



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



In the matter of:

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ISCR Case No. 17-01523

Applicant for Security Clearance

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel

For Applicant: *Pro se*

02/28/2019

Decision

HARVEY, Mark, Administrative Judge:

Applicant did not timely file her federal and state income tax returns for tax years 2012 through 2015, in part, because of problems with her spouse, allocation of deductions, and lack of understanding of the tax-filing process. She is credited with filing most of her overdue tax returns and paying all of her established tax debts and other delinquent debts. However, proof of filing of all overdue tax returns is necessary to fully mitigate financial considerations security concerns. Eligibility for access to classified information is denied.

History of the Case

On March 7, 2016, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On June 30, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AGs)*, effective June 8, 2017. (Hearing Exhibit (HE) 2)

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 her, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. (HE 2) Specifically, the SOR set forth security concerns arising under the financial considerations guideline.

On August 22, 2017, Applicant responded to the SOR, and she requested a hearing. (HE 3) On September 19, 2017, Department Counsel was ready to proceed. On February 16, 2018, the case was assigned to me. On April 4, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for April 16, 2018. (HE 1) Applicant waived her right to 15 days of notice of the date, time, and location of the hearing. (Tr. 12-14) The hearing was held as scheduled.

Department Counsel offered three exhibits; Applicant offered three exhibits; there were no objections to the documents; and all exhibits were admitted into evidence. (Tr. 16-19; GE 1-3; Applicant Exhibits (AE) A-C)) On April 25, 2018, DOHA received a copy of the transcript of the hearing. I received 18 exhibits after the hearing, which were admitted into evidence without objection. (AE D-AE V) The record closed on February 20, 2019. (AE W)

Findings of Fact

In Applicant's SOR response, she admitted the allegations in SOR ¶¶ 1.a through 1.i, and she denied the allegations in SOR ¶¶ 1.j and 1.k. (HE 3) She also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is 44 years old, and she has been employed by a defense contractor in workforce planning since 2016. (Tr. 5, 8, 35; GE 1) In 1999, she graduated from high school; in 1996, she received a bachelor's degree; and in 2001, she received a master's degree in business administration. (Tr. 5, 7) She has not served in the military. (Tr. 7) In 2001, she married, and in 2012, she separated from her spouse. (Tr. 6, 20) Her twins are age 11, and her other child is 12. (Tr. 7) She has custody of her three children, and her husband is living outside of the United States. (Tr. 29)

Financial Considerations

Applicant gave her financial information to her husband's father who was supposed to file her income tax returns. (Tr. 21) When her father-in-law filed the tax returns, he filed married separate, and he allocated the deductions to her husband. (Tr. 21, 42-43; GE 1) When she received correspondence from the IRS, she gave the documentation to her father-in-law, and she believed he was handling filing of necessary tax returns for her in good faith. (Tr. 22) She believed her husband was going to pay her share of the taxes because he was using the deductions. (Tr. 23; GE 1) She believed that the tax lien was a marital debt, and thus, her husband was responsible for half of the debt. (Tr. 24) Applicant's husband was arrested on multiple occasions for domestic violence, and on one occasion, he knocked out some of Applicant's teeth. (Tr. 31) She made 12 Child Protective Services (CPS) complaints against him, and he does not visit their children. (Tr. 31) When her husband left, he took the funds from their retirement accounts. (Tr. 40)

Her September 8, 2012 separation agreement indicated Applicant and her husband had to file a consent order to have their mutual protective orders against each other dismissed. (AE V at 17) Applicant recently obtained a second job to enable her to pay her debts. (AE L) See *a/so* GE 1, Section 22 (indicating in August 2012 Applicant's husband obtained her arrest for trespass, disturbing the peace, and assault).

In 2012, Applicant was sick and unable to work outside her home for four months. (Tr. 34-35, 41; SOR response; GE 1) Applicant's SOR alleges the following financial issues.

