



**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. 17-02496

**Appearances**

For Government: Chris Morin, Esquire, Department Counsel

For Applicant: *Pro se*

07/06/2018

**Decision**

GALES, Robert Robinson, Administrative Judge:

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

**Statement of the Case**

On February 9, 2016, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On November 21, 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 Guideline E (Personal Conduct), 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 December 21, 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 January 28, 2018, 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 February 23, 2018. Applicant's response was due on March 25, 2018. Applicant timely submitted several documents in response to the FORM. The case was assigned to me on June 11, 2018.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted with comments all of the factual allegations pertaining to financial considerations of the SOR. His response to SOR ¶ 1.b. is confusing, for while he admitted the allegation, he also claimed that the loan in question was "bogus," and that he intended to acquire legal assistance to deal with it. He denied with comments the factual allegation pertaining to personal conduct. 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 47-year-old employee of a defense contractor. He has been serving as an electro-magnetic compatibility (EMC) instructor/support technician with his current employer since February 2016. He has held a variety of positions with different employers since January 2010. He received an associate's degree in June 2008. Applicant enlisted in the U.S. Air Force in December 1989, and he was honorably retired with the rank of technical sergeant in December 2009. He was granted a top secret clearance in 2002. Applicant was married in 1990, and divorced in 1991. He remarried in 1994, and divorced in 1997. He remarried again in 1998, and divorced in 2006. He married again in 2009, and separated later that same year. He has been cohabiting since 2017. He has two daughters, born in 1995 and 2002, and one son, born in 2000.

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

After Applicant retired from military service, he went through two periods of unemployment: August 2013 until February 2014; and December 2015 until February 2016. He commented that the combination of unemployment and underemployment with a take-home pay ranged from \$114 to \$200 per week for a four-year period, made it difficult to pay all of his bills on time. It is unclear how he arrived at those figures, for he has also been receiving his military retirement. When Applicant completed his e-QIP in February 2016, he reported only one issue regarding his finances: his child support arrearage totaling approximately \$40,000. He denied having any other financial delinquencies.<sup>2</sup> When interviewed by an investigator from the U.S. Office of Personnel Management (OPM) in September 2016, Applicant volunteered that he had not filed his federal or state income tax returns since 2010. He denied that there were other financial issues. However, when the investigator confronted him with information regarding eight delinquent accounts, Applicant openly discussed some of them and the reasons why he had fallen behind in making payments, and he claimed to have no knowledge of other accounts. He indicated that he would research all of the accounts and if they were his accounts, he intended to pay them in full.<sup>3</sup>

In addition to Applicant's failure to timely file his federal and state income tax returns for the tax years 2008 through 2015,<sup>4</sup> the SOR identified eight purportedly

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<sup>1</sup> General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 3 (e-QIP, dated February 9, 2016); Item 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated February 19, 2016); Item 6 (Equifax Credit Report, dated July 6, 2017); Item 4 (Personal Subject Interview, dated September 14, 2016); Item 4 (Personal Subject Interview, dated June 2, 2017); Item 1 (Answer to the SOR, dated December 21, 2017); Credit Karma Credit Report, dated March 23, 2018, attached to Applicant's Response to the FORM.

<sup>2</sup> 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>3</sup> 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)).

<sup>4</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

delinquent accounts that had been placed for collection, as generally reflected by Applicant's 2016 or 2017 credit reports. Those debts, totaling approximately \$98,261, 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 child support arrearage which was \$53,027 in February 2016, \$48,463 in July 2017, and \$45,491 in March 2018 that was placed for collection.<sup>5</sup> Applicant claimed that he never stopped making his child support payments, but because he was earning lower salaries he was unable to make the full monthly payments of \$1,398. Although he said he has been paying \$1,700 per month to address the arrearage, his one earnings statement in evidence covering a two-week salary reflects a child support deduction of only \$773.72.<sup>6</sup> His 2018 credit report indicates that the monthly payment is supposed to be \$1,397. It is unclear when Applicant started making both his child support and arrearage payments as he failed to submit any other documentation regarding such payments. Nevertheless, the account appears to be in the process of slowly being resolved.

