collection agent about setting up a repayment plan, but that he was advised that the account had been returned to the creditor. When he attempted to set up a repayment plan with the creditor, he was advised that the account was between departments, so no arrangements could be made. Repeated efforts to resolve the account have been unsuccessful, as the creditor has not engaged in any settlement discussions. Applicant did not submit any documentation to support his contentions. The account has not been resolved.

(SOR ¶ 1.e.): Applicant failed to timely file his federal income tax returns for the tax years 2008 and 2010. During his OPM interview in September 2016, Applicant stated that if he had made income necessary to have filed a federal income tax return for the tax year 2008, he would have done so. He could not recall if he made any money during those two tax years. Applicant could not remember anything about the 2010 tax year. In his February 2017 Answer to the SOR, Applicant admitted that he did not file a federal income tax return for the tax year 2008. He indicated he was gathering all relevant information in order to do so within "the next few weeks." As of his Response to the FORM in March 2017, Applicant had not submitted any documentation to support the filing of the delinquent income tax return. With respect to the 2010 federal income tax return, Applicant contended that due to the recession and a lack of work, he was not working at the time. He did not submit any documentation to support either his lack of income, or an indication that he was not required to file a federal income tax return for that year. The issue has not been resolved.

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 last Earnings Statement for 2016 reflects gross income for 2016 of over \$54,000. His net pay per two-week paycheck during the period September 16, 2016, until

December 15, 2016, fluctuated between \$1,363 and \$1,778. There is no evidence of a budget. There is no evidence of any financial counseling. Other than comments made by him, and credit scores of 749 and 758, Applicant offered no documentary evidence to indicate 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.”¹⁰ 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.”¹¹

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.”¹² 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

¹⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹¹ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

¹² “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.¹³

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."¹⁴

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."¹⁵ 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

¹³ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹⁴ *Egan*, 484 U.S. at 531.

¹⁵ 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’s credit reports reflect four delinquent accounts, including a disputed federal tax lien, and he has admitted that three of the accounts are still delinquent. He failed to timely file his federal income tax returns for the tax years 2008 and 2010. 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.”¹⁶ 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.”¹⁷ 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

¹⁶ 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)).

¹⁷ 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(e) applies, and ¶¶ 20(b) and 20(d) minimally apply, but none of the remaining mitigating conditions apply. The nature, frequency, and recency of Applicant’s continuing financial difficulties since 2008 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 noted some unspecified financial hardships during the difficult economic period in 2008 and 2009. Applicant has been employed by his current employer since December 2015, and although he had previously intended to resolve his debts, he did nothing to do so between December 2015 and February 2017 – a week after the issuance of the SOR. Applicant claimed he was unaware that the accounts were still his responsibility because they had been written off and his creditors stopped sending him delinquency notices for over four years. Rather than addressing the three delinquent accounts, over a substantial period of time, Applicant simply took no action to resolve them. He finally commenced his repayment efforts in February 2017, and he has submitted documented proof to substantiate his efforts.

Applicant successfully disputed the tax lien and provided documented proof to substantiate the basis of the dispute as well as actions taken to remove it from his credit report. Applicant has not been credited with filing his federal income tax returns for the tax years 2008 and 2010, for aside from comments regarding his income during those years, Applicant has not submitted any documentary evidence to reflect either that he has filed the returns or that he was not required to do so. He could have obtained some documentation from the Internal Revenue Service (IRS), but he failed to do so.

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 a substantial risk when one accepts, at face value, the contents of a credit report without obtaining original source documentation to verify entries. Credit bureaus collect information from a variety of sources, including public records and “other sources,” and it is these other unidentified sources that are the cause for concern. Likewise, when accounts are transferred, reassigned, sold, or merely churned, an individual’s credit history can look worse than it really is. In this particular instance, a credit report referred to a tax lien regarding an individual with the same middle initial and last name, but different first name and Social Security Number than Applicant. Likewise, when the information in

the credit report is refuted by documentation from the actual creditor, and the credit reporting company has failed to correct its entries in a timely manner, one can conclude that the information in the credit report – actually a summary or secondary evidence pertaining to an account – is less accurate, trustworthy, or reliable than the other evidence of record.

There is little evidence of a timely good-faith effort to contact the creditors to resolve the accounts. Applicant admitted that he had not been in touch with several of his creditors for over four years.¹⁸ There is no evidence to support mitigation factors associated with the unfiled income tax returns. There is little substantiated evidence that the conditions that may have resulted in the financial issues were largely beyond Applicant's control. There is no evidence of financial counseling or a budget. Applicant offered little evidence to indicate that his financial situation is now under control. Equally as important, there is no evidence that Applicant acted timely or responsibly under the circumstances, and that failure to do so continues to cast doubt on his current reliability, trustworthiness, and good judgment.¹⁹

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.²⁰

¹⁸ "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.

¹⁹ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

²⁰ 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).

There is some evidence mitigating Applicant's conduct. Applicant has been employed full-time by his employer since December 2015. He substantiated his contentions that the federal tax lien was not filed against him, but rather was filed against someone else. He has finally, but belatedly, embarked on a good-faith effort to resolve three of his delinquent debts.

The disqualifying evidence under the whole-person concept is simply more substantial. There are three debts that Applicant has admitted having. Two went to judgment and one was charged off. He made little effort to resolve them until he received the SOR. Applicant failed to timely file his federal income tax returns for 2008 and 2010. His lack of attention to, and lack of compliance with, the law regarding the timely filing of federal income tax returns, appear to be an unacceptable pattern of conduct. Considering the relative lack of evidence regarding his current finances, and the absence of character evidence regarding Applicant's honesty, 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:²¹

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 timely debt reduction and elimination efforts, avoiding the debts in his name, and failing 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).

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

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

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