



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



In the matter of:)
)
) ISCR Case No. 15-00909
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

06/30/2016

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) includes allegations of delinquent debts, federal income tax returns not timely filed or paid, and a felony arrest in 2011. Applicant’s felony-level arrest and charge did not result in a conviction and is not recent. Personal conduct security concerns are mitigated. He did not make enough progress paying his debts to mitigate financial considerations security concerns. Access to classified information is denied.

History of the Case

On August 7, 2012, Applicant completed and signed his Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On August 17, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive); and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. (Hearing Exhibit (HE) 2)

Specifically, the SOR sets forth security concerns arising under Guidelines F (financial considerations) and E (personal conduct).

On September 7, 2015, Applicant responded to the SOR. On March 11, 2016, Department Counsel was ready to proceed. On March 15, 2016, the case was assigned to me. On March 15, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for March 31, 2016. (HE 1) Applicant waived his right under the Directive to 15 days of notice of the date, time, and location of his hearing. (Tr. 13-14) His hearing was held as scheduled.

During the hearing, Department Counsel offered 5 exhibits, and Applicant offered 17 exhibits, which were admitted without objection. (Tr. 19-27; GE 1-5; AE A-Q) On April 8, 2016, DOHA received a copy of the transcript of the hearing. The record was held open for additional evidence until May 2, 2016. (Tr. 74-75, 77) No post-hearing evidence was received.

Findings of Fact¹

In Applicant's SOR response, he admitted the allegations in SOR ¶¶ 1.b through 1.f, 1.i through 1.n, and 2.a. He denied the allegations in SOR ¶¶ 1.a, 1.g, and 1.h. He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 52-year-old operations planner, who has been employed in operations planning since he retired from the Army in 2005. (Tr. 5; GE 1; AE E; AE L) In 1983, he graduated from high school, and he completed about one year of college. (Tr. 5) He married in 1986, and he was divorced in 1990. (Tr. 8) He has a 12-year-old daughter. (Tr. 8) He served in the Army from 1983 to 2005, and he honorably retired as a first sergeant (E-8). (Tr. 6) He deployed to Southwest Asia for Operation Desert Shield/Storm and to Iraq twice for Operation Iraqi Freedom. (Tr. 6-7, 30-31) His resume indicated, and he said he received six Meritorious Service Medals (MSM), six Army Commendation Medals (ARCOM), and four Army Achievement Medals (AAM). (Tr. 29; AE L)

Financial Considerations

Applicant's history of delinquent debt is documented in his credit reports, October 19, 2012 Office of Personnel Management (OPM) personal subject interview (PSI), SOR response, and hearing record.

Applicant failed to timely file his federal income taxes for tax years 2009 and 2010 (SOR ¶ 1.a). He filed his tax returns for tax years 2009 and 2010 in 2012. (Tr. 19, 32-34; AE A) Applicant was distracted by the death of his mother and disputes with the

¹Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

mother of his daughter. (Tr. 33) Then he erroneously thought his bookkeeper filed his tax returns. (Tr. 33) In 2012, the Internal Revenue Service (IRS) wrote Applicant and stated they received Applicant's tax returns for 2009 and 2010; however, Schedule A was incomplete or missing. (AE C) The IRS garnished his paychecks for four months, which caused other debts to become delinquent. (Tr. 55) In October 2012, Applicant and the IRS reached a settlement, and Applicant agreed to pay the IRS \$200 monthly. (AE C) On his August 7, 2012 SF 86, he disclosed that he owed \$5,456 to the IRS for tax year 2009, and he owed \$1,555 for tax year 2010. (GE 1) He completed payment of his delinquent tax debts in July 2015. (Tr. 69; AE C; AE D)

Applicant's federal income tax records (AE A-C) indicate:

Tax Year	Adjusted Gross Income	Refund +	Taxes Owed -
2015	\$103,452	+\$1,213	
2014	\$98,798	+\$582	
2013	\$99,288	+\$523	
2012	\$101,473	+\$2,431	
2011	\$94,246		-\$107

