



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-02588

Appearances

For Government: Ross Hyams, Esquire, Department Counsel

For Applicant: Allison R. Weber, Esquire

11/06/2018

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 October 28, 2016, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On September 22, 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 October 20, 2017, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on November 6, 2017. The case was assigned to me on March 20, 2018. A Notice of Hearing was issued on June 29, 2018, scheduling the hearing for July 26, 2018. However, on July 13, 2018, Applicant's newly-engaged attorney entered an appearance and requested a continuance as well as a change of venue. On July 16, 2018, for good cause shown, I granted those requests. An Amended Notice of Hearing was issued on July 16, 2018. I convened the hearing as re-scheduled on August 9, 2018.

During the hearing, Government exhibits (GE) 1 through GE 6, Applicant exhibits (AE) A through AE S, and Administrative exhibit I were admitted into evidence without objection. Applicant testified. Based on information presented during the hearing, Department Counsel moved to amend the SOR by adding the following language: "You failed to timely file your federal income tax return for tax year 2016, as required." Applicant's objection to the motion was overruled, and the motion was granted, thereby amending the SOR by adding SOR ¶ 1.i.¹ The transcript (Tr.) was received on August 17, 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 T through AE GG without objection. The record closed on September 27, 2018.

Findings of Fact

In his Answer to the SOR, Applicant admitted with comments all of the factual allegations in the initial SOR (SOR ¶¶ 1.a. through 1.h.). Applicant did not admit or deny SOR ¶ 1.i., but merely acknowledged and conceded the concerns, so a denial was registered as to that allegation. 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 51-year-old self-employed president of a defense contractor. He has been serving in a variety of positions, among them project manager and technical team lead with various companies in enterprise resource planning for over two decades. He is

¹ Tr. at 81-83; Administrative exhibit I (Text of Proposed SOR Amendment). Applicant's attorney re-asserted her objection under "due process grounds," claiming that Applicant was not prepared to defend against new allegations at the time of the hearing. During a post-hearing submission, Applicant did subsequently address the concerns. See AE T (Supplemental Applicant Submission, dated September 27, 2018).

a high school graduate, with a bachelor's degree in computer science. In 1995-1996, he was an ordained minister. Applicant has never served with the U.S. military. He was granted a secret clearance in 2005 that has been periodically renewed, as well as a top secret clearance with access to sensitive compartmented information (SCI) in 1999 or 2000. Applicant was married in 1994. He has two adopted daughters, both born in 2012, as well as two adopted sons, born in 2011 and 2014.

Financial Considerations²

Applicant attributed his financial problems to several different factors: his S corporation business³ had its struggles throughout the years; in late 2009, his wife developed serious health issues; she lost income as a realtor due to the poor housing market and her health; he lost rental income from a rental property he owned; his accountants gave him misinformation on how to handle his business taxes; and the adoption of his children took three years to accomplish (2013 – 2016), rather than the expected one year, and additional expenses were incurred. The loss of income, his failure to timely pay payroll taxes; and his failure to maintain monthly payments under installment plans with the Internal Revenue Service (IRS) eventually led to cancelled installment plans and the filing of tax liens.⁴

Applicant timely filed his federal individual income tax returns for the tax years 2010, 2011, 2012, 2013, 2014, 2015, and 2017 by the required filing dates or by the required extended filing dates. The Amended SOR alleged, and Applicant conceded, that he failed to timely file his federal income tax return for the tax year 2016. He finally filed that income tax return in August 2018, nearly 12 months after the SOR was issued, and several days after the hearing was conducted. The IRS actually rejected the tax return because of errors appearing therein, but in late August 2018, the tax return was finally accepted by the IRS.⁵

² General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 2 (e-QIP, dated October 28, 2016); GE 3 (Personal Subject Interview (PSI), dated April 11, 2017); GE 3 (PSI, dated April 20, 2017); GE 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated January 6, 2017); GE 5 (Equifax Credit Report, dated July 24, 2017); and Applicant's Answer to the SOR, dated October 20, 2017e.

³ An S corporation, for federal income tax purposes, is a closely held corporation that makes a valid election to be taxed under Subchapter S of Chapter 1 of the Internal Revenue Code. In general, S corporations do not pay any income taxes. Instead, the corporation's income or losses are divided among and passed through to its shareholders. The shareholders must then report the income or loss on their own individual income tax returns.

⁴ GE 3 (April 11th PSI), *supra* note 2, at 3-4.

⁵ AE Y (Post-Transmission Summary Reports, various dates); AE Y (USPS Tracking, dated August 20, 2018); Tr. at 35-37, 80-81. 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

The adjusted gross income reported by Applicant in his federal individual income tax returns for those tax years was as follows: 2010: \$296,134;⁶ 2011: \$243,804;⁷ 2012: \$237,581;⁸ 2013: \$218,642;⁹ 2014: \$85,523;¹⁰ 2015: \$197,949;¹¹ 2016: \$212,099;¹² and 2017: \$215,451.¹³

Applicant failed to pay the required individual income taxes or S corporation taxes to the IRS for the tax years 2010, 2011, 2012, 2013, and 2015, as required. In June 2012, with an amount owed of \$74,008, on behalf of the S corporation, an installment agreement was established with the IRS, calling for monthly payments of \$2,000, increasing to \$2,600 in January 2013; and increasing again in July 2013 to \$3,299 per month.¹⁴ Applicant contends he made the required payments under that agreement until December 2013, but that month, due to insufficient funds, he failed to make the required payment. As a result, that installment agreement was terminated. Applicant did submit some documentation, in the form of cancelled checks and bank statements, to support his contentions that he had paid the IRS over \$44,000 under the installment agreement.¹⁵

Applicant contended that in the fall of 2014, or in March 2015, he submitted an Offer in Compromise through his accountant to the IRS. The offer was between 10 and

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.*

⁶ AE U (U.S. Individual Income Tax Return - 2010, dated May 3, 2011).

⁷ AE U (U.S. Individual Income Tax Return - 2011, undated).

⁸ AE U (U.S. Individual Income Tax Return - 2012, dated October 13, 2013).

⁹ AE U (U.S. Individual Income Tax Return - 2013, dated October 15, 2014).

¹⁰ AE U (U.S. Individual Income Tax Return - 2014, dated October 10, 2015).

¹¹ AE U (U.S. Individual Income Tax Return - 2015, dated October 20, 2016).

¹² AE U (U.S. Individual Income Tax Return - 2016, dated August 11, 2018).

¹³ AE U (U.S. Individual Income Tax Return - 2017, dated September 17, 2018).

¹⁴ AE R (Installment Agreement (Form 433-D), dated June 25, 2012).

¹⁵ AE P (Cancelled Checks and Bank Statements, various dates); AE R, *supra* note 14.

30 percent of his unpaid debt. The offer was rejected in August 2016.¹⁶ However, during the 2015-2016 period in which the Offer in Compromise was being considered by the IRS, Applicant contended he made payments to the IRS totaling \$16,000 (\$500 for Applicant and \$500 for his wife, each month), but the documentation submitted only supports payments of \$14,500 in \$500 increments.¹⁷

On July 15, 2016, on behalf of his S corporation, noting that a federal tax lien had already been filed, Applicant agreed to another installment agreement with the IRS, covering the tax year 2010, with an amount owed of \$30,264, calling for monthly payments of \$600, commencing on August 28, 2016.¹⁸ Applicant made his monthly payments, and in June 2017, he made a final payment for \$6,637.¹⁹

On August 31, 2016, noting that a federal tax lien had already been filed, Applicant agreed to another installment agreement with the IRS, covering the individual income tax for the tax years 2010, 2011, 2012, and 2013, for \$101,340. Under the agreement, Applicant agreed to commence making monthly payments of \$1,407.50 on September 20, 2016.²⁰ For the period July 18, 2016 through July 17, 2017, the IRS credited Applicant with making only two such payments, with one applied to his 2010 taxes, and the other applied to his 2011 taxes. Applicant explained that he was unable to continue his payments under the installment agreement because one of his clients stopped paying him. During that period, because of interest, penalties, and unspecified other charges, Applicant's balance increased from \$116,611 to \$117,873.²¹

According to Applicant, as of August 3, 2018, the IRS indicated that his remaining unpaid individual income taxes totaled \$153,698, as follows, by year: 2010: \$9,701; 2011: \$24,959; 2012: \$38,706; 2013: \$49,170; 2015: \$31,164. Because he paid the IRS \$5,000 for his 2011 tax bill on August 6, 2018, he claims the balance was reduced to \$148,698.²² However, during the hearing, Applicant said that his taxes for the tax years 2010, 2011, 2012, and 2013 are paid, and only 2014 and 2015 have remaining balances, both of which are on his installment agreement.²³

¹⁶ AE N (Statement, undated), wherein he claimed the offer was made in March 2015; GE 3, *supra* note 2, at 4, wherein he claimed it was made in the fall of 2014.

