



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



In the matter of:)
)
 ----) ISCR Case No. 15-02097
)
 Applicant for Security Clearance)

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: Leanne M. Innet, Esquire

03/30/2016

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On January 3, 2013, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On September 17, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under 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 the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial

¹ GE A (e-QIP, dated January 3, 2013).

Considerations), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on October 2, 2015. On October 10, 2015, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on December 30, 2015. However, on January 13, 2016, the Defense Office of Hearings and Appeals (DOHA) issued an amendment to the SOR to him. It is unclear when Applicant received the amended SOR as there is no receipt in the case file. On January 23, 2016, Applicant responded to the amended SOR allegations. The case was assigned to me on January 15, 2016. A Notice of Hearing was issued on January 20, 2016, and I convened the hearing as scheduled on February 1, 2016.²

During the hearing, 4 Government exhibits (GE A through D) and 24 Applicant exhibits (AE 2, 3, 10, and 16 through 36)³ were admitted into evidence without objection. Applicant chose to withdraw 12 numbered exhibits that had been marked for identification and attached to the Answer to the SOR (AE 1, and 4 through 15), but AE 14 was subsequently resubmitted and admitted into evidence without objection.⁴ One Administrative Exhibit was also admitted. Applicant testified. The transcript (Tr.) was received on February 9, 2016. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He timely submitted a number of documents, which were marked as AE 37 through AE 43, and admitted into evidence without objection. The record closed on February 22, 2016.

Findings of Fact

In his Answers to the SOR and the amended SOR, Applicant admitted one (¶ 1.b.) and a portion of another (¶ 1.c.) of the factual allegations pertaining to financial considerations. He denied the remaining allegations or a portion thereof. Applicant's

² Although the Notice of Hearing was administratively requested on January 15, 2016, it was not issued until 12 days before the scheduled date for the hearing. Applicant's attorney and Department Counsel previously had telephone discussions regarding the general time and location of the hearing. Nevertheless, on January 20, 2016, Applicant's attorney objected and chose not to waive the required notice period. During a subsequent three-party conference call, Applicant's attorney withdrew her objection. No objection was interposed during the hearing.

³ Under normal circumstances, it is my practice to mark the Government's exhibits by number and the Applicant's exhibits by letter. However, in this instance, Applicant's attorney had already pre-marked his exhibits with numbers, and to avoid confusion, I simply reversed my practice.

⁴ Tr. at 20-23. I notified the parties that the proposed exhibits that were previously attached to the Answer to the SOR were being returned to Applicant's attorney so that she could offer them as evidentiary exhibits rather than as attachments to the Answer. When Applicant's attorney chose not to reintroduce some of those documents, for reasons not fully explained, Department Counsel initially objected to them being included as part of the Answer, subsequently requested that they be returned to Applicant and not be part of the record, and eventually objected to the documents being returned, because Department Counsel sought to examine Applicant regarding the content of the documents. My rule remained undisturbed and the documents that Applicant chose to withdraw were retained by me as non-evidentiary associated documents. Nevertheless, Department Counsel did use some of the documents during the course of her examination of Applicant. See Tr. at 60-62, 84-85.

answers 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 55-year-old employee of a defense contractor. He is a master scheduler, having started out as a sheet metal technician, with his current employer since April 1988.⁵ Applicant received a General Educational Development (GED) diploma in 1978.⁶ Applicant enlisted in the U.S. Air Force in December 1980, and served until March 1988, when he was honorably discharged as a staff sergeant (E-5).⁷ During his military service, Applicant was awarded the Air Force Training Ribbon, the Air Force Longevity Service Award Ribbon, and the Air Force Good Conduct Medal (with one bronze oak leaf cluster).⁸

It is unclear if Applicant ever held a security clearance. However, when he was in the U.S. Air Force, Applicant was in the Personnel Reliability Program (PRP) - a U.S. DOD security, medical and psychological evaluation program - designed to permit only the most trustworthy individuals to have access to nuclear weapons.⁹ Applicant was married in December 1981 and divorced in May 2003.¹⁰ He has been residing with a cohabitant since September 2008 or October 2010.¹¹ He has two daughters, born in 1982 and 1985.¹²