(SOR ¶ 1.b.): This is an automobile loan account with a high credit of \$5,295 and past-due balance of \$565 that was placed for collection.<sup>7</sup> Applicant claimed that he was unaware of the account and that it is bogus. He intended to seek professional legal guidance to resolve the account. To date, there is no evidence that Applicant made any effort to dispute or resolve the account. The account has not been resolved.

(SOR ¶ 1.c.): This is a military credit card account with a high credit of \$8,500 and a past-due balance of \$3,135 that was placed for collection.<sup>8</sup> Although Applicant said he has been paying \$89 per month, his one retirement earnings statement in evidence covering a monthly salary reflects a payment to the creditor of \$89.63.<sup>9</sup> It is unclear when

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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>5</sup> Item 3, *supra* note 1, at 34; Item 5, *supra* note 1, at 5; Item 6, *supra* note 1, at 1; Item 1, *supra* note 1, at 1; Credit Karma Credit Report, *supra* note 1, at 2.

<sup>6</sup> Earnings Statement, dated March 16, 2018, attached to Applicant's Response to the FORM.

<sup>7</sup> Item 5, *supra* note 1, at 6; Item 6, *supra* note 1, at 2.

<sup>8</sup> Item 5, *supra* note 1, at 5; Item 6, *supra* note 1, at 2.

Applicant started making his payments as he failed to submit any other documentation regarding such payments. Nevertheless, the account appears to be in the process of slowly being resolved.

(SOR ¶ 1.d.): This is a telephone account with a high credit and balance of \$269 that was placed for collection.<sup>10</sup> Applicant offered no evidence of an effort to contact the creditor to resolve the account. The account has not been resolved.

(SOR ¶ 1.e.): This is an Internet cable account with a high credit and balance of \$267 that was placed for collection.<sup>11</sup> Applicant offered no evidence of an effort to contact the creditor to resolve the account. The account has not been resolved.

(SOR ¶ 1.f.): This is a power utility account with a balance and past-due balance of \$179 that was placed for collection.<sup>12</sup> Applicant offered no evidence of an effort to contact the creditor to resolve the account. The account has not been resolved.

(SOR ¶ 1.g.): This is an unspecified type of bank-related account with a balance of \$44,819 that was placed for collection.<sup>13</sup> Applicant offered no evidence of an effort to contact the creditor to resolve the account. Instead, he noted that the account had been removed from his credit report, but he failed to explain why it had been removed.<sup>14</sup> “Mere evidence that debts no longer appear on credit reports is not reason to believe that they are not legitimate or that they have been satisfactorily resolved.”<sup>15</sup> The account has not been resolved.

(SOR ¶ 1.h.): This is a cable account with a balance of \$564 that was placed for collection.<sup>16</sup> Applicant offered no evidence of an effort to contact the creditor to resolve the account. The account has not been resolved.

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<sup>9</sup> Retirement Earnings Statement, dated March 21, 2018, attached to Applicant’s Response to the FORM.

<sup>10</sup> Item 5, *supra* note 1, at 9; Item 6, *supra* note 1, at 2.

<sup>11</sup> Item 5, *supra* note 1, at 9; Item 6, *supra* note 1, at 2.

<sup>12</sup> Item 5, *supra* note 1, at 5; Item 6, *supra* note 1, at 2.

<sup>13</sup> Item 5, *supra* note 1, at 8.

<sup>14</sup> “[T]hat some debts have dropped off his [or her] credit report is not meaningful evidence of debt resolution.” ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)).

<sup>15</sup> ISCR Case No. 16-02941 at 2 (App. Bd. Dec. 29, 2017) (citing ISCR Case No. 14-03747 at 2-3 (App. Bd. Nov. 13, 2015)).

<sup>16</sup> Item 5, *supra* note 1, at 9.

(SOR ¶¶ 1.i. and 1.j.): This refers to Applicant's federal and state income tax returns for the tax years 2008 through 2015, none of which was filed. Applicant stated that he chose not to file his federal and state income tax returns during the identified tax periods because his ex-wife was earning more money than he was at the time, and he did not want his ex-wife to get the anticipated refunds as she was already receiving child support and alimony. He eventually changed his mind, and since he was no longer struggling financially, he began to think clearly and wanted to do the right thing.<sup>17</sup> Although Applicant indicated that he would have an income tax return preparer complete the returns before the end of 2016,<sup>18</sup> he offered no evidence that the returns were actually filed. In the absence of such evidence, it appears that the issues have not been resolved.

