



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



In the matter of:)
)
) ISCR Case No. 14-06808
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

08/29/2016

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant did not file timely federal or state income tax returns for several tax years. Some of his student loans and other consumer credit accounts became seriously delinquent between 2008 and 2014. He brought his student loans current in October 2015, filed his delinquent federal and state income tax returns in late 2015, and paid off several of his other debts in early 2016. Installment plans are not yet in place for his delinquent federal and state taxes totaling more than \$11,000. His handling of his income tax filing obligations continues to cause security concern. The financial considerations concerns are not fully mitigated. The personal conduct concerns are not established because he did not intentionally falsify his security clearance application. Clearance is denied.

Statement of the Case

On September 2, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the

action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

On October 5, 2015, Applicant answered the SOR allegations, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On January 15, 2016, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for him. On January 18, 2016, I scheduled a hearing for February 8, 2016. To accommodate a change in schedule, I issued an amended notice on February 5, 2016, rescheduling Applicant's hearing for February 10, 2016, with the coordination and agreement of Applicant.

I convened the hearing as rescheduled. The SOR was amended at the Government's request to correct the account number for the credit card debt in SOR ¶ 1.g. Five Government exhibits (GEs 1-5) were admitted into evidence without any objections. A chart prepared by Department Counsel as a supplement to his closing argument was marked as a hearing exhibit (HE 1) for the record but was not admitted as an evidentiary exhibit. Seventeen Applicant exhibits (AEs A-Q) were admitted into the record and Applicant testified, as reflected in a transcript (Tr.) received on February 22, 2016.

I held the record open until March 11, 2016, for Applicant to supplement the record. On February 28, 2016, Applicant submitted 18 documents, which were admitted as AEs R through II without objection from the Government. On March 10, 2016, Applicant submitted nine more documents, which were accepted into the record as AEs JJ through RR. Department Counsel filed no objections by the March 21, 2016 deadline for comment, and the record closed on that date.

Summary of SOR Allegations

The amended SOR alleges under Guideline F that Applicant failed to timely file state income tax returns for tax years 2008 through 2012 (SOR ¶ 1.a) and federal income tax returns for tax years 2009 through 2012 (SOR ¶ 1.b), and that a state tax lien had been filed against him for \$522 in 2009 (SOR ¶ 1.j). Applicant allegedly also owed delinquent student loan debt of \$24,302 (SOR ¶ 1.c), \$1,794 (SOR ¶ 1.d), and \$924 (SOR ¶ 1.e);¹ a charged-off credit card debt of \$419 (SOR ¶ 1.g); collection balances totaling \$1,446 (SOR ¶¶ 1.f, 1.h, 1.i, and 1.m); and financial judgments of \$331 and \$1,102 from 2009 (SOR ¶¶ 1.k-1.l). Under Guideline E, Applicant is alleged to have deliberately falsified his April 2013 security clearance application by responding negatively to inquiries concerning any judgments and any liens filed against him (SOR ¶ 2.a).

When he responded to the SOR, Applicant admitted that he had not filed his federal or state income tax returns for the years alleged, but he had acquired the documents

¹ The three SOR allegations concerning student loan debt have the same account number, likely because the full account numbers do not appear on his October 2014 credit report (GE 2.)

needed to file his returns and hoped to have them filed by his hearing. Applicant indicated about the student loans that he had co-signed on the loan in SOR ¶ 1.c and had been unable to pay the \$5,000 demanded by the creditor to settle the debt. He expressed his belief that the student loans in SOR ¶¶ 1.d and 1.e were the balances past due on the loan in SOR ¶ 1.c and not additional student loans. Applicant assumed that the debt in SOR ¶ 1.g also pertained to the student loan in SOR ¶ 1.c, but he had not contacted the creditor to verify the debt. Applicant admitted owing the \$721 collection debt in SOR ¶ 1.f, but he was making payments. Applicant disputed that he owed \$283 (one payment) on the car loan in SOR ¶ 1.h because he had satisfied his car loan. He admitted that he had yet to resolve the \$139 for cable television/Internet services (SOR ¶ 1.i). He acknowledged the tax lien (SOR ¶ 1.j), which he claimed he satisfied in 2013, and the debt for landscaping services (SOR ¶ 1.k), on which he had made payments to reduce the balance to less than \$200. He disputed the \$1,102 judgment (SOR ¶ 1.l) on the basis that it was for restoration costs after water damage and should have been covered by his home insurer. Applicant did not recognize the medical debt in collection (SOR ¶ 1.m) or the insurance debt in SOR ¶ 1.n. As for the Guideline E allegation, Applicant denied any willful concealment, although he admitted that he had “failed to do [his] due diligence to check on any and all items related to [his] finances.”