Financial Considerations

It is unclear when Applicant first started having issues with his finances, but he referred to several factors which contributed to his eventual financial problems over the years: (1) his excessive consumption of alcohol; (2) his addiction to prescribed pain-killing medications; (3) migraine headaches and two separate surgeries; (4) a corporate restructuring which resulted in a downgrade of his position with a \$14,000 per year salary loss; (5) poor judgment; and (6) his life was in turmoil. Associated with one of more of those primary factors were his 1986 conviction for driving while intoxicated (DWI); his 2003 divorce and associated alimony and child support costs; his 2007 conviction for breach of the peace; and his 2007 detoxification and 90-day outpatient substance abuse program. As a result of the above combination of factors and

⁵ GE A, *supra* note 1, at 10; AE 40 (Job Description and Appraisal, dated February 14, 2016); Tr. at 40-42.

⁶ GE A, *supra* note 1, at 10; Tr. at 38.

⁷ GE A, *supra* note 1, at 12-13; Tr. at 38; AE 19 (Certificate of Release or Discharge from Active Duty, dated March 31, 1988).

⁸ AE 19, *supra* note 6.

⁹ GE A, *supra* note 1, at 31-32.

¹⁰ GE A, *supra* note 1, at 15.

¹¹ GE A, *supra* note 1, at 7, 16. Applicant listed two different dates for the commencement of the cohabitation.

¹² GE A, *supra* note 1, at 19-20.

incidents, Applicant conceded that while his personal and professional lives were being destroyed, his financial situation became overburdened.¹³

Applicant's income tax return for the tax year 2003 was received by the IRS on April 15, 2004, and because he had too much withheld, on May 24, 2004, a refund was issued to him in the amount of \$1,352.47.¹⁴ Applicant's initial lack of sobriety and the various other factors, including insufficient funds and procrastination, generally led him to fail to timely file his federal income tax returns for 2004, 2005, 2006, and 2007. He claimed he was not aware that he could have filed his income tax returns even if he did not have sufficient funds to pay his income taxes.¹⁵ The IRS filed substitute returns on his behalf for those years.¹⁶ Although Applicant had addressed his alcohol and pain-killer medication problems in September 2007 by turning to his employer for assistance; taking a leave of absence for ten days for inpatient detoxification; 90 days of outpatient care; and entering a 12-step program with Narcotics Anonymous (NA), his life was in turmoil. Nevertheless, he was able to prioritize his responsibilities and actions. They were (a) break the bonds of addiction, and (b) retain his employment to be able to address his various financial obligations. It took some time to do so, but an action by the IRS – an organization that intimidated him – brought the severity of the problem to the forefront.¹⁷

On June 3, 2010, the IRS filed a federal tax lien on Applicant alleging the unpaid balance of assessments were as follows: \$14,612.02 for 2004; \$13,065.42 for 2005; and \$13,709.07 for 2006, for a combined unpaid balance of \$41,486.51.¹⁸ On August 10, 2010, the IRS filed another federal tax lien on Applicant alleging the unpaid balance of assessments for 2007 was \$12,938.62.¹⁹

In July 2010, Applicant decided to address his "financial mess" and sought the assistance of some professional accountants and tax resolution specialists to complete income tax returns for the tax years 2008 and 2009, as well as to place him in a position to negotiate a repayment plan and establish an installment agreement for the tax years

¹³ Applicant's Answer to the SOR, dated October 10, 2015, at 3-4; GE B (Personal Subject Interview, dated January 29, 2013); AE 20 (Divorce Decree, dated May 20, 2003); Tr. at 62.

¹⁴ AE 38 (IRS Account Transcript, dated February 2, 2016).

¹⁵ Tr. at 78.

¹⁶ AE 22 (IRS Account Transcript, dated October 27, 2015) – reflecting that the substitute tax return for the tax year 2004 was prepared by the IRS on March 17, 2008; AE 23 (IRS Account Transcript, dated October 27, 2015) – reflecting that the substitute tax return for the tax year 2005 was prepared by the IRS on March 17, 2008; AE 24 (IRS Account Transcript, dated October 27, 2015) – reflecting that the substitute tax return for the tax year 2006 was prepared by the IRS on September 8, 2008; AE 25 (IRS Account Transcript, dated October 27, 2015) – reflecting that the substitute tax return for the tax year 2007 was prepared by the IRS on August 24, 2009.

¹⁷ Tr. at 62-63, 78.

¹⁸ AE 2 (Notice of Federal Tax Lien, dated June 3, 2010).

¹⁹ AE 10 (Notice of Federal Tax Lien, dated August 10, 2010).

2004 through 2009.²⁰ Applicant became disenchanted with those services because they made errors in the tax returns they prepared, and they were never available to answer his telephone calls.²¹ Applicant's income tax returns for the tax years 2008 and 2009 were filed late on July 23, 2010.²² Applicant's income tax returns for the ensuing years have all been timely filed.²³

Applicant entered into an installment agreement with the IRS in mid-2010, and from August 2010 through September 2013, using a web-based third-party provider of electronic payments to federal and state agencies, he made 38 payments of \$600 each. In October 2013, he made a \$700 payment. Commencing in November 2013, he has made monthly payments of \$1,045 each.²⁴ On March 11, 2015 – six months before the SOR was issued – the IRS issued a *Certificate of Release of Federal Tax Lien* which satisfied the lien for \$41,386.51 (SOR ¶ 1.a.).²⁵ On November 4, 2015 – nearly three months before the hearing was held – the IRS issued a *Certificate of Release of Federal Tax Lien* which satisfied the lien for \$12,938.62 (SOR ¶ 1.b.).²⁶ With the exception of the two tax liens that have been resolved, and one other collection account that was previously settled and resolved, Applicant's most recent credit report does not reflect any delinquent accounts.²⁷ It appears that his financial problems, including those with the IRS, are finally under control.

Applicant has been abstinent from alcohol since July 4, 2006, and from pain-killer medications since September 2007. He remains an active participant in the NA program, where he underwent a tremendous amount of soul searching and introspective thinking, and has completed the 12-step program for the second time. He has a sponsor. Although he attended NA meetings on a daily basis for a number of years, for the past six years he has been attending meetings two days each week. He

²⁰ Tr. at 53-54.

²¹ Tr. at 71-72.

²² Tr. at 52, 54; AE 26 (IRS Account Transcript, dated October 27, 2015) – reflecting that the tax return for the tax year 2008 was received by the IRS on July 23, 2010; AE 27 (IRS Account Transcript, dated October 27, 2015) – reflecting that the tax return for the tax year 2009 was received by the IRS on July 23, 2010.

²³ Tr. at 54-55; AE 28 (IRS Account Transcript, dated October 27, 2015) – reflecting that the tax return for the tax year 2010 was received by the IRS on April 15, 2011; AE 30 (IRS Account Transcript, dated October 27, 2015) – reflecting that the tax return for the tax year 2011 was received by the IRS on April 15, 2012; AE 32 (IRS Account Transcript, dated October 27, 2015) – reflecting that the tax return for the tax year 2012 was received by the IRS on April 15, 2013; AE 34 (IRS Account Transcript, dated October 27, 2015) – reflecting that the tax return for the tax year 2013 was received by the IRS on April 15, 2014; AE 36 (IRS Account Transcript, dated October 27, 2015) – reflecting that the tax return for the tax year 2014 was received by the IRS on April 15, 2015; AE 43 (Electronic Tax Filing Center E-mail, dated January 30, 2016) – reflecting that the tax return for 2015 was received by the IRS on January 30, 2016.