Although Applicant indicated that his adjusted gross income for the tax years 2016 and 2017 was \$65,835 and \$63,732 respectively, 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.

### **Personal Conduct**

(SOR ¶ 2.a.): On February 9, 2016, when Applicant completed his e-QIP, he responded to certain questions pertaining to his finances found in Section 26. One of those questions asked if, in the past seven years, he had failed to file or pay Federal, state, or other taxes when required by law or ordinance? Applicant answered "no" to that particular question. He certified that his response to that question was "true, complete, and correct" to the best of his knowledge and belief, but the response to that question was, in fact, false, for Applicant had deliberately failed to file his federal and state income tax returns for the tax years 2008 through 2015.

Applicant subsequently explained that his response was a mistake on his part by answering "no." He was not sure if he misread the question, but he contends that it was not a deliberate attempt to disguise the fact that he had not filed those income tax returns. Applicant noted that he openly discussed his non-filing with the OPM investigator during both interviews.<sup>19</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,

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<sup>17</sup> Item 4, *supra* note 1, at 6.

<sup>18</sup> Item 4, *supra* note 1, at 6.

<sup>19</sup> Item 1, *supra* note 1, at 4.

“no one has a ‘right’ to a security clearance.”<sup>20</sup> 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.”<sup>21</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>22</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>23</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

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<sup>20</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>21</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>22</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>23</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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.”<sup>24</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>25</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;

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<sup>24</sup> *Egan*, 484 U.S. at 531.

<sup>25</sup> See Exec. Or. 10865 § 7.



(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.

Applicant had eight purportedly delinquent debts, totaling approximately \$98,261, placed for collection. In addition, he failed to file his federal income tax returns for the tax years 2008 through 2015. There is evidence that Applicant was unwilling to file his federal and state income tax returns because he did not want his ex-wife to receive his anticipated income tax refunds. The failure to timely file income tax returns has security implications because:<sup>26</sup>

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. Id.* A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

The Appeal Board clarified that even in instances where an “[a]pplicant has purportedly corrected [his or her] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant’s security worthiness in light of [his or her] longstanding prior behavior evidencing irresponsibility” including a failure to timely file federal income tax returns.<sup>27</sup> In this instance, while Applicant may now be properly motivated, he still has not taken the appropriate actions to actually file his federal and state income tax returns for the tax years 2008 through 2015. AG ¶¶ 19(a), 19(b), 19(c), and 19(f) have been established.

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<sup>26</sup> ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis in original). See ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

<sup>27</sup> See ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. June 15, 2016) (characterizing “no harm, no foul” approach to an Applicant’s course of conduct and employing an “all’s well that ends well” analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR).

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>28</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>29</sup>

(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.

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<sup>28</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>29</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].

(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)).

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 three separate issues: his income during a four-year period was insufficient for him to continue making monthly payments on his accounts; his divorce and the associated expenses, including alimony payments; and because his child support arrearage mushroomed, he was focusing on making child support payments. It is unclear when Applicant started making both his child support and arrearage payments, or even the payment(s) on his military credit card, as he failed to submit any documentation reflecting the history of such payments.

Although Applicant indicated that he would have an income tax return preparer complete the federal and state income tax returns before the end of 2016, to date, he offered no evidence that the returns were actually filed. He also indicated a willingness to engage his creditors in good-faith efforts to resolve his delinquent debts, but 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.<sup>30</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.

### **Guideline E, Personal Conduct**

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

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect

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<sup>30</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

- (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and
- (b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes a condition that could raise security concerns under AG ¶ 16:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

As noted above, on February 9, 2016, when Applicant completed his e-QIP, he responded to certain questions pertaining to his finances found in Section 26. One of those questions asked if, in the past seven years, he had failed to file or pay Federal, state, or other taxes when required by law or ordinance? Applicant answered “no” to that particular question. He certified that his response to that question was “true, complete, and correct” to the best of his knowledge and belief, but the response to that question was, in fact, false, for Applicant had deliberately failed to file his federal and state income tax returns for the tax years 2008 through 2015.