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 57-year-old test technician with an associate’s degree awarded in 2004. He started working for his employer, a defense contractor, as a contract employee through a consulting company in November 2012. He became a direct employee in late January 2013. (GEs 1, 4; AE N; Tr. 29-30.)

Applicant has been involved in a cohabitant relationship since October 1997. (GE 1; Tr. 33.) He has lived at the same address most of his life. On the death of their mother in December 2002, he and his four brothers inherited their parents’ home. (Tr. 94-95.) Applicant bought out his brothers’ shares in June 2003. (GE 1; Tr. 96.)

Applicant worked as a contract engineering technician for a commercial design company from January 2003 to November 2004, when he was laid off. He collected unemployment until late January 2005. Within days, Applicant began working in a contract assembler position for a local manufacturer. In September 2005, he converted to a full employee. He transferred to customer technical support in August 2007. In June 2012, he was involuntarily terminated following a customer complaint. Applicant collected unemployment compensation at approximately \$573 a week until October 2012, when he began working for his current employer, initially as a contractor. (GEs 1, 4; Tr. 30-32, 48, 120.) He had federal but not state taxes withheld from his unemployment compensation. (Tr. 48.) On his federal income tax return for 2012 (AE I), he reported taxable pension income of \$22,117, from cashing out a pension and from taking an early withdrawal from

his 401(k) for his expenses. (Tr. 119, 121.) Applicant wanted to make sure that he did not lose his home. (Tr. 121.)

Applicant completed and certified to the accuracy of a Questionnaire for Investigations Processing (SF 86) on April 4, 2013. In response to a financial record inquiry concerning any failure to file or pay federal, state, or other taxes when required by law or ordinance, Applicant indicated that he failed to file his state income tax returns or pay taxes owed of \$1,200 for 2008, \$1,734 for 2009, \$1,701 for 2010, and \$1,160 for 2011. He also disclosed that he failed to pay \$459 in federal income taxes owed for 2009 (see AE F), and did not file his federal tax returns or pay taxes owed of \$3,427 for 2010 and \$2,286 for 2011. Applicant cited financial struggles caused in part by his partner's unemployment. He explained that his situation improved by modifying his mortgage in early 2012, which lowered his monthly mortgage payment from \$1,750 to \$1,316 (Tr. 117), but he then lost his job in June 2012. As for actions taken to address his taxes, Applicant indicated that he had contacted the Internal Revenue Service (IRS) on March 15, 2013, and the state department of revenue on April 1, 2013, but no terms of repayment have been established. Regarding any delinquency involving enforcement, Applicant indicated that court action had been brought against him for an \$8,000 credit card debt due to financial hardships from his partner not working. Under the terms of a moderated settlement, he paid \$200 a month to reduce the balance to \$4,200. Applicant responded negatively to a summary inquiry which covered whether there were any other instances of judgments in the last seven years and whether there were any other instances of liens in the last seven years. (GE 1.)

Applicant's April 16, 2013 credit report revealed two unpaid judgments of \$331 (SOR ¶ 1.k) and \$1,102 (SOR ¶ 1.l)² from 2009 and an outstanding state tax lien of \$522 from January 2009 (SOR ¶ 1.j). A student loan debt of \$22,034 reportedly had been charged off in July 2009 for \$16,661 (SOR ¶ 1.c). Student loans in his name of \$20,408 and \$13,546 were reportedly \$984 and \$504 past due (SOR ¶¶ 1.d and 1.e), but four other student loans totaling \$18,599 were rated as current. A credit card account opened in February 2007 had been charged off for \$479 in February 2009 (SOR ¶ 1.g). He reportedly owed collection balances of \$284 on an auto loan obtained in April 2007 for \$8,519 (SOR ¶ 1.h), \$721 on a credit card account placed in November 2009 (SOR ¶ 1.f), \$159 on a medical debt assigned in December 2010 (SOR ¶ 1.m), and \$144 on an insurance debt assigned in June 2008 (SOR ¶ 1.n). (GE 3.)