¹⁷ AE O (Statement, undated); AE M (Offer in Compromise – Periodic Payment Voucher (Form 656-PPV), various dates). Applicant's submission included two sets of duplicate documents (money orders ending in 069 and 070); Tr. at 32-33.

¹⁸ AE R (Installment Agreement, dated July 15, 2016).

¹⁹ AE R (Payments, various dates).

²⁰ AE L (Installment Agreement, dated August 31, 2016).

²¹ AE K (Annual Installment Agreement Statement, dated October 5, 2017).

²² AE N, *supra* note 16; AE J (Direct Pay Confirmation, dated August 6, 2018).

²³ Tr. at 38.

The IRS filed tax liens individually against Applicant, his wife, as well as jointly against him and his wife, as follows: December 2014: \$19,466;²⁴ December 2014: \$51,442;²⁵ January 2015: \$36,619;²⁶ August 2016: \$60,729;²⁷ August 2016: \$10,386;²⁸ August 2016: \$10,394;²⁹ and June 2017: \$25,253.³⁰ During his interview with an investigator for the U.S. Office of Personnel Management (OPM) on April 20, 2017, Applicant claimed that he was unaware of any federal tax liens until after he completed his e-QIP in the fall (October) of 2016. He indicated that he attempted to dispute the liens to have them removed, because he had established installment agreements, but the IRS refused to do so, claiming the liens were valid.³¹ With the exception of the June 2017 lien, Applicant's claim that he was unaware of the liens until after October 2016 is contrary to the information appearing on his July 2016 and August 2016 installment agreements, as both installment agreements clearly noted that a federal tax lien had already been filed. Applicant subsequently contended that he had disputed some of the liens with the IRS,³² but he did not submit any documents from the IRS to indicate that any of the liens had been satisfied and released.

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 pay his state individual income taxes and S corporation taxes for the tax years 2010, 2011, 2012, and 2013. Applicant contended that he entered into an installment agreement with the state department of revenue in 2012, covering the taxes due for 2010 and 2011, and subsequently the unpaid taxes for 2012 and 2013 were added to it.³³ Although he claimed that the taxes for those tax years were eventually paid by him, leaving a zero balance, he submitted only a copy of his 2010 state income tax return reflecting \$5,380 taxes due,³⁴ and despite claiming

²⁴ GE 6 (Lien Filing, dated December 15, 2014, at 2); GE 4, *supra* note 2, at 5; AE BB (Court Record, dated December 15, 2014, at 2, 5). There were actually two liens in the same amount, with one filed solely against Applicant's wife and the other filed against Applicant and his wife.

²⁵ GE 6 (Lien Filing, dated December 15, 2014, at 2); GE 4, *supra* note 2, at 5; AE BB (Court Record, dated August 16, 2016, at 4).

²⁶ GE 6 (Lien Filing, dated December 15, 2014, at 3); GE 4, *supra* note 2, at 5; AE BB (Court Record, dated January 21, 2015, at 6).

²⁷ GE 6 (Lien Filing, dated December 15, 2014, at 4); GE 4, *supra* note 2, at 5; AE BB (Court Record, dated August 16, 2016, at 7).

²⁸ GE 6 (Lien Filing, dated December 15, 2014, at 5); GE 4, *supra* note 2, at 5.

²⁹ AE BB (Court Record, dated August 16, 2016, at 3).

³⁰ GE 6 (Lien Filing, dated June 20, 2017, at 6); AE BB (Court Record, dated June 20, 2017, at 8).

³¹ GE 3, *supra* note 2, at 6-7.

³² AE Z (e-mails, various dates).

³³ AE C (Statement, undated).

³⁴ AE GG (Individual Income Tax Return 2010, undated and unsigned).

that there was an exhibit to support his claims, Applicant failed to submit documents, such as the installment agreement, or proof of payments under that agreement, to support his claims. In addition, there is also another installment agreement, dated January 22, 2018, reflecting a balance due of \$16,799. Applicant added that, effective August 6, 2018, the total remaining balance for 2014 and 2015 has been reduced to \$14,788.³⁵ The most recent installment agreement requires Applicant to make 34 monthly \$500 payments starting in February 2018, until the balance of \$16,799 is paid off, and Applicant submitted evidence of six such payments between February 2018 and July 2018.³⁶

In addition to his federal and state taxes, Applicant also had a significant number of delinquent mortgage, credit card, auto loan, and medical debts. During 2018, he paid off a total of \$38,480 in those debts, leaving unpaid debts totaling \$8,493.³⁷

In May 2017, Applicant submitted a Collection Information Statement (Form 433-F) to the IRS. The financial information reported that, in addition to his primary residence, Applicant owned a residence where his elderly dependent mother resided with a current value of \$130,000, for which he was paying \$595 per month on a balance of \$64,500; and a car, a truck, and a 2014 van with a current van value of \$20,000, for which he was paying \$582 per month on a balance of \$19,821.³⁸ He reported \$5,000 in his net monthly income; \$1,000 in his wife's net monthly income; and \$5,898 in monthly expenses, including \$2,107 in federal and state taxes under two installment agreements.³⁹ At the hearing, Applicant produced a budget reflecting \$15,506 in net monthly family income, including \$2,006 in adoption assistance income; \$7,360 in monthly expenses; and \$7,355 in "other" expenses, including payments on debts, credit cards, mortgage and property taxes, auto loan, cell phone, and \$2,000 on his federal (\$1,500) and state (\$500) installment agreements. Also included in his "other" expenses were \$500 for savings and college savings, and \$100 for family vacations. He reported a monthly remainder of \$791.⁴⁰

There is no evidence that Applicant has ever received financial counseling. In addition, while Applicant attributed his financial problems to several different factors, he failed to submit documents or other evidence to support his contentions. For example, his claim that his business "had its struggles throughout the years" seems to be without merit because his gross income, with the exception of 2014 when it was only \$85,525, was

³⁵ AE C, *supra* note 33.

³⁶ AE B (Authorization for Bank Drafted Payment Agreement, dated January 22, 2018); AE B (Recent Transactions, undated).

³⁷ AE E (Credit and Debt Paid Down in 2018, undated); AE F (Payments and Receipts, various dates); AE G (Payments and Receipts, various dates).

³⁸ AE I (Form 433-F, dated May 15, 2017).

³⁹ AE I (e-mail, dated May 16, 2017).

⁴⁰ AE A (Budget, undated).

generally above \$200,000. His claim that his wife, to whom he referred as a “part-time referral real estate agent/independent contractor who works by commission only,” lost “substantial” commission-based income as a realtor due to a poor housing market is unsupported by any documents, either describing the local housing market or reporting her commissions during that unspecified period. He did submit an article describing her health issues that commenced sometime in 2006 and which were eventually resolved by 2011.⁴¹ His claim that he lost rental income from a small rental property is unsupported by documents indicating his rental-income stream over the years, or the repairs he needed to make before selling that property. His claim that his accountants gave him misinformation on how to handle his business taxes is also unsupported by any documents. Furthermore, while there is evidence of recent (2018) payments of non-SOR delinquent debts well after the SOR was issued, as well as periodic tax payments under installment agreements, some of which were terminated because of Applicant’s failures to remain in compliance with those arrangements, there is little meaningful evidence to indicate that Applicant’s financial situation is now under control.

Character Reference and Award

The program manager of a U.S. Navy program for whom Applicant was a consultant in 2010 and 2011, noted that Applicant’s attention to detail coupled with his extensive knowledge and experience were invaluable in resulting in “amazing accomplishments.” Applicant’s professionalism and willingness to manage multiple priorities were truly appreciated, and his contributions were invaluable to the overall mission success.⁴² On May 22, 2018, Applicant was awarded an award of excellence for his consistent record of excellence and outstanding contributions to one particular corporation.⁴³

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.”⁴⁴ 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.”⁴⁵

⁴¹ AE CC (Magazine Article, dated 2011/2012).

⁴² AE S (Letter of Appreciation, dated August 18, 2011).

⁴³ AE S (Certificate, dated May 22, 2018).

⁴⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁴⁵ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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."⁴⁶ 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.⁴⁷

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."⁴⁸

⁴⁶ "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).

⁴⁷ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁴⁸ *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.”⁴⁹ 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.

⁴⁹ See Exec. Or. 10865 § 7.