SOR ¶¶ 1.a through 1.g, and 1.i allege eight delinquent medical debts totaling \$2,198 in the following amounts: \$877; \$674; \$321; \$121; \$67; \$35; \$34; and \$69. She said she paid several of the medical debts. (Tr. 31-32; AE B) Applicant paid \$15,000 for her children's braces. (Tr. 21) She said she just paid the debt for \$877. (Tr. 31-32; AE U) She pays her family's medical bills as she receives them. (Tr. 32)

After her hearing, Applicant provided a printout of her healthcare claims and payment activity from August 2016 to January 2019. (AE U) The chart listed approximately 140 payments to medical creditors. Many of the payments were made using a credit card and the source of the claim is not indicated on the printout. Several substantial payments are from a health savings account. (AE U) The following table shows a sample of some of the payments for medical and orthodontic bills she made from December 2017 to January 2019.

Date of Payment	Amount of Payment	Exhibit	Date of Payment	Amount of Payment	Exhibit
Dec. 7, 2017	\$1,119	AE U at 5	Aug. 9, 2018	\$243	AE U at 2
Dec. 7, 2017	\$1,119	AE U at 5	Aug. 16, 2018	\$185	AE U at 2
Jan. 7, 2018	\$2,650	AE U at 5	Aug. 26, 2018	\$185	AE U at 2
Mar. 1, 2018	\$271	AE U at 5	Aug. 29, 2018	\$194	AE U at 2
Mar. 25, 2018	\$323	AE U at 4	Nov. 27, 2018	\$34	AE U at 2
Apr. 13, 2018	\$119	AE U at 4	Jan. 10, 2018	\$975	AE U at 1
Apr. 13, 2018	\$597	AE U at 4	Jan. 24, 2019	\$133	AE S at 1
June 28, 2018	\$80	AE U at 3	Jan. 24, 2019	\$476	AE S at 2
July 21, 2018	\$489	AE U at 3	Jan. 24, 2019	\$34	AE T at 1
July 21, 2018	\$50	AE U at 3	Jan. 24, 2019	\$1,081	AE T at 2

Applicant's September 8, 2012 separation agreement indicated Applicant's husband was required to maintain health insurance for Applicant and their three children so long as it was available at reasonable cost through his employer. (AE V at 11, 13) Unreimbursed medical, dental, and orthodontic expenses for each minor child were required to be paid in direct proportion to each party's share of their combined gross income. (AE V at 12) His separation agreement required him to pay some of the other family bills; however, he only made sporadic payments. (Tr. 30) She has attempted to convince her husband to pay some of the medical debts. (AE M) Applicant acted

reasonably and responsibly in the overall resolution of her medical and dental debts, and she mitigated SOR ¶¶ 1.a through 1.g, and 1.i.

SOR ¶ 1.h alleges a tax lien filed by the Internal Revenue Service (IRS) in 2012 for \$28,188. A copy of the tax lien is not part of the record, and it is unclear which tax year or years were addressed with this lien. The lien appears to be for tax years 2008 and 2011 based on the IRS tax transcripts which show transfers of refunds to those two tax years. (AE F; AE G) Applicant's September 8, 2012 separation agreement indicated Applicant and her husband were responsible for joint debts incurred prior to May 2012, and Applicant has a good faith argument that her husband is jointly responsible for half of her tax debts for tax years 2008 and 2011. (AE at 15)

The supporting federal and state tax documentation Applicant is summarized in the following table:

Tax Year	Taxable Income or Adjusted Gross Income Rounded to nearest \$100	Tax Owed (O) or Tax Refund (R) Rounded to nearest \$100	Exhibit
Federal 2011	\$119,800	O-\$2,951	AE F; AE J
Federal 2012	\$88,600	R-\$1,300	AE N; AE I
State 2012	\$74,900	O-\$400	AE N
Federal 2013	\$123,400	R-\$1,000	AE O
State 2013	\$113,600	R-\$300	AE O
Federal 2014	\$133,200	R-\$4,000	AE P
State 2014	\$129,400	O-\$0	AE P
Federal 2015	\$147,300	O-\$1,600 ¹	AE Q
State 2015			
Federal 2016	\$111,500	R-\$9,358	AE R
State 2016			
Payments to IRS in Addition to Wage Withholding			
Date	Amount	Exhibit	
July 23, 2018	\$15,000 (Tax Year 2008)	AE D; AE G	
Aug. 31, 2018	\$4,701 (Tax Year 2008)	AE E; A E G; AE L	
Oct. 5, 2018	\$4,230 (Tax Year 2011)	AE F; AE L	
Dec. 12, 2018	\$5,000	AE F	