SOR ¶¶ 1.b and 1.c are collection debts for \$3,535 and \$2,095, and both debts are owed to the same collection company. (Tr. 34-35) Applicant said they may be collecting the bank debt in SOR ¶ 1.g for \$1,708 and the two charged-off debts to the same bank in SOR ¶¶ 1.j and 1.k of unspecified amounts. (Tr. 35) SOR ¶¶ 1.b and 1.j and SOR ¶¶ 1.c and 1.k are the same accounts. (Tr. 37) There was a class action lawsuit for deceptive practices, which resulted in Applicant receiving checks for \$102 and \$7. (Tr. 35-36; AE M; AE N) On June 17, 2015, the creditor for SOR ¶ 1.b offered to settle the debt for \$1,414. (Tr. 38) He did not make any payments to the debt in SOR ¶ 1.g. (Tr. 54) Applicant decided not to settle the debt. (Tr. 39) Applicant is credited with mitigating the debts in SOR ¶¶ 1.j and 1.k as duplications.

SOR ¶ 1.d is a charged-off debt for \$2,064. (Tr. 39) The creditor wrote that the balance was \$2,353, and the creditor offered to settle the debt for \$1,412. Applicant did not pay the creditor anything. (Tr. 40)

SOR ¶ 1.e is a charged-off debt for \$1,869. (Tr. 40) The creditor wrote that the balance was \$1,869; the most recent payment was in May 2010; and in 2015, the creditor offered to settle the debt for \$550. (Tr. 40) Applicant did not pay the creditor anything. (Tr. 40)

SOR ¶ 1.f is a charged-off debt of unspecified amount owed to a bank. Applicant believed it was from a gas card. (Tr. 54)

SOR ¶ 1.h is a charged-off utility debt for \$228. Applicant had a letter from a collection company seeking payment. (Tr. 41) Applicant called the utility company and was informed he did not owe anything. (Tr. 41-42)

SOR ¶ 1.i is a telecommunications-collection debt for \$147. (Tr. 52) He disputed his responsibility for the debt because the creditor breached the contract by failing to provide maintenance for equipment. (Tr. 52)

SOR ¶ 1.l is a \$4,230 debt for furniture. Applicant made some payments, and he was unable to continue making payments. (Tr. 32) He told the furniture store to repossess the furniture. (Tr. 32) He provided a March 9, 2012 letter from the creditor acknowledging receipt of \$500 and indicating additional \$500 payments were supposed to be made. (AE Q) The creditor's letter did not specify the balance owed on the debt. (AE Q) Applicant said the debt is resolved. (Tr. 32)

SOR ¶ 1.m is a collection debt for \$2,257 from a home-alarm company. Applicant disputed his responsibility for the debt because the home-alarm company failed to comply with the contract. (Tr. 45) He telephoned the home-alarm company and communicated his concerns about contract compliance, and he informed the home-alarm company that the contract was terminated. (Tr. 45-46) He did not have documentation showing the basis of the dispute. (Tr. 46, 52) He offered to generate and provide a letter disputing his responsibility for the debt. (Tr. 46)

SOR ¶ 1.n is a charged-off debt owed to the Army and Air Force Exchange System (AAFES) of an unspecified amount. (Tr. 43) Applicant said he recently paid AAFES \$1,200 and had paid AAFES a total of almost \$2,000. (Tr. 43) His retirement pay was being debited \$100 monthly, and then the IRS intercepted his tax refund for \$1,200. (Tr. 44) He still owes a small amount to AAFES. (Tr. 51)

In sum, Applicant paid his federal income tax debt in 2015, and he is credited with paying most of his AAFES debt in SOR ¶ 1.n. (Tr. 69-71) In 2015, Applicant paid the creditor in SOR ¶ 1.l \$500. (Tr. 70) He brought his mortgage to current status. (Tr. 72) Applicant accepted responsibility for his debts, and he promised to pay his remaining delinquent debts. (Tr. 57-59) I asked Applicant to submit proof of his debt disputes, payments to AAFES, and his DD Form 214 to show his military awards and deployments. (Tr. 49-51, 53, 73) His suspense to provide additional evidence was May 2, 2016. (Tr. 74-75, 77) No post-hearing documentation was received.

Personal Conduct

In August 2011, Applicant was upset about his employment, and he could not sleep. (Tr. 17-18) At about midnight, Applicant went for a walk, and he left his seven-year-old daughter alone. (GE 3) She woke up; she became frightened because she was alone; and shortly after midnight, she called 911. (Tr. 17-18; GE 3) At about 2:30 a.m., Applicant walked up to his residence. (GE 3) The police arrested him for child abandonment and drunk and disorderly. (GE 3) Applicant told the police he was walking around the block. (GE 3) The drunk and disorder charge was a misdemeanor, and it was dismissed. (GE 3) He pleaded guilty to child abandonment, a felony, and he received two years of deferred adjudication. (Tr. 17-18; SOR response; GE 3) He was required to complete and did complete 200 hours of community service. (Tr. 18-19) He

paid a \$2,200 fine. (Tr. 59) He does not have a criminal conviction for his conduct in August 2011 because he successfully completed his probation. He attended parenting classes, and he went to Alcoholics Anonymous (AA) meetings. (Tr. 58-59) He disclosed his felony-level child abandonment arrest on his August 7, 2012 SF 86 and discussed the events surrounding his arrest during his OPM PSI. (GE 1; GE 2)

Character Evidence

Applicant's supervisor for four years is a retired lieutenant colonel and has frequent contact with Applicant. (Tr. 62-64) He described Applicant as dependable, responsible, diligent, conscientious about security, and trustworthy. (Tr. 63) His employment appraisals describe Applicant as meeting, exceeding, or consistently exceeding expectations. (AE E) Applicant received bonuses and letters of appreciation from his employer for his contributions to mission accomplishment, and he completed security training. (AE F-K)

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." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. 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." See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole

or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts"; "(c) a history of not meeting financial obligations"; and "(g) failure to file annual Federal, state, or local income tax returns as required" Applicant's history of delinquent debt is documented in his credit reports, OPM PSI, SOR response, and hearing record.

Applicant failed to timely file his federal income taxes for tax years 2009 and 2010. In 2012, he filed his tax returns for tax years 2009 and 2010. In 2012, the IRS

wrote Applicant and stated they received Applicant's tax returns for 2009 and 2010; however, Schedule A was incomplete or missing. The IRS garnished his paychecks for four months, which caused other debts to become delinquent. In October 2012, Applicant and the IRS reached a settlement, and Applicant agreed to pay the IRS \$200 monthly. On his August 7, 2012 SF 86, he disclosed that he owed \$5,456 to the IRS for tax year 2009, and he owed \$1,555 for tax year 2010. He completed payment of his delinquent tax debts in July 2015.

Applicant has nine unresolved delinquent debts totaling \$16,694. The Government established the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(g) requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;² and

(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

²The 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) 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)).

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

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant's conduct in resolving his delinquent debt does not warrant full application of any mitigating conditions to all of his SOR debts; however, he presented some important mitigating information. Several circumstances beyond his control adversely affected his finances: Applicant was deployed to Iraq; his mother died; and he had disputes with the mother of his daughter about his daughter. However, he did not provide enough specifics about how these circumstances adversely affected his finances, and he did not show that he acted responsibly to address his delinquent debts.

Applicant failed to timely file his federal income tax return for tax years 2009 and 2010. The DOHA Appeal Board has commented:

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

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). See ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)). ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015). The Appeal Board commented that even in instances where an “[a]pplicant has purportedly corrected [the applicant’s] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant’s security worthiness in light of [applicant’s] longstanding prior behavior evidencing irresponsibility” including a failure to timely file federal income tax returns. See ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. June 15, 2016) (characterizing “no harm, no foul” approach to an Applicant’s course of conduct and employment of an “all’s well that ends well” analysis as inadequate to support approval of access to classified information and focusing on problematic timing of filing of tax returns after receipt of the SOR).

Applicant filed his 2009 and 2010 federal income tax returns in 2012, which is well before the SOR was issued; however, he did not pay his delinquent taxes for those years until 2015.

Applicant is credited with mitigating the debts in SOR ¶¶ 1.f (unspecified amount), 1.h (paid), 1.j (duplication), 1.k (duplication), and 1.n (mostly paid). He is not credited with mitigating the other SOR debts because he did not provide documentation showing enough progress paying debts or reasonable disputes of his debts, such as copies of letters to the SOR creditors and credit reporting companies explaining why he believed he was not responsible for the debts.

Applicant’s failure to make greater progress addressing his delinquent debts shows a lack of judgment and responsibility that weighs against approval of his security clearance. There is insufficient evidence about why he was unable to make greater documented progress resolving more of his SOR debts. There is insufficient assurance that his financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, he failed to establish that financial considerations security concerns are mitigated.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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.

Three disqualifying conditions in AG ¶ 16 that are relevant in this case. AG ¶¶ 16(c), 16(d)(3), and 16(e) read:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

AG ¶¶ 16(c) and 16(d)(3) do not apply. Applicant abandoned his seven-year-old daughter between shortly after midnight and 2:30 a.m., which is a felony-level crime. Guideline J, criminal conduct, explicitly covers this criminal offense involving his daughter. The financial consideration section is sufficient for an adverse determination without consideration of his abandonment of his daughter. AG ¶ 16(e) applies because this criminal conduct adversely affects his personal, professional, and community standing.

AG ¶ 17 lists three conditions, which may mitigate security concerns in this case. The three mitigating conditions are as follows:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

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

AG ¶¶ 17(c) and 17(e) apply. In August 2011, Applicant left his daughter unattended. He received deferred adjudication from the court, and he successfully completed the probation period. He does not have a conviction. Security officials, the courts, and law enforcement are aware of his misconduct, and he is not subject to coercion. Personal conduct security concerns are mitigated.

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 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. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 52-year-old operations planner, who has been employed in operations planning since he retired from the Army in 2005. He completed about one year of college. He served in the Army from 1983 to 2005, and he honorably retired as a first sergeant. He deployed to Southwest Asia for Operation Desert Shield/Storm and to Iraq twice for Operation Iraqi Freedom. His resume indicated, and he said he received six MSMs, six ARCOMs, and four AAMs. However, he did not provide his DD Form 214, which would have provided the dates of his service in combat zones and a specific list of his awards and decorations.

Applicant is credited with mitigating the debts in SOR ¶¶ 1.f (unspecified amount), 1.h (\$228—paid), 1.j (unspecified amount—duplication), 1.k (unspecified amount—duplication), and 1.n (mostly paid). He is also credited with payment of his delinquent federal income tax debt in 2015. In 2015, Applicant paid the creditor in SOR ¶ 1.l \$500; however, this payment is not sufficient to fully establish mitigation of this debt. He brought his mortgage to current status.

Applicant has a lengthy history of delinquent debt. He failed to timely file his federal income tax returns for tax years 2009 and 2010. In 2012, those two returns were filed; however, the taxes on those two tax returns were not completely paid until 2015. He is not credited with mitigating the SOR debts in ¶¶ 1.b through 1.e, 1.f and 1.g, 1.i, 1.l, and 1.m because he did not provide documentation showing enough progress paying these debts or reasonable disputes of these debts, such copies of letters to the SOR creditors and credit reporting companies disputing his responsibility for them.

Applicant did not provide enough specifics about how circumstances beyond his control adversely affected his finances, and he did not show that he acted responsibly to address his delinquent debts. His failure to make greater progress resolving his SOR debts shows lack of financial responsibility and judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More documented financial progress is necessary to mitigate financial considerations security concerns.

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*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of his past-due debts, and a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that personal conduct security concerns are mitigated; however, financial considerations security concerns are not mitigated. It is not clearly consistent with the national interest to grant or reinstate Applicant's security clearance eligibility at this time.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraphs 1.j and 1.k:	For Applicant
Subparagraphs 1.l and 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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 or reinstate Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

MARK HARVEY
Administrative Judge