



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-06542

Appearances

For Government: Chris Morin, Esquire, Department Counsel

For Applicant: *Pro se*

12/08/2015

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On May 15, 2014, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On February 7, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the DOD on September

¹ GE 1 (e-QIP, dated May 15, 2014).

1, 2006) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators could not make an affirmative finding under the Directive 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 acknowledged receipt of the SOR on February 19, 2015. In a sworn statement, dated March 9, 2015, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On May 8, 2015, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on July 9, 2015. A Notice of Hearing was issued on July 31, 2015. I convened the hearing, as scheduled, on August 25, 2015.

During the hearing, four Government exhibits (GE 1 through GE 4) and one administrative exhibit were admitted into evidence without objection. Applicant testified. The transcript of the hearing (Tr.) was received on September 2, 2015. I kept the record open to enable Applicant to supplement it. He timely submitted a number of documents which were marked and accepted as Applicant Exhibits (AE A through AE I), without objection. The record closed on September 23, 2015.

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations in the SOR under financial considerations (¶¶ 1.a. through 1.n.). Applicant's admissions 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 41-year-old employee of a defense contractor. He has been serving as an electronic technician since April 2006.² He previously served in another position with another company on the same contract beginning in November 2003.³ A 1992 high school graduate,⁴ Applicant attended a community college for about a year, and subsequently received technology training at a local technical school on a part-time basis, for which he was awarded certificates of completion, but he did not earn a degree.⁵ Applicant has never served with the United States military.⁶ He was granted a

² GE 1, *supra* note 1, at 10.

³ GE 1, *supra* note 1, at 11-12; Tr. at 21-22.

⁴ GE 2 (Personal Subject Interview, dated June 11, 2014), at 3.

⁵ GE 1, *supra* note 1, at 9; GE 2, *supra* note 4, at 3.

⁶ GE 1, *supra* note 1, at 13.

secret security clearance in May 2004.⁷ He was married in October 2006.⁸ He has a stepson, born in 2000.⁹

Financial Considerations

There was nothing unusual about Applicant's finances until after he was married in October 2006. He attributed his financial woes to a number of causes. He and his wife were financially irresponsible and they purchased items and took out too much credit. They did not keep a budget. They purchased a residence in September 2007, to be closer to a particular religious school for her son, and, with the expectation that his wife would operate a day-care business from their residence, they spent a significant, but unspecified, amount for home improvements. It is unclear what happened to the day-care plan, although Applicant indicated that it was fairly successful, and it enabled them to meet payments on some accounts during that particular period. But, there were simply too many bills. She continued to spend freely, and Applicant stood by and permitted her to do so. When he earned more money, they spent that much more. As a result, their bills increased to a point where Applicant was unable to continue making all of his normal monthly payments. His wife's next venture was to attend truck driving school in an effort to generate additional funds. Unfortunately, she was fired during her training, and she was subsequently unable to find employment in that field because of her inexperience. She took a job as a nursing assistant for the elderly, but was unable to handle that job. She then developed unspecified medical problems which "have kept her from working." In 2013, they moved to another residence in a different state. Applicant's wife and her sister owned and operated a restaurant from November 2014 until recently, when her sister pulled out of the partnership and Applicant started supporting it. He pays \$800 a month, plus utilities, to operate the restaurant, but it is currently closed for repairs. The venture has not yet paid off, and is actually costing him money.¹⁰

Applicant did not file his state or federal income tax returns for the tax years 2007, 2008, 2009, 2010, 2011, 2012, and 2013, as required by law.¹¹ He was aware

⁷ GE 1, *supra* note 1, at 26-27; Tr. at 22.

⁸ GE 1, *supra* note 1, at 15.

⁹ GE 1, *supra* note 1, at 18.

¹⁰ GE 2, *supra* note 4, at 8; Applicant's Answer to the SOR, dated March 9, 2015; Tr. at 19-20, 23-25, 53-55; 59-60.

¹¹ The legal requirement to file a federal income tax return is based upon certain conditions, including an individual's gross income and other enumerated conditions. Once it is determined that there is an obligation to so file, the following applies:

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$25,000 (\$100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution. In the case of any person with

that he was required to file his federal income tax returns. He explained that when he was preparing his federal income tax return for tax year 2007, he was experiencing problems while using the TurboTax system, and he was unable to obtain certain information from the prior year. As a result, the effort ceased. During the ensuing years, because of his failure to file the earlier tax returns, he was unsure as to how to file the newer ones. He did not request assistance from the Internal Revenue Service (IRS). Applicant denied that he ignored the process each year. Instead, he attributed the delays to “everything that was going on and my financial mess that I had at the time, it really kind of got put off.” He added, “with everything on me, with all of this stuff, it just -- it was one more thing I knew I had to do and it just kept getting pushed aside.” In other words, he was overwhelmed by his circumstances. On May 1, 2014, because of his security clearance, Applicant sought assistance from a tax preparation firm, and his federal income tax returns for the past-due tax years were finally prepared and filed.¹² He did not file state income tax returns because he was unsure that he had to.¹³