²⁴ Applicant's Answer to the SOR, *supra* note 13, at 5; AE 14 (Official Payments, dated October 14, 2015); Tr. at 70-71, 81-82, 84-85.

²⁵ AE 3 (Certificate of Release of Federal Tax Lien, dated March 11, 2015).

²⁶ AE 21 (Certificate of Release of Federal Tax Lien, dated November 4, 2015).

²⁷ GE D (Equifax Credit Report, dated February 20, 2015).

correctly recited the Serenity Prayer. He has a variety of sobriety coins, including an 8-year coin attesting to his continued sobriety over the years.²⁸

Work Performance and Character References

Applicant's annual work performance ratings since 2003 have been predominately "successful contributor" and "high contributor," but he has, on occasion, also been "exceeded" and "significantly exceeded."²⁹ His most recent performance appraisal rated him as "significantly exceeded" or 4.9 out of a possible 5.0.³⁰ His annual salary since joining his employer started at \$79,688, dropped by 15.94% in 2004, subsequently exceeded his original starting salary in 2013, and, as of February 2015, he now earns \$98,835.³¹ He has also received a number of spot awards, excellence awards, long-term incentive awards, and a team accomplishment award.³² It was also noted that Applicant "has demonstrated superior judgment on all levels regarding the interests of [the employer] and ultimately the best interests for our customers."³³

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."³⁴ 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."³⁵

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.

²⁸ Tr. at 58, 69-70, 72-76; Applicant's Answer to the SOR, *supra* note 13, at 4; AE 39 (Sobriety Coins, undated).

²⁹ AE 17 (Review Rating History, dated October 17, 2015).

³⁰ AE 41 (2015 Performance Form, dated February 20, 2016).

³¹ AE 16 (Job History, dated October 17, 2015).

³² AE 18 (Special Award History, dated October 17, 2015); AE 42 (Long-term Incentive Award, dated January 28, 2016); Tr. at 56.

³³ AE 40 (Position Description and Appraisal, dated February 14, 2016).

³⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³⁵ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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."³⁶ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.³⁷

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."³⁸

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."³⁹ 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

³⁶ "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

³⁷ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

³⁸ *Egan*, 484 U.S. at 531.

³⁹ See Exec. Or. 10865 § 7.

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 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, a "failure to file annual Federal, state, or local income tax returns as required. . ." may raise security concerns under AG ¶ 19(g). Applicant failed to timely file his federal income tax returns for 2004 through 2009. In 2010, two federal tax liens were filed on Applicant alleging the unpaid balances of his assessments for those years as \$41,486.51 and \$12,938.62. AG ¶¶ 19(a), 19(c), and 19(g) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. 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). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."⁴⁰

⁴⁰ 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

AG ¶ 20(d) applies. AG ¶¶ 20(a), 20(b), and 20(c) partially apply. Applicant's financial problems were not caused by frivolous or irresponsible spending, and he did not spend beyond his means. To his credit, he acknowledged having made some poor decisions pertaining to alcohol and pain-killer medications, and he admitted a lack of sobriety, addiction to pain-killer medications, poor judgment, and procrastination. The nature, frequency, and recency of Applicant's financial difficulties make it difficult to conclude that it "was so infrequent." Instead, as noted above, Applicant's financial problems consisted of two components: failing to timely file his federal income tax returns over a span of years, and failing to timely pay the federal income taxes for the same tax years. His finances were stretched and his thinking was affected by: (1) his excessive consumption of alcohol; (2) his addiction to prescribed pain-killing medications; (3) migraine headaches and two separate surgeries; and (4) a corporate restructuring which resulted in a downgrade of his position with a \$14,000 per year salary loss. His decision-making was negatively impacted by the alcohol and the pain-killer medications. Years passed without filing federal income tax returns. He was intimidated by the IRS and failed to see the severity of the situation.

However, eventual sobriety from alcohol and abstinence from pain-killer medications, a newly developed strength, along with the realization of the seriousness of the problem, resulted in Applicant's decision to extricate himself from his "financial mess." He engaged the professional services of some accountants and tax resolution specialists and addressed the IRS directly. His federal income tax returns for the tax years 2004 through 2009 were filed. His income tax return for the tax year 2003 was actually filed on time. Applicant entered into an installment agreement with the IRS in mid-2010 – over five years before the initial SOR was issued. Monthly payments were routinely made. On March 11, 2015 – six months before the SOR was issued – the IRS issued a *Certificate of Release of Federal Tax Lien* which satisfied the lien for \$41,386.51. On November 4, 2015 – nearly three months before the hearing was held – the IRS issued a *Certificate of Release of Federal Tax Lien* which satisfied the lien for \$12,938.62. Applicant has resolved all of the allegations in the SOR and the amended SOR as well as accounts that were not in the SOR. There are clear indications that Applicant's financial problems are under control. His actions, under the circumstances, no longer cast doubt on his current reliability, trustworthiness, and good judgment.⁴¹

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

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)).

⁴¹ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁴²

There is some evidence against mitigating Applicant's conduct. Applicant failed to fully appreciate the requirements to timely file his federal income tax returns for the tax years 2004 through 2009, or to make timely payments, or enter into installment agreements with the IRS pertaining to the repayment of unpaid taxes. Because of his double failures, the IRS filed substitute income tax returns for him for 2004 through 2007, and two federal tax liens were filed against him in 2010. In addition, he abused alcohol until 2006 and pain-killer medications until 2007.

The mitigating evidence under the whole-person concept is more substantial. Applicant served with the U.S. Air Force from December 1980 until March 1988, when he was honorably discharged as a staff sergeant (E-5). During his military service, Applicant was in the Personnel Reliability Program (PRP) - a U.S. DOD security, medical and psychological evaluation program - designed to permit only the most trustworthy individuals to have access to nuclear weapons. Applicant overcame a litany of mishaps and substance-related problems. He sought employer assistance for an inpatient detoxification program and a 90-day outpatient program. He followed those programs with years of active involvement with NA. He embraced sobriety. He faced his fears and addressed his financial mess. Income tax returns were filed, an installment agreement was agreed to, and payments were made. Income tax returns for the tax years 2010 and the ensuing years have all been filed timely. The tax liens were released. Applicant did not wait for an SOR to motivate his actions. He had already resolved one tax lien, the larger of the two, well before the SOR was issued. Applicant has an outstanding reputation in the workplace. There are clear indications that Applicant's financial problems are under control. His actions under the circumstances no longer cast doubt on his current reliability, trustworthiness, and good judgment.

⁴² See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

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

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.⁴³

Applicant has demonstrated a “meaningful track record” of debt reduction and elimination efforts, and he started to do so years before the SOR was issued. This decision should serve as a warning that Applicant’s failure to continue the timely filing of annual federal income tax returns, will adversely affect his future eligibility for a security clearance.⁴⁴

Overall, the evidence leaves me without questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from his financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

⁴³ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

⁴⁴ While this decision should serve as a warning to Applicant as security officials may continue to monitor his finances, this decision, including the warning, should not be interpreted as a conditional eligibility to hold a security clearance. The Government can re-validate Applicant’s financial status at any time through credit reports, investigation, and interrogatories. Approval of a security clearance now does not bar the Government from subsequently revoking it, if warranted. “The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance.” Nevertheless, the Defense Office of Hearings and Appeals (DOHA) has no authority to attach limiting conditions, such as an interim, conditional, or probationary status, to an applicant’s security clearance. See, e.g., ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 06-26686 at 2 (App. Bd. Mar. 21, 2008); ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006); ISCR Case No. 04-04302 at 5 (App. Bd. June 30, 2005); ISCR Case No. 03-17410 at 4 (App. Bd. Apr. 12, 2005); ISCR Case No. 99-0109 at 2 (App. Bd. Mar. 1, 2000).

Formal Findings

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge