



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



In the matter of:)
)
 ---) ISCR Case No. 17-02468
)
 Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Driskill, Esquire, Department Counsel
For Applicant: *Pro se*

07/03/2018

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 February 3, 2016, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On March 3, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued him a set of interrogatories. He submitted a response to those interrogatories on June 9, 2017. On August 15, 2017, the DOD CAF issued a Statement of Reasons (SOR) to him, under 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.

Applicant received the SOR on September 15, 2017. In a sworn statement, dated October 30, 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 December 21, 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 Adjudicative Guidelines applicable to his case. Applicant received the FORM on January 25, 2018. Applicant's response was due on February 24, 2018. Applicant chose not to submit any response to the FORM. The case was assigned to me on April 12, 2018.

Findings of Fact

In his Answer to the SOR, Applicant admitted with comments several of the factual allegations pertaining to financial considerations of the SOR. He denied several of the allegations, claiming that they have either been satisfied or they are in the process of being satisfied. He also contended that two of the allegations (SOR ¶¶ 1.d. and 1.i.) are separate versions of the same debt. 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 57-year-old employee of a defense contractor. He has been serving as an inspector/quality control manager with his current employer since June 2013, and has held somewhat similar positions with different government contractors since March 2001. He is a 1978 high school graduate. Applicant enlisted in the U.S. Air Force Reserve in August 1978, and he served in that capacity or with the U.S. Air Force until he was honorably discharged in August 1984. He was granted a secret clearance in 1979, and in 2015, he was granted a favorable suitability risk assessment. Applicant was married in approximately 1994, but the marriage was annulled after only one month. He was "religiously" but not "legally" remarried in 1978, and divorced in 1984. He has been cohabiting since 2004. He has one daughter, born in 1999.

Financial Considerations¹

When Applicant completed his e-QIP in February 2016, he reported two issues regarding his finances: his failure to timely file his federal income tax returns for the tax years 2014 and 2015, and child support arrearage. He denied having any other financial delinquencies. When interviewed by an investigator from the U.S. Office of Personnel Management (OPM) in August 2016, Applicant claimed that there were no other financial issues. However, when the investigator confronted him with information regarding four other delinquent accounts, Applicant openly discussed them and the reasons why he had fallen behind in making payments. He claimed that his omissions were due to oversight. He attributed the delinquencies to not being reimbursed for his business expenses or because he was focusing on his child support responsibilities.

Applicant later attributed his delinquencies to four incidents: his employer required him to travel for company business during 2013 through 2016 at his own expense for lengthy periods of time without reimbursement, salary increases, or bonuses; in 2015 his vehicle, which he used to travel to and from work 74 miles per day, was a total loss; he had a major fire in July 2016, during which he experienced a total loss of his residence, his dog, and all of his personal records and documents; and his inability to contact his income tax return preparer whom he later learned had a terminal illness and was unable to contact her clients.

In addition to Applicant's failure to timely file his federal income tax returns for the tax years 2013 and 2014,² the SOR identified 12 purportedly delinquent accounts that

¹ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 2 (e-QIP, dated February 3, 2016); Item 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated February 20, 2016); Item 5 (Equifax Credit Report, dated July 10, 2017); Item 3 (Personal Subject Interview, dated August 2, 2016); Item 4 (Equifax Credit Report, dated June 9, 2017); Item 1 (Answer to the SOR, dated October 30, 2017).

² 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.*

had been placed for collection, charged off, or sold or transferred, as generally reflected by Applicant's 2016 or 2017 credit reports. Those debts, totaling approximately \$23,636, their current status, according to the credit reports, and other evidence submitted by the Government and Applicant, are described below:

(SOR ¶ 1.a.): This is a credit card account with a \$7,000 credit limit and past-due balance of \$7,869 that was placed for collection and charged off.³ On July 1, 2017, nearly a year after his OPM interview, Applicant wrote the creditor seeking a 41 percent settlement, indicating a willingness to make \$60 per month payments.⁴ There is no response in evidence, and Applicant has not indicated that any payments have been made to the creditor. The account has not been resolved.

(SOR ¶ 1.b.): This is another credit card account with a high credit of \$2,545 and past-due balance of \$2,526 that was placed for collection and charged off.⁵ On July 1, 2017, nearly a year after his OPM interview, Applicant wrote the creditor seeking a settlement, indicating a willingness to make \$60 per month payments. There is no response in evidence, and Applicant has not indicated that any payments have been made to the creditor. The account has not been resolved.

(SOR ¶ 1.c.): This is another credit card account with a high credit and past-due balance of \$2,352 that was placed for collection and charged off.⁶ On October 15, 2017, over a year after his OPM interview, Applicant wrote the creditor seeking a 75 percent settlement, indicating a willingness to make \$60 per month payments. There is no response in evidence, and Applicant has not indicated that any payments have been made to the creditor. The account has not been resolved.