Applicant subsequently explained that his response was a mistake on his part by answering “no.” He was not sure if he misread the question, but he contends that it was not a deliberate attempt to disguise the fact that he had not filed those income tax returns. Applicant noted that he openly discussed his non-filing with the OPM investigator during both interviews.

Applicant’s comments provide sufficient evidence to examine if his submission was a deliberate falsification, as alleged in the SOR, or merely an inaccurate answer that was the result of oversight or misunderstanding of the true facts on his part. Proof of incorrect answers, standing alone, does not establish or prove an applicant’s intent or state of mind when the falsification or omission occurred. As an administrative judge, I must consider the record evidence as a whole to determine whether there is a direct or circumstantial

evidence concerning Applicant's intent or state of mind at the time the alleged falsification or omission occurred. I have considered the entire record, including Applicant's initial and subsequent comments.<sup>31</sup>

According to the OPM investigator, on September 14, 2016, seven months after completing his e-QIP, Applicant volunteered the information regarding the status of his federal and state income tax returns before he was confronted with the evidence of his non-filing. Based on my assessment of Applicant's overall credibility, especially after he misled the OPM investigator with respect to delinquent accounts until he was confronted with them, Applicant's explanation for his submission, in my view, is that he essentially deliberately falsified, omitted, and concealed the fact that he had not filed his federal and state income tax returns for the tax years 2008 through 2015. His lengthy course of conduct with the objective of denying his ex-wife his anticipated income tax refunds seems to have affected his knee-jerk response as to their actual status. In light of this more persuasive evidence of Applicant's actual intent, I conclude that, with respect to his response in the e-QIP, AG ¶ 16(a) has been established.

The guideline also includes examples of conditions under AG ¶ 17 that could mitigate security concerns arising from personal conduct. They include:

- (a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

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<sup>31</sup> The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

- (a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). See also ISCR Case No. 08-05637 at 3 (App. Bd. Sept. 9, 2010) (noting an applicant's level of education and other experiences are part of entirety-of-the-record evaluation as to whether a failure to disclose past-due debts on a security clearance application was deliberate).

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

I have concluded that AG ¶ 17(a) does not apply because a seven month delay from the date of the e-QIP to Applicant's revelation regarding his income tax returns is not considered "prompt." None of the other mitigating conditions apply. To his credit, Applicant was candid when he self-reported the entire income tax return situation to the OPM investigator, but that candor was not present when he misled the investigator with respect to the delinquent accounts, an action that was not alleged in the SOR. Applicant's actions under the circumstances continue to cast doubt on his current reliability, trustworthiness, and good judgment.

### **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>32</sup>

There is some evidence mitigating Applicant's conduct. Applicant is a 47-year-old employee of a defense contractor. He has been serving as an EMC instructor/support technician with his current employer since February 2016. He enlisted in the U.S. Air Force in December 1989, and he was honorably retired with the rank of technical sergeant in December 2009. He was granted a top secret clearance in 2002. He was unemployed from August 2013 until February 2014; and from December 2015 until February 2016. Applicant has finally started making his child support and child support arrearage payments.

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<sup>32</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).

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 his federal income tax returns for the tax years 2008 through 2015, although he promised to do so by the end of 2016. In addition, while Applicant was reminded by the OPM investigator of his delinquent accounts in September 2016, he made little, if any, efforts to contact most of his creditors. All of his delinquent debts remain unresolved, although there is evidence that two of them, the child support arrearage and the military credit card have received at least one payment each from him. One large debt, for \$44,819, apparently dropped off his credit report, but Applicant offered no explanation for that action. Some debts with the minimum balances of \$179, \$267, and \$269, still have not been addressed by him. 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:<sup>33</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 debts in his name, failing to file his late income tax returns for 2008 through 2015, 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

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<sup>33</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Applicant has failed to mitigate the security concerns arising from his financial considerations and personal conduct. 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
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	For Applicant
Subparagraphs 1.d. through 1.h.:	Against Applicant
Subparagraphs 1.i. and 1.j.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	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