Applicant's tax transcript for tax year 2008 indicates that she timely filed and paid (\$32,955) to address her federal taxes for tax year 2008. (AE G) In March 2011, the IRS assessed \$15,590 in additional taxes for tax year 2008 and over the next seven years, about \$10,000 in penalties and interest. (AE G) Her federal income tax refunds for tax years 2012 (\$16,262) and 2013 (\$1,024) were applied to this debt. (AE G) On August 31,

¹ Applicant may have miscalculated the child and dependent care credit. She indicated \$1,000 on lines 3 and 6 of Form 2441, instead of \$6,000. (AE Q) She may be entitled to a credit of \$1,200 instead of \$200 on line 49 of Form 1040. (AE Q)

2018, she paid the IRS \$4,701, and the IRS credited her with paying her tax debt on her tax transcript for tax year 2008. (AE G)

Applicant did not owe any federal income taxes for tax years 2009, 2010, 2012, 2013, and 2014. (Tr. 25-26; AE F) Applicant timely filed her 2011 federal income tax return; however, she owed about \$3,500 at the time she filed her tax return. (AE F) On August 31, 2018, the IRS transferred a \$490 credit from tax year 2008, and on October 5, 2018, she paid \$4,230, resolving her tax debt for tax year 2011. (AE F; AE G)

SOR ¶ 1.j alleges Applicant failed to file or pay her federal income taxes as required for tax years 2012 through 2015. She said she filed her 2013 and 2014 federal income tax returns sometime before she responded to the SOR; however, she did not specify when she filed them. (Tr. 25-26; SOR response) In November 2017, Applicant paid the IRS \$14,504. (AE C) At the time of her hearing, she had not filed her tax returns for tax years 2015 and 2016 because she needed information from her husband to file her tax returns. (Tr. 25-27) She wanted to be sure that she correctly filed all needed information for her tax returns. (Tr. 26-27)² She met with a divorce lawyer in 2014; however, she had not seen a lawyer recently because she lacked funds to pay her lawyer. (Tr. 27) Her lawyer told her not to file the tax returns. (Tr. 27) Her lawyer said she needed to consult someone knowledgeable about taxes before doing anything. (Tr. 27-28) The first certified public accountant (CPA) she consulted wanted \$5,000 before he would advise her on what she should do. (Tr. 28) Her husband said he filed his tax returns. (Tr. 29) He is outside the country working for the U.S. Government, and he refused to give her information or assist her. (Tr. 29) He did not believe a court would be able to force him to cooperate with her because he is out of the country. (Tr. 29)

SOR ¶ 1.k alleges Applicant failed to file or pay her state income taxes as required for tax years 2012 through 2015.

On December 21, 2018, I asked Applicant to provide copies of her federal and state tax returns for tax years 2012 through 2016.³ If the tax returns are undated, I asked her to disclose when they were filed. Her “final suspense” was January 25, 2019.

² The Internal Revenue Service may reject an inaccurate return. See IRS website, <https://www.irs.gov/fags/electronic-filing-e-file>. Applicant filed her tax returns using a commercial electronic software program. (AE N-AE Q) Applicant attempted to file her 2015 federal income tax return on April 18, 2016, (the date it was due) electronically; however, the IRS rejected her electronic return without specifying the reason(s). (AE Q) Electronic returns are not accepted by the IRS after November of the year they are due. (IRS website) The proper recourse after a return is rejected is to contact the IRS, and then the IRS may instruct the caller to file the return manually. Applicant provided a 2015 federal income tax return dated December 1, 2018, which was manually signed. (AE Q) When tax information is unavailable, the taxpayer is supposed to provide a good-faith estimate and disclose the estimation to the IRS. See American Institute of Certified Public Accountants website, “Standards for Tax Services No. 4, Use of Estimates,” <https://www.aicpa.org/interestareas/tax/resources/standardsethics/statementsonstandardsfortaxservices/downloadabledocuments/ssts-no.4-use-of-estimates.pdf>.

³ Copies of email communications from and to Applicant are the source for the information in this paragraph and the next three paragraphs. (AE W)

On January 24, 2018, Applicant said she provided as attachments to emails: [c]opies of all my Federal and state returns. From 2012 on. I cannot get onto the IRS website to get the filing dates for the ones prior to 2015 because I changed my phone number and that's how the[y] verify. I need to have a new code mailed to access the online website to see my transcripts. I've been calling and cannot get through. I would assume that's due to the shut down. I'll call again in the morning. 2015 and 2016 were mailed in Dec.

Applicant provided her federal and state tax returns for tax years 2012, 2013, and 2014, and she provided her federal tax returns for tax years 2015 and 2016. On January 27, 2019, I asked Applicant to provide copies of her federal and state tax returns for tax year 2017. I also asked her to provide copies of her state tax returns for 2015 and 2016. I noted that many of the tax returns she previously provided are undated, and I asked her to disclose when they were filed.⁴ Her suspense to submit documentation was February 20, 2019. I did not receive a response to my January 27, 2019 email.

In November 2017, Applicant paid a credit card debt for \$5,272. (AE A) On December 12, 2018, she sent \$5,000 to the IRS to ensure the IRS had ample funds to address any income tax she owed. (AE L)

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

⁴ An Applicant’s failure to provide requested, available tax documentation, including IRS-generated federal income tax transcripts, can undermine mitigation of tax debts. See ISCR Case No. 16-02322 at 4 (App. Bd. Mar. 14, 2018).

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 should be construed to suggest that I have based this decision, 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 or her 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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

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" SOR ¶¶ 1.a through 1.g, and 1.i allege and credit reports establish eight delinquent medical debts totaling \$2,198, and she had a federal income tax lien entered against her for \$28,188. Applicant admitted that she failed to timely file several state and federal tax returns. She did not provide proof that her state tax returns were filed as of February 20, 2019 for tax years 2015 and 2016. 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.

Seven 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;⁵

⁵ The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

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).

No mitigating conditions fully apply to her failure to timely file and pay her federal and state income taxes; however, Applicant presented some important mitigating information about her finances. Several circumstances that were partially or fully beyond her control adversely affected her finances or filing of tax returns: (1) she was ill and unable to work for four months in 2012; (2) she was repeatedly assaulted by her husband; (3) her father-in-law was supposed to file her tax returns and did not do so; (4) her husband did not pay his share of marital debts; (5) her husband left the United States and enforcement of the separation agreement was not feasible; (6) her husband did not provide documentation or information to assist her in filing her tax returns; and (7) these multiple factors cumulatively caused her delinquent debts or distracted her from taking care of her finances, especially her federal and state income taxes for several years.

Applicant acted reasonably and responsibly in the overall resolution of her medical and dental debts. She showed numerous payments towards her family's medical or dental debts. She is credited with mitigating the medical and dental financial allegations in SOR

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)).

¶¶ 1.a through 1.g, and 1.i. SOR ¶ 1.h alleges a tax lien filed by the IRS in 2012 for \$28,188. In addition to wage withholding, in 2018, Applicant paid the IRS \$28,931. Applicant is credited with paying the tax lien alleged in SOR ¶ 1.h.

Applicant filed her federal income tax returns for tax year 2016 after her hearing.⁶ She did not provide proof that she filed her state income tax returns for 2015 and 2016. The DOHA Appeal Board has observed:

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 clarified 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

⁶ Applicant’s SOR does not allege that she did not timely file her federal and state income tax returns for tax years 2016 and 2017. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). On January 27, 2019, I emailed Applicant and requested a copy of her 2017 federal and state income tax returns; however, she may not have received my January 27, 2019 email. No adverse inference is drawn from her failure to provide her 2017 federal and state income tax returns. She received my request for her federal and state tax returns for tax year 2016, and she did provide her federal tax return for tax year 2016 (signed on December 1, 2019). Applicant’s failure to timely file her federal and state income tax returns for tax year 2016 will not be considered except for the five purposes listed above.

irresponsibility” including a failure to timely file federal income tax returns. See ISCR Case No. 15-01031 at 3 and n. 3 (App. Bd. June 15, 2016) (characterizing “no harm, no foul” approach to an Applicant’s course of conduct and employed an “all’s well that ends well” analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR).

Applicant repeatedly failed to timely file her state and federal income tax returns. As of February 20, 2019, the date the record closed, she did not provide proof that she filed her state tax returns for tax years 2015 and 2016. Financial considerations security concerns are not 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(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual’s age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under 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 Guideline F 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 44 years old, and she has been employed by a defense contractor in workforce planning since 2016. In 1996, she received a bachelor’s degree, and in 2001, she received a master’s degree in business administration. In 2001, she married, and in 2012, she separated from her spouse. She has custody of her three children, and her husband is living outside the United States.

Several circumstances partially or fully beyond Applicant’s control adversely affected her finances. She acted reasonably and responsibly in the overall resolution of her medical and dental debts, and she is credited with mitigating the financial allegations in SOR ¶¶ 1.a through 1.g, and 1.i. She is also credited with paying the tax lien alleged in SOR ¶ 1.h.

Applicant’s history of failing to timely file her federal and state income tax returns raises unresolved financial considerations security concerns. She may owe state income

taxes for tax years 2015 and 2016.⁷ When an issue of delinquent taxes is involved, an administrative judge is required to consider how long an applicant waits to file their tax returns, whether the IRS or a state generates the tax returns, and how long the applicant waits after a tax debt arises to begin and complete making payments.⁸ The primary problem here is that Applicant has repeatedly been late filing her tax returns, and she did not provide proof that she filed her state tax returns for tax years 2015 and 2016.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true financial reform and rehabilitation necessary to be eligible for a security clearance. The determination of an individual's eligibility and suitability for a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. 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. In the future, with a track record of addressing her delinquent financial obligations and timely filing tax returns and paying taxes, she may well be able to demonstrate persuasive evidence of her 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. Financial considerations security concerns are not mitigated.

⁷ See ISCR Case No. 14-03358 at 3, 5 (App. Bd. Oct. 9, 2015) (reversing grant of a security clearance, noting \$150,000 owed to the federal government, and stating "A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information.").

⁸ See ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016) (reversing grant of security clearance and stating, "His delay in taking action to resolve his tax deficiency for years and then taking action only after his security clearance was in jeopardy undercuts a determination that Applicant has rehabilitated himself and does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation's secrets."); ISCR Case No. 14-01894 at 2-6 (App. Bd. Aug. 18, 2015) (reversing grant of a security clearance, discussing lack of detailed corroboration of circumstances beyond applicant's control adversely affecting finances, noting two tax liens totaling \$175,000 and garnishment of Applicant's wages, and emphasizing the applicant's failure to timely file and pay taxes); ISCR Case No. 12-05053 at 4 (App. Bd. Oct. 30, 2014) (reversing grant of a security clearance, noting not all tax returns filed, and insufficient discussion of Applicant's efforts to resolve tax liens). More recently, in ISCR Case No. 14-05476 (App. Bd. Mar. 25, 2016) the Appeal Board reversed a grant of a security clearance for a retired E-9 and cited applicant's 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, he filed his tax returns and paid his tax debts except for \$13,000, which was in an established payment plan. The Appeal Board highlighted his annual income of over \$200,000 and discounted his non-tax expenses, contributions to DOD, and spouse's medical problems. The Appeal Board emphasized "the allegations regarding his failure to file tax returns in the first place stating, it is well settled that failure to file tax returns suggest that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information." *Id.* at 5 (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002) (internal quotation marks and brackets omitted).

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.i:	For Applicant
Subparagraphs 1.j and 1.k:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

MARK HARVEY
Administrative Judge