In addition to the untimely federal income tax returns, the SOR identified 13 purportedly continuing delinquent accounts, totaling approximately \$28,218, which had been placed for collection or charged off. Those debts and their respective current status, according to a May 2014 credit report¹⁴ and a February 2015 credit report,¹⁵ Applicant’s comments to the investigator from the U.S. Office of Personnel Management (OPM), his Answer to the SOR, and his testimony, are described below.

Among the accounts that remain unpaid or otherwise unresolved, are: SOR ¶¶ 1.a. and 1.b. – two medical (weight loss) accounts with past-due balances of \$171 and \$122 that were placed for collection when the insurance did not cover the charges and Applicant disputed the diagnoses;¹⁶ SOR ¶ 1.c. – a cable television account with a past-due balance of \$849 that was placed for collection when Applicant terminated his service and failed to return associated equipment, and although the creditor furnished him some supplies to do so, he has not yet done anything;¹⁷ SOR ¶ 1.d. – an

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 60501, 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*

¹² GE 2, *supra* note 4, at 3-4, 8; GE 1, *supra* note 1, at 28-30; Tr. at 35-41; AE A (Form 1040 (2007), dated May 1, 2014); AE B (Form 1040 (2008), dated May 1, 2014); AE C (Form 1040 (2009), dated May 1, 2014); AE D (Form 1040 (2010), dated May 1, 2014); AE E (Form 1040 (2011), dated May 1, 2014); AE F (Form 1040 (2012), dated May 1, 2014). Applicant failed to furnish a copy of the federal income tax return for the tax year 2013.

¹³ Tr. at 42.

¹⁴ GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated May 18, 2014).

¹⁵ GE 4 (Equifax Credit Report, dated February 3, 2015).

¹⁶ GE 3, *supra* note 14, at 7; GE 4, *supra* note 15, at 1; Tr. at 25-26, 59.

¹⁷ GE 3, *supra* note 14, at 11; GE 4, *supra* note 15, at 1; Tr. at 26-27.

unspecified bank loan account with a past-due balance of \$3,066 (erroneously alleged as \$3,773) that was placed for collection;¹⁸ SOR ¶ 1.g. – an unspecified bank loan account with a past-due balance of \$2,142 that was placed for collection;¹⁹ SOR ¶ 1.h. – a home mortgage on Applicant’s former principal residence, but now a rental property, with over a 120 days past-due balance of \$3,773 (and a remaining balance of \$91,130) that was placed for collection;²⁰ SOR ¶ 1.i. – a combined Internet and cable television account with an unpaid balance of \$294 that was placed for collection;²¹ SOR ¶ 1.j. – a telephone account with an unpaid balance of \$937 that was placed for collection;²² SOR ¶ 1.k. – a cellular telephone account with a past-due balance of \$1,675 that was placed for collection;²³ SOR ¶ 1.l. – an insurance account with an unpaid balance of \$231 that was placed for collection;²⁴ and SOR ¶ 1.m. – an unspecified type of account with an unpaid balance of \$5,833 that was placed for collection and charged off.²⁵

Among the accounts that Applicant contends he or his wife took some action to make payments or otherwise resolve, but for which he has failed to submit any documentation to support his contentions, are: SOR ¶ 1.e. – an unspecified bank loan account with a past-due balance of \$7,576 (subsequently increased to \$7,976) that was placed for collection, and according to Applicant, he made some payments and eventually missed a payment, failed to comply with a mediation agreement, and the account remains unpaid;²⁶ and SOR ¶ 1.f. – a fitness center account with an unpaid balance of \$842 that was placed for collection, and according to Applicant, his wife said she paid the bill, and the account is no longer listed in his February 2015 credit report.²⁷

During his interview with the OPM investigator, Applicant discussed and acknowledged a number of delinquent accounts. There were also accounts for which he had no information. He did not dispute the information related to those accounts listed in his credit report. He indicated that he would pay some bills in full, contact some of the

¹⁸ GE 3, *supra* note 14, at 11; GE 4, *supra* note 15, at 2; Tr. at 27.

¹⁹ GE 3, *supra* note 14, at 6; Tr. at 29-30.