On April 30, 2013, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant confirmed his negative responses to whether he was over 120 days delinquent on any debt and whether he had defaulted on any loan. He changed his answer to "yes" as to whether any account had been suspended, charged off, or cancelled for failure to pay as agreed and whether any accounts had been turned over for collection in the last seven years. Applicant confirmed his affirmative response to any judgments and liens. Applicant admitted that he had unlisted judgments and delinquencies, and explained that he did not think that he had to list them because

² Applicant presented evidence of a default judgment of \$1,102 entered against him on February 4, 2009. He was ordered to repay the debt at \$35 per week starting March 1, 2009. (AE PP.)

they were either small and insignificant amounts or educational loans. Regarding the disclosed credit card debt, Applicant indicated that he has been repaying the debt at \$200 a month since February 2011. When asked about the \$331 judgment, Applicant indicated that it was for landscaping services, and that he planned to settle the debt within the next three months. He expressed his intent to dispute the \$1,102 judgment because his home insurer should have paid the costs to fix water damage to his home. Applicant did not recognize the tax lien, but he planned to investigate the debt. When confronted with the student loan delinquencies, Applicant was unable to provide any details of the listed charged-off student loan, which he believed was a loan that he had co-signed for his partner. As for the two accounts in his name that were past due (SOR ¶¶ 1.d and 1.e), Applicant admitted that he had obtained the loans. The reported delinquencies were because the lender had failed to process his third payments every time he arranged repayment terms. As a result, his monthly repayment obligation increased from \$179 to an unaffordable \$368 per month. He paid only half of that amount. Applicant added that he would contact the lender to renegotiate the monthly payment amount. Concerning the credit card debt in SOR ¶ 1.g, Applicant indicated that in response to a settlement offer, he made \$60 payments in March 2012 and April 2012 and that he planned to make two more payments to pay off the debt. Applicant disputed the \$283 car loan debt (SOR ¶ 1.h), asserting that he made all the payments required on the loan. Applicant acknowledged that he had an unpaid credit card debt in collection (SOR ¶ 1.f), which he was currently unable to repay. Applicant did not recognize the \$159 medical debt (SOR ¶ 1.m). He recognized the insurance debt (SOR ¶ 1.n), but he planned to ignore it because the insurance company charged him after he had changed to another insurance company. (GE 4.)

Regarding the reasons for the delinquencies, Applicant told the OPM investigator that when he bought his home in 2003, the plan was for his partner to become employed and help pay the mortgage, but she was unable to find steady employment. He took in a boarder from 2003 to 2006, which helped pay expenses. He began experiencing financial stress in 2007, and instructed his employer to stop withholdings from his income for taxes for several years so that he had extra cash to cover some bills.³ Around 2009, he fell behind on some accounts, and in 2010, his mortgage went into foreclosure proceedings. He fell further into debt because of his mortgage lender's handling of his loan modification application. In early 2012, his mortgage holder lowered his interest rate on his loan to 2.5%, which reduced his monthly mortgage payment by \$500. His finances were then impacted by his unemployment from June 2012 to October 2012. (GE 4.)

About his delinquent income tax returns and tax debts, Applicant told the investigator that he had filed his state return for tax year 2009, but he did not pay the \$1,734 owed.⁴ He had yet to file his state income tax returns for tax years 2010 and 2011 because he could not afford to pay the taxes due, which he estimated at \$1,701 for 2010 and \$1,160 for 2011. He expressed his intent to file his delinquent state income tax returns

³ Applicant testified that prior to his mortgage modification he adjusted his federal and state tax withholdings so that he had enough cash to cover his bills. (Tr. 35-36.)

⁴ Applicant presented as AE B a state return for 2009 signed on February 9, 2016. He completed his federal income tax return for tax year 2009 in April 2010 but did not file it with the IRS. (Tr. 55-56.)

for tax years 2008 (the state filed a substitute return for 2008, see Tr. 37), 2010, 2011, and 2012 within the next three months. As for his federal income returns, Applicant indicated that he filed for 2009 but owed \$459 for that year. He filed for an extension for 2010 but then did not submit a return. Nor had he filed his federal returns for tax years 2011 or 2012. He estimated owing \$2,286 in federal income taxes for 2011, but he did not know his federal tax liability for 2012. He had yet to be contacted by the IRS about his tax issues. He expressed his intent to file all his delinquent tax returns within the next three months. (GE 4.)