(SOR ¶¶ 1.d. and 1.i.): Applicant contends that these two accounts are actually the same account with one being listed by the creditor and the other being listed by the debt purchaser. The original account is a charge account with a national hypermarket-discount department store-grocery store chain with a credit limit of \$1,140 that was placed for collection and charged off.⁷ The account was subsequently transferred or sold to an unidentified debt purchaser. A debt purchaser identified in SOR ¶ 1.d. reported the high credit for its unidentified account as \$2,346.⁸ Applicant has offered no documentation to support his contention that the two accounts are actually the same. Moreover, there is no

³ Item 4, *supra* note 1, at 2-5; Item 5, *supra* note 1, at 2; Item 6, *supra* note 1, at 6.

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)).

⁵ Item 4, *supra* note 1, at 2-5; Item 5, *supra* note 1, at 2; Item 6, *supra* note 1, at 6.

⁶ Item 4, *supra* note 1, at 25-28; Item 5, *supra* note 1, at 2.

⁷ Item 4, *supra* note 1, at 54-57; Item 5, *supra* note 1, at 3; Item 6, *supra* note 1, at 8.

⁸ Item 5, *supra* note 1, at 2.

evidence that Applicant has contacted the original creditor or the debt purchaser in an effort to enter into any type of repayment arrangements. Applicant has not indicated that any payments have been made to the creditor or the debt purchaser. The account(s) has/have not been resolved.

(SOR ¶ 1.e.): This is a charge account with a consumer electronics retailer with a \$2,132 credit limit and a balance of \$1,676 that was placed for collection and charged off.⁹ On September 21, 2017, over a year after his OPM interview, Applicant wrote the creditor seeking a settlement, indicating a willingness to make \$60 per month payments. There is no response in evidence, and Applicant has not indicated that any payments have been made to the creditor. The account has not been resolved.

(SOR ¶¶ 1.f. and 1.k.): This is a national home improvement store charge account with a \$1,840 credit limit and a balance of \$2,064 that was placed for collection and charged off.¹⁰ The account was subsequently transferred or sold to a debt purchaser. The debt purchaser identified in SOR ¶ 1.f. reported the high credit and past-due balance for its account as \$1,427.¹¹ On September 29, 2017, over a year after his OPM interview, Applicant made a \$1,000 payment to the debt purchaser,¹² and on October 31, 2017, he promised to make a final payment of \$400 on November 3, 2017.¹³ Applicant has not submitted documentation to confirm that his \$400 payment was actually made. Nevertheless, in light of the initial payment and subsequent promise to make the final payment, it appears that the account is in the process of being resolved.

(SOR ¶ 1.g.): This is an unidentified type of account with a high credit of \$856 that was placed for collection and transferred or sold to a debt purchaser.¹⁴ There is no evidence that Applicant ever contacted the original creditor or the debt purchaser in an effort to resolve the account, or that he ever made any payments to either entity. The account has not been resolved.

(SOR ¶ 1.h.): This is a department store charge account with a high credit of \$599 of which \$332 was past-due that was placed for collection and charged off.¹⁵ The account was later sold or transferred to a debt purchaser. On August 1, 2017, approximately a year after his OPM interview, Applicant wrote the debt purchaser seeking a settlement, indicating a willingness to make \$60 per month payments. There is no response in

⁹ Item 4, *supra* note 1, at 8-11, 60-62; Item 5, *supra* note 1, at 2; Item 6, *supra* note 1, at 7.

¹⁰ Item 4, *supra* note 1, at 57-59; Item 5, *supra* note 1, at 3; Item 6, *supra* note 1, at 5.

¹¹ Item 5, *supra* note 1, at 2.

¹² Check, dated September 29, 2017, attached to Applicant's Answer to the SOR.

¹³ Letter, dated October 31, 2017, attached to Applicant's Answer to the SOR.

¹⁴ Item 5, *supra* note 1, at 2.

¹⁵ Item 4, *supra* note 1, at 39-42; Item 5, *supra* note 1, at 3; Item 6, *supra* note 1, at 9.

evidence, and Applicant has not indicated that any payments have been made to the creditor or the debt purchaser. The account has not been resolved.

(SOR ¶ 1.i.): This is a medical account with a \$225 balance that was placed for collection.¹⁶ On October 1, 2017, over one year after his OPM interview, Applicant wrote the creditor seeking validation of the account.¹⁷ There is no response in evidence, and Applicant has not indicated that any payments have been made to the creditor. The account has not been resolved.

(SOR ¶ 1.j.): This is a credit union deposit account with overdraft protection with a balance of \$100 that was placed for collection.¹⁸ On July 25, 2017, nearly a year after his OPM interview, Applicant wrote the creditor seeking validation of the account.¹⁹ Telephone contact was made on October 30, 2017, and Applicant authorized a withdrawal from his account of \$100.43 by the creditor.²⁰ The account has been resolved.

(SOR ¶ 1.m.): This refers to Applicant's federal income tax returns for the tax years 2013 and 2014, neither of which was timely filed. Although Applicant indicated that he would have his income tax return preparer complete the returns before November 15, 2017, he offered no evidence that the returns were actually filed. In the absence of such evidence, it appears that 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. There is no evidence of a budget. There is no evidence of any financial counseling. Applicant offered no 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."²¹ 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

¹⁶ Item 5, *supra* note 1, at 3.

¹⁷ Letter, dated October 1, 2017, attached to Applicant's Answer to the SOR.

¹⁸ Item 3, *supra* note 1, at 3.

¹⁹ Letter, dated July 25, 2017, attached to Applicant's Answer to the SOR.

²⁰ E-mail, dated October 30, 2017, attached to Applicant's Answer to the SOR.

²¹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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.”²²

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.”²³ 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.²⁴

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.”²⁵

²² Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

²³ “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).

²⁴ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

²⁵ *Egan*, 484 U.S. at 531.

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.”²⁶ 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
- (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.

²⁶ See Exec. Or. 10865 § 7.

Applicant had 12 purportedly delinquent debts, totaling approximately \$23,636, placed for collection, charged off, or sold or transferred. He failed to timely file his federal income tax returns for the tax years 2013 and 2014. There is no evidence that Applicant was unwilling to satisfy his debts. AG ¶¶ 19(a), 19(c), and 19(f) have been established. AG ¶ 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;²⁷
- (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;²⁸
- (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

²⁷ 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)).

²⁸ 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)).

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 attributed his financial difficulties to four incidents: his employer required him to travel for company business during 2013 through 2016 at his own expense for lengthy periods of time without reimbursement, salary increases, or bonuses; in 2015 his vehicle, which he used to travel to and from work 74 miles per day, was a total loss; he had a major fire in July 2016, during which he experienced a total loss of his residence, his dog, and all of his personal records and documents; and his inability to contact his income tax return preparer whom he later learned had a terminal illness and was unable to contact her clients. It remains unclear, however, how those incidents contributed to his financial delinquencies that occurred as early as mid-2015. In addition, while Applicant may have lost his personal records and documents due to a fire in July 2016, his financial records could have been reconstructed by obtaining a credit report and contacting the creditors in his credit report, or even from continuing collection correspondence from his creditors. Unable to obtain his income tax return information from his tax return preparer, Applicant failed to explain why he failed to make a direct request of the Internal Revenue Service (IRS) for his income tax transcripts.

Applicant argued that by writing some of his creditors, and making a few payments, he has satisfied the requirement that he showed a good-faith effort to resolve his accounts. As noted above, he waited approximately one year – in a few cases less than a year, and in a few cases, more than a year – to contact his creditors, collection agents, or debt purchasers to either seek validation of the accounts or settle them. With respect to the three accounts he has resolved or was in the process of resolving, Applicant took no positive action until a month or more after he received the SOR.

Applicant indicated a willingness to engage his creditors in good-faith efforts to resolve his delinquent debts, but without the appropriate documentation, there is little evidence that he did so. 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. There is no evidence of a budget. There is no evidence of any financial counseling. There is no evidence of disputes. Applicant offered no evidence to indicate that his financial situation is now under control. Applicant's actions under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment.²⁹

²⁹ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

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.³⁰

There is some evidence mitigating Applicant's conduct. Applicant has been serving as an inspector/quality control manager with his current employer since June 2013, and has held somewhat similar positions with different government contractors since March 2001. He enlisted in the U.S. Air Force Reserve in August 1978, and he served in that capacity or with the U.S. Air Force until he was honorably discharged in August 1984. He was granted a secret clearance in 1979, and in 2015, he was granted a favorable suitability risk assessment. He has finally resolved, or is in the process of resolving, three of his debts.

The disqualifying evidence under the whole-person concept is simply more substantial. Although it is now mid-2018, Applicant failed to prove that he had finally filed

³⁰ 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).

his federal income tax returns for the tax years 2013 and 2014. In addition, while Applicant was reminded by the OPM investigator of his delinquent accounts in July 2016, he made no efforts to contact his creditors for approximately one year. The vast majority of his delinquent debts remain unresolved. The one debt with the minimum balance of \$100 was not addressed until October 2017, and the one debt with a relatively modest balance of \$225 has still not been paid. There is no evidence that he disputed any of the accounts. Because of his failure to submit documentation or information regarding his current finances, or his planned efforts to resolve his outstanding debts, his financial situation is unknown. Considering the lack of evidence regarding his current finances, 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:³¹

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 debts in his name, failing to file his late income tax returns for 2013 and 2014, and failing to take other 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).

³¹ 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.e.:	Against Applicant
Subparagraphs 1.f. and 1.k.:	For Applicant
Subparagraphs 1.g.through 1.i.:	Against Applicant
Subparagraph 1.j.:	For Applicant
Subparagraph 1.l.:	Against Applicant
Subparagraph 1.m.:	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.

ROBERT ROBINSON GALES
Administrative Judge