²⁰ GE 3, *supra* note 14, at 6; GE 4, *supra* note 15, at 2; Tr. at 30-33.

²¹ GE 3, *supra* note 14, at 7; Tr. at 34.

²² GE 3, *supra* note 14, at 7; Tr. at 33-34.

²³ GE 3, *supra* note 14, at 8; Tr. at 34.

²⁴ GE 3, *supra* note 14, at 13; Tr. at 34.

²⁵ GE 3, *supra* note 14, at 14; Tr. at 34.

²⁶ GE 3, *supra* note 14, at 10; GE 4, *supra* note 15, at 2; Tr. at 27-28.

²⁷ GE 3, *supra* note 14, at 5; Tr. at 29. Applicant indicated he would look for the canceled check to confirm his wife’s payment, but he failed to submit any such evidence.

creditors to work out payments, or return equipment.²⁸ There is no evidence that he has followed through with his stated intentions.

Applicant has a number of other delinquent accounts that were not alleged in the SOR. They include credit card accounts (including one that had been charged-off) and a mortgage on a mobile home that is “getting close to foreclosure.” He has already received some unspecified documentation from the court regarding the foreclosure issue, and he does not have the funds to hire an attorney to represent him.²⁹ He made a \$172.10 payment in January 2015 on one formerly delinquent credit card account, which is now closed by the credit grantor;³⁰ and a \$255.45 payment in June 2015 on another formerly delinquent credit card account, which is also now closed by the credit grantor.³¹ Although he previously referred to other non-SOR delinquent accounts, and indicated he was either working with creditors or making payments, he submitted no documentation to support his narrative. Applicant anticipated an income tax refund of approximately \$10,000 this year and planned on using it to address some of his delinquent accounts.³² While his filing date was April 15, 2015, approximately five months before the record closed, during that period he failed to submit any documentation to support the existence of a refund, the amount of the refund, or any payments to creditors.

During the hearing, Applicant estimated that he had approximately \$80 in his checking account, \$5 in his savings account, and \$21,000 to 22,000 in his 401(k) retirement account.³³ He owns three vehicles and an all-terrain vehicle (ATV) that have already been paid off.³⁴ On the last day of the month, after receiving family income and paying family expenses, Applicant does not expect to have any money remaining for discretionary spending or saving.³⁵ Because of the uncertainty of his security clearance and job status, Applicant and his wife have focused on making the restaurant a successful venture.³⁶ He has not sought the assistance of a financial counselor.³⁷ Other than hoping to avoid having to file for bankruptcy,³⁸ Applicant has no specific plan regarding the handling of his delinquent debts other than hoping to retain his job,

²⁸ GE 2, *supra* note 4, at 4-8.

²⁹ Tr. at 44-49; GE 3, *supra* note 14, at 9.

³⁰ AE H (Cancelled Check, dated January 1, 2015); GE 3, *supra* note 14, at 6; GE 4, *supra* note 15, at 1.

³¹ AE G (Cancelled Check, dated June 8, 2015); GE 3, *supra* note 14, at 12; GE 4, *supra* note 15, at 1.

³² Applicant's Answer to the SOR, *supra* note 10; Tr. at 33, 46.

³³ Tr. at 50.

³⁴ Tr. at 51-52.

³⁵ Tr. at 46.

³⁶ Tr. at 53.

³⁷ Tr. at 53.

³⁸ Applicant's Answer to the SOR, *supra* note 10.

receive his income tax refund, and make the restaurant successful, all to generate the funds to enable him to pay off his creditors.³⁹ There is no evidence that Applicant's financial problems are either under control or that they have been resolved.

Character References and Work Performance

Applicant's supervisor has known him since 2006. He considers Applicant to be a reliable worker and an asset in maintaining a positive security environment.⁴⁰

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."⁴¹ 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."⁴²

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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."⁴³ The Government initially has the burden of producing evidence to establish

³⁹ Tr. at 58-59.

⁴⁰ AE I (Character Reference, dated September 18, 2015).

⁴¹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁴² Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁴³ "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,

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.⁴⁴

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."⁴⁵

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."⁴⁶ 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 or inability 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

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).

⁴⁴ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁴⁵ *Egan*, 484 U.S. at 531.