The tax lien filed in 2009 for unpaid state income taxes for 2007 was released in August 2014. (AEs L, Y.) Applicant overlooked that it was his responsibility to file the discharge of the lien with the town to have it removed from his record. (Tr. 103-104.) On February 26, 2016, Applicant had the discharge of lien recorded with his town clerk. (AE Y.) Applicant's wages were garnished at \$257 every two weeks in 2014 to satisfy a \$2,200 state tax debt for 2008. (Tr. 40-41.)

As of October 2014, Applicant was making timely \$1,348 monthly payments on his modified mortgage. A charged-off student loan was on his credit record as a "joint con" account and \$12,959 past due on a \$24,302 balance. He was reportedly behind \$1,794 and \$924 on his student loans in SOR ¶¶ 1.d and 1.e. He had also made no payments on the \$721 and \$419 delinquent credit card balances, or on the car loan balance of \$283. Additionally, a \$139 debt from April 2014 was in collection (SOR ¶ 1.i). (GE 2.)

In October 2015, Applicant brought his student loans in SOR ¶¶ 1.d and 1.e current. In November 2015, he made reduced student loan payments of \$245 and \$118 on respective account balances of \$20,253 and \$13,012. Applicant was making separate monthly payments of \$25, \$21, \$26, and \$16 on four federal student loans totaling \$16,835. (Tr. 70.) The student loan account that had been allegedly charged off for \$16,661 was not on his December 2015 credit record. (GE 5.) Recent correspondence from the company now handling his student loans indicates that his loans are in good standing as of late February 2016. (AE KK.) The debt in SOR ¶ 1.c may be the loan co-signed for his partner, a separate loan charged off, or even a collective balance of the student loans in SOR ¶¶ 1.d and 1.e, both of which had been delinquent. The initial balances of those loans were \$8,112 and \$7,600, which would be consistent with a charge off of \$16,661 as of 2009. Applicant admitted that he was delinquent on his student loans in 2008 and 2009, but that he also made some payments toward his student loans after he modified his home loan. IRS records show that he paid student loan interest of \$977 in 2009 (AE P), \$1,564 in 2010 (AE Q), \$1,644 in 2011 (Tr. 127-128), \$1,312 in 2012 (AE O), and \$1,018 in 2015. (AE HH.) His student loan interest payments for 2013 and 2014 are not in evidence. The evidence falls short of establishing that Applicant is currently being held liable for a student loan delinquency of \$24,302 as alleged in SOR ¶ 1.c.

In late August 2015, Applicant received his W-2 information from the IRS for tax years 2009 (AE P), 2010 (AE Q), and 2012 (AE O). Applicant completed his federal income tax return for 2009 on April 30, 2010, but he did not file it with the IRS. (AE F; Tr. 55.) He completed his federal returns for tax years 2010, 2011, and 2012 between November 25,

2015, and December 4, 2015. (Tr. 58.) He reported adjusted gross incomes of \$63,030 for 2009 (AE F), \$58,585 for 2010 (AE G), \$53,385 for 2011 (AE H), and \$68,972 for 2012. (AE I.) Applicant filed his 2013 return electronically in December 2015. (Tr. 49.) The IRS received his returns for tax years 2009 through 2014 on February 10, 2016. (AE AA.) According to the IRS, he underpaid his federal income taxes by \$1,424 for 2009 (AE BB), \$3,909 for 2010 (AE CC), and \$2,826 for 2011. (AE DD.) The IRS intercepted his tax refunds for 2013 and 2014 of \$3,029 and \$899 and applied them to reduce his tax debt for 2012, so his tax debt for 2012 apparently exceeded the \$2,453 reported on his return. (AEs I, Z, EE, FF, QQ.)

Applicant understands that he had a legal obligation to file timely income tax returns. He conceded that it was “stupidity” on his part to have not filed them, but he was “doing everything [he] could to keep [his] head above water.” (Tr. 34-35.) Applicant had no explanation for his late filing of his 2013 and 2014 tax returns other than that he was being inattentive to his obligation. (Tr. 49.) Applicant expressed his intent to comply with his income tax filing obligations going forward. (Tr. 67-68.)

