



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 17-01246

**Appearances**

For Government: Bryan Olmos, Esquire, Department Counsel

For Applicant: *Pro se*

10/22/2018

**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 17, 2016, 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 him a set of interrogatories. He responded to those interrogatories on June 29, 2017. On July 10, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order (Exec. Or.) 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 Directive 4 of the Security Executive Agent (SEAD 4), (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, effective June 8, 2017.

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 national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR as there is no receipt in the case file. In a sworn statement, dated August 3, 2017, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on August 22, 2017. The case was initially assigned to another administrative judge on October 6, 2017, and scheduled for a hearing, but because Applicant had apparently separated from his employer in November 2017, the processing of this matter ceased. New sponsorship was subsequently obtained, and the Department Counsel indicated the Government was again prepared to proceed on March 28, 2018. The case was assigned to me on June 28, 2018. A Notice of Hearing was issued on June 29, 2018. I convened the hearing as scheduled on July 25, 2018.

During the hearing, Government exhibits (GE) 1 through GE 7, and Applicant exhibits (AE) A through AE N were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on August 7, 2018. I kept the record open to enable Applicant to supplement it. He took advantage of that opportunity and timely submitted additional documents, which were marked and admitted into evidence as AE O through AE Y without objection. The record closed on August 22, 2018.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted with comments all of the factual allegations in the SOR (SOR ¶¶ 1.a. through 1.f.). 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 50-year-old employee of a defense contractor. He has been serving as a geographic information systems (GIS) engineer with his current employer since February 2016. He completed his high school education through a General Educational Development (GED) test in 1986. He received an associate's degree in 1994, and has earned additional vocational and college credits, but no other degree. Applicant has never served with the U.S. military. He was granted a top secret clearance in July 2006. Applicant was married in 1987, and divorced in 1990. He remarried in 1996. He has two daughters, born in 2001 and 2005, as well as one son, born in 2003.

## Financial Considerations<sup>1</sup>

Applicant attributed his financial problems essentially to one factor: he contended that as a self-employed individual during the period 2013 through 2015, his work hours slowed and he had insufficient funds to pay his bills, including his federal and state income taxes, especially since he did not have his income taxes withheld.<sup>2</sup> In his e-QIP, Applicant reported that he was employed full-time as a software engineer by a particular company (Company A) from May 2005 until September 2010, and as the owner of a company (Company X) initially part-time from April 2009 until September 2010, and then full-time from September 2010 until at least January 2016.<sup>3</sup> However, during his interview with an investigator from the U.S. Office of Personnel Management (OPM) in May 2016, he conceded that his actual commencement date with Company A was March 2005, and that he also worked part-time for a Company B from September 2010 until October 2011.<sup>4</sup>

The adjusted gross income reported by Applicant in his federal income tax returns for various tax years was as follows: 2010: \$134,024;<sup>5</sup> 2011: \$181,836;<sup>6</sup> 2012: \$159,915;<sup>7</sup> 2013: \$145,853;<sup>8</sup> 2014: \$125,144;<sup>9</sup> 2015: \$105,305;<sup>10</sup> 2016: \$134,685;<sup>11</sup> and 2017: \$131,912.<sup>12</sup>

Applicant filed his federal income tax returns for the tax years 2010, 2011, and 2017 by the required filing dates, and his federal income tax return for the tax year 2013 by the required extension filing date. The SOR alleged, and Applicant admitted, that he

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<sup>1</sup> General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1 (e-QIP, dated January 17, 2016); GE 2 (Answers to Interrogatories, dated June 29, 2017); GE 2 (Personal Subject Interview (PSI), dated May 17, 2016); GE 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated February 20, 2016); GE 6 (Equifax Credit Report, dated March 9, 2017); GE 7 (Equifax Credit Report, dated July 17, 2018); and Applicant's Answer to the SOR, dated March 19, 2018.

<sup>2</sup> GE 1, *supra* note 1, at 28-32; Tr. at 35.

<sup>3</sup> GE 1, *supra* note 1, at 9-10.

<sup>4</sup> GE 2 (PSI), *supra* note 1, at 5.

<sup>5</sup> AE B (Account Transcript, dated July 19, 2018).

<sup>6</sup> AE C (Account Transcript, dated July 19, 2018).

<sup>7</sup> AE D (Account Transcript, dated July 19, 2018).

<sup>8</sup> AE E (Account Transcript, dated July 19, 2018).

<sup>9</sup> AE F (Account Transcript, dated July 19, 2018).

<sup>10</sup> AE G (Account Transcript, dated July 19, 2018).

<sup>11</sup> AE H (Account Transcript, dated July 19, 2018).

<sup>12</sup> AE I (Account Transcript, dated July 19, 2018).

failed to timely file his federal income tax returns for the tax years 2014 and 2015.<sup>13</sup> He finally filed those income tax returns in January 2018, nearly six months after the SOR was issued.<sup>14</sup> Moreover, while not alleged in the SOR, Applicant also failed to timely file his federal income tax return for the tax year 2016 because he did not have the necessary funds to pay his income tax. It was also finally filed in January 2018.<sup>15</sup> Because Applicant had failed to pay the required income taxes for the tax years 2012 and 2013, and he failed to fully comply with installment agreements, the IRS filed a federal tax lien against Applicant in January 2015, in the amount of \$65,678, covering those two tax periods (\$29,675 for 2012) and (\$36,003 for 2013).<sup>16</sup> In addition, while Applicant made some payments for the other tax years, as of July 19, 2018, the week prior to the hearing, Applicant owes the IRS \$177,584, broken down by tax year as follows: 2012: \$42,117; 2013: \$48,228; 2014: \$45,163; 2015: \$34,944; 2016: \$5,167; and 2017: \$1,962.<sup>17</sup> Contrary to Applicant's initial contention that he had been making \$200 payments to the IRS since the first of the year (2018), he later modified his statement and affirmed the

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<sup>13</sup> The legal requirement to file a federal income tax return is based upon 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.*

<sup>14</sup> AE F, *supra* note 1; AE G, *supra* note 1.

<sup>15</sup> AE H, *supra* note 11; Tr. at 41. 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 unlisted and unalleged delinquent accounts will be considered only for the five purposes listed above.

<sup>16</sup> GE 3 (Notice of Federal Tax Lien, dated December 23, 2014); Tr. at 37.

<sup>17</sup> AE A (IRS Account, dated July 19, 2018), at 1-2.

actual IRS records: Applicant made payments within a six-month period, as follows: for 2012 - \$225 on March 12, 2018; \$200 on April 5, 2018; and \$508 on May 17, 2018; for 2014 - \$200 on May 10, 2018; \$200 on June 12, 2018; and \$200 on July 6, 2018; and for 2017 - \$480 on April 20, 2018.<sup>18</sup>

In addition to his difficulties with respect to his federal income tax returns and the taxes he still owes the IRS, Applicant also failed to timely file his state income tax returns for the tax years 2014 and 2015. Moreover, while not alleged in the SOR, Applicant also failed to timely file his state income tax return for 2016. He finally filed those returns on December 1, 2017, nearly five months after the SOR was issued.<sup>19</sup> In November 2015, a Notice of Levy on Intangibles was issued against Applicant by the state Department of Revenue, seeking \$10,280.<sup>20</sup> As a result, Applicant's wages were garnished.<sup>21</sup> On June 5, 2018, the state Department of Revenue issued Applicant two Notices Before Collection, requiring that he pay the \$8,865 balance of his unpaid 2014 income taxes, and the \$6,373 balance of his unpaid 2015 income taxes.<sup>22</sup> In June 2018, 11 months after the SOR was issued, Applicant and the state Department of Revenue discussed a payment plan. Based on the outstanding balance of \$15,336, the minimum monthly installment payment was determined to be \$160.<sup>23</sup> Applicant failed to submit documentation, such as cancelled checks, bank registers, correspondence, or receipts, to reflect that any such payments have been made between the June 2018 agreement and the closing of the record in late August 2018.

Applicant obtained a student loan in March 2002 in the amount of \$35,520. According to his 2018 credit report, the account was at least 120 days or more past due, and it had been assigned to the Government.<sup>24</sup> During his OPM interview, Applicant claimed that he had been making monthly payments of \$500 until the account was transferred, but there are no documents to support his claim.<sup>25</sup> Furthermore, in his Answer to the SOR, he claimed that the account was placed in forbearance because of his income reduction.<sup>26</sup> He submitted no documents to support that forbearance claim. Applicant

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<sup>18</sup> AE A, *supra* note 17, at 2; Tr. at 48.

<sup>19</sup> AE P (2014 Individual Income Tax Return, dated December 1, 2017); AE Q (2015 Individual Income Tax Return, dated December 1, 2017); AE R (2016 Individual Income Tax Return, dated December 1, 2017).

<sup>20</sup> GE 4 (Incident History, dated December 23, 2015).

<sup>21</sup> Applicant's Answer to the SOR, *supra* note 1; GE 2 (PSI), *supra* note 1, at 10.

<sup>22</sup> AE K (Notice Before Collection, dated June 5, 2018); AE L (Notice Before Collection, dated June 5, 2018).

<sup>23</sup> AE J (Payment Plan, dated June 21, 2018).

<sup>24</sup> GE 7, *supra* note 1, at 6.

<sup>25</sup> GE 2 (PSI), *supra* note 1, at 13.

<sup>26</sup> Applicant's Answer to the SOR, *supra* note 1.

acknowledged that he last contacted the creditor four or five or up to eight years ago, and he was now reluctant to “poke the bear,” as he described the situation.<sup>27</sup>

Applicant indicated that because he recently reduced his expenses by paying off one of his older automobiles, and selling a camper, thereby freeing up approximately \$600 each month, he is able to live within his means regarding current expenses.<sup>28</sup> However, Applicant acknowledged that his current financial situation is “currently deteriorating.”<sup>29</sup> He submitted a Personal Financial Statement to reflect his \$6,114 net monthly income; \$3,325 in monthly expenses; and a purported \$3,209 in debt payments, but the mathematics fail to support those debt payments because Applicant would be paying \$420 a month that he does not have. In other words, he is running a monthly deficit, and he does not have any monthly remainder.<sup>30</sup> Applicant purportedly has been obtaining financial counseling through his church with a nationally recognized financial expert,<sup>31</sup> but aside from a photograph of some materials, he offered no documents to furnish the exact type of financial guidance he has received or if he is actually enrolled in a specific financial course. There is no meaningful evidence to indicate that Applicant’s financial situation is now under control, and in fact, the evidence seems to indicate that he is currently unable to pay any of his delinquent debts, despite his statements of intent to the contrary.

## **Character Reference**

The Director, Software Services, of a Government contractor with whom Applicant has had a professional relationship for over eight years, noted that Applicant has contributed to the company’s success on multiple contracted projects. Should Applicant receive a security clearance, it is the company’s intention to assign him to support another Government project.<sup>32</sup>

## **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.”<sup>33</sup> As Commander in Chief, the President has the authority to control access to information bearing on national security and to

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<sup>27</sup> Tr. at 52, 60-61.

<sup>28</sup> Tr. at 51.

<sup>29</sup> Tr. at 58.

<sup>30</sup> AE S (Personal Financial Statement, dated August 19, 2018).

<sup>31</sup> Tr. at 57-58; AE T (Photograph of Financial Counseling Materials, undated).

<sup>32</sup> AE M (Character Reference, dated July 19, 2018).

<sup>33</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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.”<sup>34</sup>

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.”<sup>35</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.<sup>36</sup>

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

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<sup>34</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>35</sup> “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 (4<sup>th</sup> Cir. 1994).

<sup>36</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”<sup>37</sup>

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.”<sup>38</sup> 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 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) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and

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<sup>37</sup> *Egan*, 484 U.S. at 531.

<sup>38</sup> See Exec. Or. 10865 § 7.



(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 failed to timely file federal and state income tax returns for a multi-year period; failed to pay annual federal and state income taxes as required; and currently owes the IRS \$177,584 in unpaid income taxes, interest, and penalties. He had a federal income tax lien filed, and a state garnishment of his wages imposed. In addition to unpaid federal and state income tax issues, Applicant owes \$35,520 in delinquent student loans. There is no evidence that Applicant was unwilling to satisfy his debt regardless of the ability to do so. AG ¶¶ 19(a), 19(c), and 19(f) have been established, but 19(b) has not been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 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;<sup>39</sup>

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;<sup>40</sup>

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<sup>39</sup> A debt that became delinquent several years ago is still considered recent because “an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions.” ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

<sup>40</sup> The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good-faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good-faith” mitigating condition].

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

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

AG ¶ 20(b) partially applies, but none of the remaining mitigating conditions apply. The nature, frequency, and recency of Applicant's continuing financial difficulties make it difficult to conclude that it occurred "so long ago" or "was so infrequent," or that it is "unlikely to recur." Applicant generally attributed his financial difficulties to one factor: as a self-employed individual during the period 2013 through 2016, his work hours slowed and he had insufficient funds to pay his taxes. However, insufficient funds to pay one's income taxes is not a legitimate reason not to timely file one's taxes, something Applicant did on several occasions. His federal and state income tax returns for the tax years 2014 and 2015 were not filed until January 2018, nearly six months after the SOR was issued. With respect to those federal and state income tax returns, it appears that the state took decisive action against him and garnished his wages; and the IRS filed a tax lien. Applicant apparently had some contact with the IRS in establishing installment agreements, but at least one such agreement was terminated because of his failure to comply with its terms. The most recent installment agreement with the IRS resulted in minimum periodic payments commencing in March 2018. Nevertheless, as of June 2018, Applicant owes the state \$15,336 in unpaid income taxes, interest, and penalties; and as of July 2018, he owes the IRS \$177,584 in unpaid income taxes, interest, and penalties. Applicant essentially made little, if any, effort to file his income tax returns or make voluntarily good-faith payments to reduce his outstanding income tax balances until after he was motivated to do so by the issuance of the SOR. Furthermore, with respect to his delinquent student loans, after numerous years, he still has made no effort to address it because he would rather not "poke the bear."

An applicant who begins to resolve his financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests.<sup>41</sup> In this instance, to date, there is minimal meaningful evidence that corrective actions have been taken by Applicant. While Applicant claimed to have insufficient funds to timely file his federal and state income tax returns or pay his federal or state income tax over several years, the evidence regarding his adjusted gross income over a substantial period reveals that between 2010 and 2017, his adjusted gross income never fell below \$105,305 (2015), and for several years, it exceeded \$130,000

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(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)).

<sup>41</sup> See, e.g., ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018).

(\$131,912 in 2017; \$134,024 in 2010; \$134,685 in 2016; \$145,853 in 2013; \$159,915 in 2012; and \$181,836 in 2011), more than sufficient to make payments well before the SOR was issued.

Applicant offered no meaningful evidence to indicate that his financial situation is now under control. To the contrary, the evidence shows that he has insufficient funds to make the payments on his delinquent debts that he claimed to be making. Applicant's actions, or inaction, under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment.<sup>42</sup>

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 every debt or issue 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 issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time. Mere promises to pay debts in the future, without further confirmed action, are insufficient.

### **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.<sup>43</sup>

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<sup>42</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

<sup>43</sup> 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 is a 50-year-old employee of a defense contractor. He has been serving as a GIS engineer with his current employer since February 2016. He was granted a top secret clearance in July 2006. There is no evidence of any security violations.

The disqualifying evidence under the whole-person concept is more substantial. Applicant failed to timely file federal and state income tax returns for a multi-year period; failed to pay annual federal and state income taxes as required; and currently owes substantial amounts to the IRS and the state for unpaid income taxes, interest, and penalties. He also has a delinquent student loan, but has chosen not to address that debt for a lengthy multi-year period. He had a federal income tax lien filed, and a state garnishment of his wages imposed. Applicant's current financial situation is such that he can maintain his recent accounts, but is seemingly unable to make the anticipated payments for his delinquent debts. Considering Applicant's present financial situation, the absence of a good-faith effort to voluntarily address his debts, and his multi-year failure to file his federal and state income tax returns until after the SOR was issued, 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:<sup>44</sup>

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has "... established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant has demonstrated an extremely poor track record of debt reduction and elimination efforts, seemingly avoiding the delinquent federal and state income tax and his delinquent student loan debts in his name. Overall, the evidence leaves me with

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<sup>44</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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.f.:              Against Applicant

### **Conclusion**

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

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ROBERT ROBINSON GALES  
Administrative Judge