⁴⁶ See Exec. Or. 10865 § 7.

questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. In addition, security concerns may be raised under AG ¶ 19(g), for a "failure to file annual Federal, state, or local income tax returns as required. . ." Applicant has been experiencing significant financial problems since 2006, when the first of his various accounts commenced the slide into delinquency. Starting in 2008, and continuing for several years thereafter, he failed to timely file his federal income tax returns for 2007, 2008, 2009, 2010, 2011, 2012, and 2013. AG ¶¶ 19(a), 19(c), and 19(g) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial considerations. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." Also, under AG ¶ 20(b), financial security concerns may be mitigated where "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances." Evidence that "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control" is potentially mitigating under AG ¶ 20(c). Also, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."⁴⁷

AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do not apply. The nature, frequency, and recency of Applicant's continuing financial difficulties since late 2006 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Applicant attributed his financial problems to a variety of causes and misadventures such as: financial

⁴⁷ 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)).

irresponsibility with his wife spending freely and Applicant simply standing by; using too much credit; not keeping a budget; purchasing a residence nearer to a certain school; spending too much on the residence to operate a day-care business from the residence; and other commercial interests of his wife which simply failed to pan out. None of the expressed reasons appear to be beyond Applicant's control.

There is a paucity of evidence to indicate that Applicant took any steps to contact his creditors (even for one account for only \$122) in an effort to resolve his debts. All but two of the delinquent accounts alleged in the SOR remain essentially ignored by him. As to the two remaining delinquent accounts, Applicant has offered excuses and explanations, but he offered no documentation to support his contentions that he or his wife made some good-faith efforts to resolve them with some recent payments. Furthermore, he has no actual plan for addressing his delinquent accounts. Instead, he is hoping to retain his job, hoping to receive his income tax refund, and hoping to make the restaurant successful, all to generate the funds to enable him to pay off his creditors. "Hope" is not a strategy for addressing financial problems. Furthermore, because he has never received financial counseling, it appears that Applicant is perplexed as to how to proceed.

Applicant had approximately \$80 in his checking account, \$5 in his savings account, and \$21,000 to \$22,000 in his 401(k) retirement account. He owns four vehicles, including an ATV. On the last day of the month, after receiving family income and paying family expenses, Applicant does not expect to have any money remaining for discretionary spending or saving. Rather than addressing his financial problems and focusing on his security clearance and his job, because of the uncertainty of his security clearance and job status, Applicant and his wife have focused on making the restaurant a successful venture. Applicant's security clearance and compliance with his financial obligations were not high enough on his priority scale. The overwhelming evidence is that Applicant's financial problems are not under control. Applicant has not acted responsibly by generally failing to address his delinquent accounts.⁴⁸

Applicant's failures to timely file his federal income tax returns were neither infrequent nor under unusual circumstances; they constituted a routine practice that continued to occur over a multiyear period. It is his failure to see the urgency or to be motivated to do so, that sets Applicant's actions apart. The law is to be complied with, and it is not up to the individual to determine the urgency, or generate the motivation, to comply with the law in a timely manner. In the absence of clear demonstrations that his behavior has been modified, there is nothing to indicate that it is unlikely to recur. Applicant's actions under the circumstances presented continue to cast doubt on his current reliability, trustworthiness, or good judgment.⁴⁹

⁴⁸ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

⁴⁹ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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 AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

There is some evidence in favor of mitigating Applicant's behavior. He has been working on the same contract since 2003 and with the same employer since 2006. His supervisor thinks highly of him. He is apparently a loving and caring husband and stepfather. He has made some small periodic payments on accounts that were not alleged in the SOR. He has declared his intentions of avoiding bankruptcy and eventually bringing his accounts current and repaying them. There is no evidence of substance abuse or security violations. While he failed to timely file his federal income tax returns for a multi-year period, he finally did so in 2014, before the SOR was issued.

The disqualifying evidence under the whole-person concept is more substantial than the mitigating evidence. Applicant's indebtedness was caused by frivolous and irresponsible spending. He has a lengthy history of not meeting financial obligations. Applicant routinely failed to timely file his federal income tax returns over a multi-year period. He has continued to ignore most of his delinquent accounts; and he has no monthly remainder available for spending or saving.

Applicant is focused on his wife's restaurant, not his security clearance. He has no budget. He has no repayment plan. He simply has "hope." Applicant's long-standing failure or inability to voluntarily repay his creditors, even in the smallest amounts, or to arrange payment plans, reflects traits which raise concerns about his fitness to hold a security clearance. There are clear indications that Applicant's financial problems are not under control. Applicant's actions under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment. Considering the absence of confirmed debt resolution and elimination efforts, Applicant's financial issues are likely to remain.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁵⁰

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 essentially negative track record of voluntary debt reduction and elimination efforts, generally ignoring his delinquent debts, but promising to eventually take some corrective actions. He did finally file his federal income tax returns. 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 concerns. See AG ¶ 2(a)(1) through AG ¶ 2(a)(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.m.:	Against Applicant
Subparagraph 1.n.:	For Applicant

⁵⁰ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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