Applicant completed his federal income tax return for tax year 2015 on February 28, 2016. He reported adjusted gross income of \$72,873 and a tax refund of \$3,476 that would be applied to his back taxes for other years. (AE HH.) Applicant proposed to repay \$4,885 in delinquent federal taxes at \$80 per month. (AE GG.) The IRS had not confirmed his installment agreement as of early March 2016.

Applicant completed his delinquent state income tax return for 2008 on January 27, 2016. On adjusted gross wages of \$54,547, he underpaid his taxes by \$928. (AE A.) He knew he was going to owe taxes to the state for 2008 and put off filing his return. (Tr. 53.) On February 9, 2016, he completed his state income tax returns for tax years 2009 (AE B), 2010 (AE C), 2011 (AE D) and 2012 (AE E). He reported owing state taxes of \$3,112 for 2009, \$2,008 for 2010, \$1,120 for 2011, and \$3,989 for 2012, exclusive of any penalties for late filing or interest. (AEs B-E.) Applicant reported \$68,711 in adjusted gross income for 2014. (AE X.) The state received his delinquent returns on February 10, 2016.⁵ (AEs S-X.) He completed his state income tax return for 2015 on February 28, 2016. Applicant reported that he was due a refund of \$173. (AE II.) As of March 10, 2016, formal repayment arrangements for his delinquent state taxes were still pending an audit of his returns. (AE QQ.) Applicant indicates that he arranged to make payments twice a month to be applied to his outstanding state taxes in the interim. (AEs R, QQ.)

Applicant took steps to address his delinquent consumer credit debts after he received the SOR. On February 4, 2016, Applicant paid \$70 to resolve the collection debt in SOR ¶ 1.i. (AE K.) He had paid \$69 toward the debt in January 2016. (Tr. 101.) He had previously disputed that debt, but decided to just pay it off. (Tr. 102.) On February 8, 2016, Applicant authorized two wire transfers of \$141 and \$142 to pay off the debt in SOR ¶ 1.h.

⁵ Applicant maintains that his 2013 state income tax return has also been filed. (AE QQ.) He provided documentation confirming receipt of his state income tax returns for 2008 (AE S), 2009 (AE T), 2010 (AE U), 2011 (AE V), 2012 (AE W), and 2014 (AE X). It is likely that his return for 2013 was also filed. IRS records indicate that he filed his 2013 federal return. (AE EE.)

(AE J; Tr. 97.) Around February 9, 2016, he made a final payment of \$110 to resolve the judgment debt in SOR ¶ 1.k. (AE M; Tr. 107.) He made arrangements to satisfy the charged-off credit card debt in SOR ¶ 1.g over five months. (AE QQ.) Applicant was making payments of \$70 every two weeks toward the debt in SOR ¶ 1.f. (AEs NN, OO, QQ; Tr. 88.) He had made no payments toward the judgment in SOR ¶ 1.l, although realizing that his home insurer was not going to cover the debt, he was attempting to negotiate a settlement. (AE QQ.) Applicant presented evidence showing that the medical debt in SOR ¶ 1.m had been referred for collection in December 2010. (AE LL.) A statement of account from the physician shows no outstanding charges due as of March 2, 2016 (AE MM), although it is unclear whether the zero balance covers the collection debt in addition to current charges. Applicant asserts that the debt was satisfied and will be removed from his credit record. (AE QQ.) Applicant has had no success resolving the debt in SOR ¶ 1.n in that the collection agency has no record of an account under his name or other identifier. He disputes the validity of the debt because he had changed insurance companies. (Tr. 110.) About the judgment in SOR ¶ 1.l, Applicant is attempting to negotiate a settlement, even though he continues to dispute his liability. (AE QQ.) Applicant attributes his failure to list the tax lien and judgment in SOR ¶ 1.l on his SF 86 to oversight. (Tr. 143, 147.)

Applicant's cohabitant partner has been unemployed for the last five years. (Tr. 33.) He has not been late on his mortgage payment in several years. Available credit records show no delinquency since August 2011. (GEs 2, 3, 5.) He has not been late on his utility payments in the past year. (Tr. 112.) An hourly worker, Applicant takes advantage of available overtime opportunities. (Tr. 118.) He is active in his community. He plays softball and umpires youth baseball games. (Tr. 123.)