Applicant failed to timely file his federal income tax return for the tax year 2016 until August 2018, well after the SOR was issued; failed to pay annual federal and state individual income taxes or payroll taxes as required; and, as of August 3, 2018, according to the IRS, he still owed the IRS \$153,698 in unpaid income taxes, payroll taxes, interest, and penalties. He had a number of federal income tax liens filed. Although he entered into several installment agreements with the IRS over the years, two of those installment agreements were terminated because of Applicant's failure to comply with the terms of those arrangements. A rejected Offer in Compromise only proposed a settlement of the tax debt of between 10 and 30 percent. AG ¶¶ 19(a), 19(c), and 19(f) have been established, and 19(b) has been partially 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;⁵⁰

(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;⁵¹

⁵⁰ 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)).

⁵¹ 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), 20(d), and 20(g) minimally apply, 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 problems to several different generally unsubstantiated factors: his business "had its struggles throughout the years," although his gross income, with the exception of 2014 when it was only \$85,525, was generally above \$200,000; his wife - a part-time referral real estate agent and independent contractor - lost "substantial" commission-based income as a realtor due to a poor housing market; he lost rental income from a small rental property; and his accountants gave him misinformation on how to handle his business taxes. Applicant failed to produce documents to support his claims.

As the president of a corporation, Applicant was expected to know and follow various financial requirements or to engage the services of those who do to enable the corporation to properly function. Although Applicant's adjusted gross income in 2010 was \$296,134, he started a multi-year course of conduct that year which, to this day, has not been resolved. He failed to seek financial guidance. It is troubling that on several occasions, Applicant entered into installment agreements with the IRS, and he failed to remain in compliance with those agreements, claiming that he had insufficient funds to do so. However, insufficient funds to pay one's income taxes is not a legitimate reason not to timely file one's taxes, something Applicant did for the tax year 2016. Faced with federal tax liens filed over a multi-year period, and then with the possible loss of his security clearance in September 2017, well after the SOR was issued, Applicant finally initiated some serious efforts to address his non-SOR delinquent debts, and he made some periodic tax payments under installment agreements. However, Applicant's history of making payments on his delinquent accounts over the years has not risen to the standard of good-faith efforts. As of August 2018, Applicant still owed the IRS between \$148,698 and \$153,698 in unpaid income taxes, payroll taxes, interest, and penalties. He also owes \$8,493 in delinquent non-SOR debts. There is little meaningful evidence to indicate that Applicant's financial situation is now under control.

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

(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)).

threat to his or her own interests.⁵² 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 pay his federal or state income tax over several years, or to timely file his federal income tax return for the tax year 2016, the evidence regarding his adjusted gross income over a substantial period reveals that between 2010 and 2017, his adjusted gross income appears to be more than sufficient to make significant payments well before the SOR was issued. Applicant's actions, or inaction, under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment.⁵³

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

⁵² 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).

⁵³ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁵⁴

There is some evidence mitigating Applicant's conduct. Applicant is a 51-year-old self-employed president of a defense contractor. He has been serving in a variety of positions, among them project manager and technical team lead with various companies in enterprise resource planning for over two decades. He has a good professional reputation. He was granted a secret clearance in 2005 that has been periodically renewed, as well as a top secret clearance with SCI access in 1999 or 2000. There is no evidence of any security violations. Applicant made some generally modest tax payments under installment agreements, and is currently making monthly \$500 payments under his most recent installment agreement. In 2018, he paid off a total of \$38,480 in non-SOR debts.

The disqualifying evidence under the whole-person concept is more substantial. Applicant failed to timely file his federal income tax return for the tax year 2016 until August 2018, well after the SOR was issued; failed to pay annual federal and state individual income taxes or payroll taxes as required; and, as of August 3, 2018, according to the IRS, he still owed the IRS \$153,698 in unpaid income taxes, payroll taxes, interest, and penalties. He had a number of federal income tax liens filed. Although he entered into several installment agreements with the IRS over the years, two of those installment agreements were terminated because of Applicant's failure to comply with the terms of those arrangements. A rejected Offer in Compromise only proposed a settlement of the tax debt of between 10 and 30 percent. Although he made some payments to the IRS before the SOR was issued in September 2017, Applicant's most significant payments commenced in 2018, well after the SOR was issued. Considering all of the above, 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:⁵⁵

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

⁵⁴ 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).

⁵⁵ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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 payroll taxes in his name, until well after the SOR was issued. Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations. See SEAD 4, App. A, ¶¶ 2(d)(1) through AG 2(d)(9).

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: **AGAINST APPLICANT**

Subparagraphs 1.a. through 1.i.: 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