Character References

Applicant's job is important to him. (Tr. 123.) Applicant's direct supervisor attests that Applicant has consistently met or exceeded performance expectations since he was hired in January 2013. Applicant has no record of security violations, disciplinary actions, or attendance issues. (AE N.) Applicant also has the positive endorsement of a longtime friend, who works as an assistant tax collector for a local municipality. He recommends Applicant for security clearance eligibility as he has always known Applicant to be honest, hardworking, and trustworthy. (AE JJ.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior,

these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concerns for financial considerations are articulated 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 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.

Applicant failed to file timely state income tax returns for tax years 2008 through 2012 as alleged in SOR ¶ 1.a and federal income tax returns for tax years 2009 through 2012 as alleged in SOR ¶ 1.b. He prepared his 2009 federal return on time but then did not

file a return for that year until late 2015. Applicant adjusted his income tax withholdings from 2008 to 2011 so that he would have more of his income available to pay his debts. He then could not pay the taxes owed when they came due, and so he chose not to file his returns. Disqualifying condition AG ¶ 19(g), “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same,” applies.

Security significant financial considerations concerns are also established by Applicant’s record of financial delinquency. On receipt of Applicant’s delinquent federal tax returns, which were filed around December 2015, the IRS calculated his unpaid tax liabilities at \$1,424 for 2009, \$3,909 for 2010, and \$2,826 for 2011. Concerning his 2012 federal taxes, Applicant’s tax refunds totaling \$3,928 for 2013 and 2014 were intercepted and applied to his 2012 tax liability. As of late February 2016, he owed at least \$8,159 in delinquent federal tax debt. He calculated his outstanding state tax liabilities at \$928 for 2008, \$3112 for 2009, \$2,008 for 2010, \$1,120 for 2011, and \$3,989 for 2012, not including any penalties or interest. A state tax lien was filed against him in 2009 for \$522 in taxes owed for 2007 (SOR ¶ 1j), although his wages were garnished for the debt and the tax lien was discharged in August 2014. Applicant had a history of nonpayment on his student loans in 2008 and 2009. He was again behind on the accounts in SOR ¶¶ 1.d and 1.e from January 2014 until October 2015. Two judgments were entered against him in 2009 for \$331 to a landscaper and for \$1,102 in water damage restoration costs (SOR ¶¶ 1.k and 1.l). Five accounts totaling \$1,865 were in collection status (SOR ¶¶ 1.f-1.i and 1.m-1.n). Disqualifying conditions AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations,” are also implicated.

Mitigating condition 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,” cannot reasonably apply. Applicant certainly should have realized when he was interviewed by the OPM investigator in April 2013 that his delinquent accounts and unfiled tax returns were of concern to the DOD, and yet he did not file his 2013 and 2014 returns on time. He did not bring his student loans current until October 2015. Several collection debts went unpaid until February 2016. Applicant has yet to make any payments on the \$1,102 judgment in SOR ¶ 1.l from February 2009.

AG ¶ 20(b) has very limited applicability in this case. It provides:

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances.

Applicant’s financial problems can be traced back to his purchase of his parents’ home in June 2003, when he took on mortgage payments of \$1,750 per month. He counted on his life partner to find a job, and he had no control over her employment prospects. Around that same time, he opened several student loans to pursue his associate’s degree. His job layoff in November 2004 is an unexpected circumstance that

implicates AG ¶ 20(b), but he began working in late January 2005. He was employed full time when he adjusted his income tax withholdings between 2008 and 2011 so that he would have sufficient income to pay his household expenses. His tax filing and payment issues are attributed in part to that decision, which was within his control. A subsequent unemployment from June 2012 to October 2012 mitigates his failure to pay his tax debts and consumer credit delinquencies for a time. However, Applicant had a legal obligation to file timely federal and state tax returns, whether or not he could afford the taxes owed. A few months of unemployment does not justify his years of noncompliance with his tax filing obligations. Applicant did not act fully responsibly with regard to handling his tax matters.

Both AG ¶ 20(c), “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,” and AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” are partially applicable. The tax lien in SOR ¶ 1.j was satisfied in August 2014 through wage garnishment. Applicant brought his student loans in SOR ¶¶ 1.d and 1.e current in October 2015. Albeit within weeks and in some cases days of his security clearance hearing in February 2016, Applicant paid in full or is making payments toward the debts in SOR ¶¶ 1.f, 1.h, 1.i and 1.k. He reportedly made arrangements to satisfy the charged-off credit card debt in SOR ¶ 1.g, although no payments had been made as of the close of the record. Billing records show that he owes a zero balance to the medical provider that placed a \$159 debt (SOR ¶ 1.m) for collection, so that debt may well have been resolved although there is no proof of payment on that specific debt. Neither AG ¶ 20(c) nor AG ¶ 20(d) are satisfied with respect to the judgment debt in SOR ¶ 1.l, the insurance debt in SOR ¶ 1.n, or his delinquent federal and state income taxes.

With respect to his delinquent federal taxes, the IRS calculated Applicant’s outstanding tax liability at \$1,424 for 2009, \$3,909 for 2010, and \$2,826 for 2011. His refunds for tax years 2013 of \$3,029 and 2014 of \$899 were intercepted and applied to his 2012 tax debt. It is unclear whether he has a balance remaining for 2012. Applicant submitted a request to the IRS to repay \$4,885 in delinquent federal tax debt at \$80 per month. The \$4,885 figure is significantly less than the \$8,159 in tax debt calculated by the IRS, and could be the debt remaining after the IRS takes his refund for tax year 2015. By his own calculations, he owes over \$11,000 in delinquent state tax debt. He has no confirmed installment plan in place with either the IRS or the state tax authority. Without a track record of timely tax payments, it is difficult to conclude that his tax issues are sufficiently mitigated.

Furthermore, when an issue of delinquent taxes is involved, an administrative judge is required to consider how long an applicant waits to file his tax returns, whether the IRS generates the tax returns, and how long the applicant waits after a tax debt arises to begin and complete making payments.⁶ Filing of timely tax returns is an important obligation of

⁶ In ISCR Case No. 14-05476 (App. Bd. Mar. 25, 2016) the Appeal Board reversed a grant of a security clearance to an applicant, citing his failure to timely file state tax returns for tax years 2010 through 2013 and federal returns for tax years 2010 through 2012. Before his hearing, the applicant filed his tax returns and paid his tax debts except for \$13,000, which was in an established payment plan. The Appeal Board noted that the

U.S. citizenship. Noncompliance raises serious doubts about whether an individual can be counted on to comply with well-established government rules, including the regulations for protecting classified information.⁷ See ISCR Case No. 01-05340 (App. Bd. Dec. 20, 2002). The state filed a substitute return for him for 2008. Applicant prepared his federal return for 2009 and then did not submit it. Tax filing deadlines passed for tax years 2010, 2011, and 2012, without any action on his part to comply. He was on notice as of his OPM interview in April 30, 2013, that his delinquent tax returns were of concern to the DOD, and he expressed intent to file his delinquent federal and state income tax returns for those years within the next three months. Not only did he fail to file the returns within a reasonable time frame, but he also failed to timely file his federal and state income tax returns for tax years 2013 and 2014. The dilatory nature of Applicant's various tax filings and his admission that he was inattentive to his filing obligation (Tr. 49) undermine his sincerity with respect to whether he can be counted on to file timely returns and pay taxes owed in the future.

AG ¶ 20(e) has some applicability in this case in that the evidence falls short of establishing the student loan default alleged in SOR ¶ 1.c. Account information from the loan servicer and his December 2015 credit report fail to confirm the alleged debt. The credit line offered by the Government to prove the debt is from 2013 and indicates "joint con," which would suggest that it was a joint consolidation balance for the two loans that had been in default but are now current. AG ¶ 20(e) provides:

(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 of substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant also disputes his liability for the judgment debt in SOR ¶ 1.l, claiming that his home insurer should have covered restoration costs from water damage to his home. He contests the validity of the \$144 car insurance debt in SOR ¶ 1.n in that the creditor was claiming he still owed one payment after he switched car insurance providers. In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations

applicant's tax liabilities had been resolved primarily after the SOR had been issued and that it raised questions as to whether the issues had been resolved simply because his clearance was threatened.

⁷ Failure to file timely federal income tax returns may be punishable as criminal conduct under 26 U.S.C. § 7203, willful failure to file return, supply information, or pay tax, which provides:

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.

under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that he is not responsible for the debt or that matters in mitigation apply.

(Internal citation omitted). Applicant did not adequately rebut the credit report listing or submit documentation establishing AG ¶ 20(e) with regard to the debts in SOR ¶¶ 1.l and 1.n. It may reasonably be inferred from the fact of a court judgment that the debt in SOR ¶ 1.l was legally proven. Concerning SOR ¶ 1.n, Applicant admitted at his hearing that he could possibly have changed insurers before his coverage term ended. (Tr. 111.)

Nothing in the Directive requires that Applicant be debt free before he can be granted security clearance eligibility. He is commended for those steps he has taken to address his delinquencies, but he also would have had a stronger case in mitigation had he acted promptly and not waited until his employment was in jeopardy. For the reasons stated, the financial considerations concerns are not fully mitigated.

Guideline E, Personal Conduct

The security concerns about personal conduct are articulated in AG ¶ 15:

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 classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The SOR alleges that Applicant falsified material facts on his April 4, 2013 security clearance application by responding negatively to whether he had any financial judgments entered against him and whether he had any liens placed against his property (SOR ¶ 2.a). The evidence shows that Applicant responded "Yes" to any delinquency involving enforcement, which includes the inquiries about any judgments in the last seven years and any liens placed against his property in the last seven years. However, he listed only a credit card debt, which was apparently settled in response to a court action. He responded "No" to whether there were any other instances of judgment or liens in the last seven years. The evidence shows that Applicant had a \$1,067 default judgment entered against him in February 2009 and a \$331 judgment filed against him in July 2009. A tax lien of \$522 was filed against him in January 2009 for unpaid taxes for 2007. The lien and judgments had not been paid as of his SF 86 and should have been reported on the form.

Applicant has denied willful falsification. During his OPM interview in April 2013, Applicant responded affirmatively to when asked about unlisted judgments or delinquencies. He indicated that he did not think they needed to be listed because they were either small or insignificant amounts or educational loans, which he believed were out of the scope of the inquiry. When confronted about the specific judgments, Applicant did not deny them, but he could not confirm the case numbers or amounts. Applicant did not recognize the tax lien. When he answered the SOR, Applicant did not deny the judgment in

SOR ¶ 1.i, but he disputed its validity. He admitted that he owed a debt to the creditor awarded the judgment in SOR ¶ 1.k, but he claimed to not have known that there was a judgment against him. He acknowledged the tax lien, which he claimed he satisfied between May and September 2013. As for his failure to list the judgments and lien on his SF 86, Applicant indicated that he would not have willfully concealed the information because the Government would discover it during its background investigation. He admitted nonetheless that he had “failed to do [his] due diligence to check on any and all negative items related to [his] finances.” When asked at his hearing about the omissions, Applicant responded that he “sincerely thought that [he] had covered everything.” He denied any intent to deceive. (Tr. 139-140.) About the lien, Applicant claimed that he did not remember the lien and that the debt in SOR ¶ 1.k was not listed because of oversight. (Tr. 142-143.) About the tax lien, it can reasonably be concluded that he did not intend to conceal his tax problems from the Government, given he disclosed that he had not filed federal and state tax returns for several years and that he owed back taxes. As for the judgment debts, Applicant described in detail his dispute about the debt in SOR ¶ 1.l, and he admitted that he owed a debt for landscaping services to the creditor in SOR ¶ 1.k. Applicant knew that these creditors were claiming outstanding balances. What is less clear is whether Applicant deliberately concealed known judgments, both of which were entered by default against him. He listed a larger credit card debt that had been settled in response to a court action. The evidence falls short of establishing the intentional omission or concealment required to trigger AG ¶ 16(a), which provides:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant has admitted to a lack of due diligence in not apprising himself fully of his financial delinquencies so that he could make an accurate reporting of his financial affairs on his SF 86. To the extent that his lack of diligence raises doubts about his judgment and reliability under AG ¶ 15, the primary concern is with his handling of his personal financial affairs, especially his income taxes.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).⁸

⁸ The factors under AG ¶ 2(a) are as follows:

- (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

A determination of Applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern. Applicant was described by his direct supervisor as "a model employee," dedicated to his work, and a diligent team member. Applicant has made some strides in rectifying some of the issues of concern to the DOD and these efforts weigh in his favor. Yet, it is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Mindful of the very significant security concerns raised by years of noncompliance with tax return filing obligations and the Appeal Board's recent admonition that "an applicant who begins to resolve debts only after an SOR placed him on notice that his clearance was in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his own interests," (see ISCR Case No. 14-05476 at 4 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 14-03358 at 4 (App. Bd. Oct. 9, 2015)), I am unable to conclude that it is clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

recurrence.

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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge