



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



In the matter of:)	
)	
)	ISCR Case No. 17-04272
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

02/04/2019

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant had not filed his Federal and state income tax returns for tax years 2009 through 2014 as of November 2018. Tax debts and some collection debts have not been paid. Several circumstances outside of his control impacted his finances and diverted his attention, but his failure to comply with his legal tax obligations for six consecutive years casts doubt on his judgment and reliability. Clearance is denied.

Statement of the Case

On January 18, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative*

Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AG) effective within the DOD on June 8, 2017.

Applicant responded to the SOR on February 21, 2018, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On September 7, 2018, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On October 5, 2018, I scheduled a hearing for November 15, 2018.

At the hearing, five Government exhibits (GEs 1-5) were admitted in evidence. Three documents were marked as hearing exhibits (HE) for the record but were not admitted for evidentiary purposes: a March 19, 2018 letter forwarding the proposed GEs to Applicant (HE I); a November 5, 2018 email message to Applicant forwarding GE 4 (HE II); and a list of the GEs (HE III). Applicant testified, as reflected in a transcript (Tr.) received on November 29, 2018.

I held the record open to January 2, 2019, for post-hearing submissions from Applicant. He timely submitted copies of his Federal and state income tax returns for tax years 2015 through 2017. The documents were admitted as Applicant exhibits (AEs A-G) without any objections.

Summary of SOR Allegations

The SOR alleges under Guideline F that Applicant failed to file his Federal (SOR ¶ 1.a) and state (SOR ¶ 1.b) income tax returns for tax years 2009 through 2016; that Applicant owes delinquent state income taxes totaling \$7,810 for tax years 2012 through 2015 (SOR ¶ 1.c); and that he owes collection debt totaling \$11,631 on seven accounts (SOR ¶¶ 1.d-1.j). Applicant admitted the allegations, but he also indicated that he had paid \$2,000 on the account in collection for \$7,755 (SOR ¶ 1.e). He attributed his tax filing and debt issues to several unfortunate events. After his sister died in 2003, he and his parents became guardians of his sister's four children and then his parents passed away. He stated that he was working on his tax returns.

Findings of Fact

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

Applicant is a 51-year-old high school graduate who has worked as a field technician for a defense contractor since December 2016. He and his spouse married in February 2016, and they have a six-year-old son. Applicant's spouse has an 18-year-old daughter from a previous relationship. Applicant seeks a security clearance for his current duties. He held a DOD security clearance some 30 years ago. (GE 1.)

In August 2003, the youngest of Applicant's three sisters passed away at age 37. Applicant and his parents became guardians of her four children, who were all under age 18.¹ Applicant's parents took the children into their home. Applicant moved into his parents' home to help care for his three nephews and a niece and provide some financial assistance. He was allowed by a court order to claim the children as dependents on his income tax returns. Applicant obtained health insurance coverage for his nephews and niece, and he went from paying \$58 a month to more than \$300 a month for health insurance. His food expenditures more than doubled to \$400 to \$600 a month. Applicant also helped with other household bills, but his father paid the mortgage on the house. (Tr. 23-26, 53-54.) The record evidence contains no information about Applicant's income at that time. There is also no evidence about any financial assistance provided by the children's father.

In November 2005, Applicant began working as a systems administrator at \$50,000 a year. (Tr. 37.) In 2006, his father died. Applicant became the primary provider for his ill mother, his three nephews, and his niece. In addition to the household bills, Applicant covered some of the cost of his mother's medications, which, at times, amounted to \$800 a month. (Tr. 24-25.)

Applicant's mother died in 2009. Applicant's youngest nephew was age 17 and his niece was age 15 at the time. The younger of Applicant's sisters claimed the two children as dependents on her income tax returns. When Applicant's parents' home sold in 2010, Applicant's niece went to live with the older of Applicant's two living sisters. His nephew turned 18, but Applicant continued to claim three exemptions for income tax withholding purposes because he needed the extra money. (GE 2; Tr. 26-29, 55-58.)

Applicant did not file his Federal or state X income tax returns when they were due for tax years 2009 through 2014, even for those years when he believed he overpaid his taxes. (GEs 1-2; Tr. 41.) He knew he was supposed to file his income tax returns and he "just didn't do it." (Tr. 59.) After Applicant received a notice from state X of tax delinquency for tax years 2009 to 2012,² he established a repayment plan to address his state his tax delinquencies, and he paid \$150 a month until April 2016. He believes he has resolved his state tax liabilities for tax years 2009 through 2011. (GE 2; Tr. 51, 60.) Applicant did not adjust his tax withholdings until 2015, when he began to claim zero exemptions. (GE 2, Tr. 51, 59.)

¹ Applicant testified that, in 2006, his niece was age 10 and his nephews were ages 12, 13, and 15. (Tr. 24.) However, Applicant discrepantly told an OPM investigator (GE 2) and testified at his hearing (Tr. 25, 55) that his two older nephews were 19 and 20 years old and his underage niece and nephew were 15 and 17 years old in 2009.

² Applicant is reported to have indicated during his July 2017 interview with an OPM investigator that he received the state tax delinquency notice in 2012 for tax years 2009 through 2014 [sic]. (GE 2.) His income tax returns for tax years 2012 through 2014 would not have been due in 2012. It is unclear when he received the notice of tax delinquency. GE 5 shows that he made some tax payments to state X before July 2017 that were applied to his tax delinquency for 2012.

Applicant and his spouse planned to marry in 2012, but her mother became ill in state Y. His spouse returned to state Y to care for her mother. With their son born in November 2012 being raised by his spouse across the country, Applicant began to pay court-ordered child support. He told an Office of Personnel Management (OPM) investigator in July 2017 that he paid around \$500 a month in child support. (GE 2.) At his hearing, he recalled that he paid around \$800 a month for child support. (GE 2; Tr. 27-28, 76.)

In February 2016, Applicant and his spouse married in state Y. Applicant resigned from his job in state X in March 2016 and moved to state Y in April 2016. He was unemployed until July 2016 and supported by his spouse and his savings. He worked as a contact field technician for the next five months at an income of \$4,000 a month before he obtained a permanent position with his current employer in December 2016. (GE 1; AE D; Tr. 37.)

Applicant's spouse handled his income tax returns after their marriage. (Tr. 72.) His Federal and state X income tax returns for tax year 2015 were submitted electronically on the tax deadline of April 18, 2016. (Tr. 41.) On adjusted gross income of \$64,492, he overpaid his Federal income taxes by \$1,632 (AE A) but owed \$1,216 in income taxes to state X. (AE B.) Applicant testified that his Federal refund was applied to delinquent taxes for previous tax years. (Tr. 41.)

On May 1, 2017, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). Applicant responded affirmatively to an inquiry concerning whether he had failed to file or pay Federal, state, or other taxes when required in the last seven years. He indicated that he had not yet filed his Federal and state income tax returns or paid his taxes owed for tax years 2009 through 2014 and that he owed an estimated \$5,000 in back taxes. He explained that there was "really no reason not to file," with respect to tax years 2009 through 2013, but that he had submitted his W-2 forms and would file his delinquent returns for those tax years within 30 days. Concerning tax year 2014, he explained that he was working with a tax agency to resolve his back taxes and get his returns filed. He indicated that his sibling "wrote off" his deceased sister's children on her taxes without his consent, and that as the children's legal guardian, he should have been allowed to claim them as dependents. Applicant related with respect to tax year 2015 that his tax returns had been filed, but he owed \$1,500 to state X and was working with the state to resolve his tax debt. Under optional comments, Applicant asserted that he "did start filing and paying taxes again in 2015." He expressed his belief that his state taxes had been paid up to tax year 2014. (GE 1.)

In response to an SF 86 inquiry concerning any delinquency involving enforcement, Applicant listed a judgment estimated at \$7,775 [sic] for a defaulted auto loan (SOR ¶ 1.e) on which he could not afford payments after his son was born. He explained that he had contacted the creditor recently to arrange for repayment. Applicant answered "Yes" to whether he had any bills or debts turned over for collection in the last seven years, and he indicated that he owed \$315 for a payday loan (SOR ¶ 1.d), \$2,214 for wireless phone services (SOR ¶ 1.i), and \$149 for cable television service (SOR ¶ 1.f) that he would

repay. He explained that he defaulted on the payday loan and his wireless phone account because he had to pay child support. He questioned his liability for the cable television debt claiming that he did not open the account. However, he also indicated that he would contact the creditor to pay the debt in full. (GE 1.) A check of Applicant's credit on July 7, 2017, revealed that he owed \$7,755 on the previously disclosed defaulted auto loan (SOR ¶ 1.e); \$315 on the payday loan (SOR ¶ 1.d); \$149 for cable television (SOR ¶ 1.f); and \$2,214 for wireless phone services (SOR ¶ 1.i). His cell phone account first became delinquent in December 2015 and was considered seriously past due as of January 2017. His credit report also revealed old collection debts of \$668 for natural gas services (SOR ¶ 1.g), \$416 for utility services (SOR ¶ 1.h), and \$114 for insurance when he lived in state X (SOR ¶ 1.j). (GE 3.)

On July 21, 2017, Applicant was interviewed by an investigator for the OPM. He admitted that he had not filed his Federal and state income tax returns for tax years 2009 through 2014. His tax returns for tax year 2015 were filed, but he owed approximately \$1,500 in state X taxes. After he received a notice from state X indicating that he owed taxes for several years starting with tax year 2009, he reported making \$150 payments toward his state X income tax debts until he moved in April 2016. Applicant acknowledged that he had yet to resume his tax payments because all of his tax documents had been provided to a local accountant. He indicated that the accountant would file all of his delinquent federal and state income tax returns along with his 2016 income tax returns in August 2017. Applicant stated that he would establish repayment plans for his tax debts. (GE 2.)

Regarding his listed judgment debt for the defaulted car loan, Applicant explained that he made timely payments of \$584 a month for about a year until November 2012, when his son was born and his brother passed away. Applicant helped pay for his brother's funeral, and he had an ongoing child support obligation for his son until April 2016. Applicant had the vehicle voluntarily repossessed, and it was sold at auction in 2013, leaving him responsible for a \$7,775 [sic] deficiency balance. On receiving notice in October 2016 of a May 2016 default judgment, Applicant contacted the creditor, who demanded a lump-sum payment that he could not pay. Applicant explained that he and his spouse intended to sell her home to repay the debt.³ As for the payday loan, Applicant obtained the loan in January 2013 for food, gasoline, and other living expenses. He indicated that he contacted the collection entity in January 2017, and indicated that he would pay off the debt in full. However, he later learned that his spouse had not paid the debt. He explained that he and his spouse had budgeted to pay off the debt in October 2017. Applicant acknowledged the \$2,214 wireless telephone debt, which he maintained would be paid in full in August 2017. As for the \$149 cable television debt, Applicant indicated that he closed the account when he moved in October 2012. He had been unaware of a balance due before he obtained his credit report in September 2016. He cited lack of funds as the reason why he had not paid the debt, but his child care expenses would be reduced in September 2017 when his son started school. Concerning the delinquencies not listed on his SF 86, Applicant became aware of the \$114 insurance debt

³ As of November 2018, Applicant and her spouse were still residing at the same address, so it does not appear that his spouse sold her home to help him pay his debts.

when he obtained his credit report. He indicated that he would satisfy the debt by December 2017. Applicant did not deny the \$416 utility debt when confronted, which he assumed was a final bill that he did not receive. As for the \$668 natural gas debt, Applicant was a tenant when he had a gas leak, and he had heard nothing further about the debt after he contacted his landlord. He indicated that he would work the debt into his budget to repay it by December 2017. Applicant described his financial situation as “getting better” in that he and his spouse have been able to pay their current living expenses. He added that they would continue to use a budget, live within their means, and start savings for an emergency fund. (GE 2.)

On July 19, 2017, state X billed Applicant for unpaid income taxes totaling \$7,810 for tax years 2012 through 2015 after being credited for \$783 in payments applied to his tax debt for tax year 2012. (GE 5.) On July 28, 2017, Applicant provided the OPM investigator with a copy of the notice. He explained that the payments he made to state X before April 2016 fully resolved his state X tax debts for tax years 2009, 2010, and 2011. He expressed an intention to contact state X to establish a payment plan for the taxes owed for tax years 2012 through 2015 and to file his delinquent Federal and state income tax returns in August 2017. Applicant related that he contacted the gas company about the \$668 debt and was waiting to hear back about the debt. Applicant had made no effort to look into the \$416 utility debt in collection, but he planned to pay it off by December 2017. (GE 2.)

Applicant submitted his Federal and state income tax returns for tax year 2016 on September 29, 2017.⁴ (AEs C-E.) Applicant asserts that he filed his income tax returns on time. (Tr. 42.) Based on adjusted gross income of \$51,515, Applicant was entitled to Federal tax refund of \$301. (AE C.) He earned \$34,158 of his income in state Y, and was paid a refund of \$103. (AE D.) Applicant underpaid his state X income taxes by \$133 on earnings of \$17,357 in state X for 2016. He arranged for the debt to be paid through automatic deduction from his bank account. (AE E.)

Applicant filed his Federal and state tax returns for tax year 2017 before his November 2018 hearing. (Tr. 43.) After his hearing, he provided copies of his Federal and state income tax returns confirming that they had been filed electronically, but his returns do not show the filing date. Based on adjusted gross income of \$95,030, Applicant overpaid his Federal income taxes by \$1,985 (AE F) and his state Y income taxes by \$1,623. (AE G.) He received a notice from the Internal Revenue Service (IRS) that he owed approximately \$1,300 for tax year 2010 and assumed that his refund for 2017 would be seized and applied to his debt for tax year 2010. However, he received his refund for 2017. (Tr. 44, 48.)

As of November 2018, Applicant had not filed his delinquent Federal and state income tax returns for tax years 2009 through 2014. (Tr. 43.) When asked to explain his continuing noncompliance with his legal obligation to file these tax returns, Applicant indicated that he had given his documentation to a local tax preparer, but his spouse

⁴ The deadline for filing was April 18, 2017, unless Applicant requested an automatic six-month extension of the deadline to October 16, 2017.

thought it cost too much and that she could handle them. (Tr. 46.) He was told by state X that if he filed his delinquent state returns, he would receive refunds rather than owe income taxes. (Tr. 45-46.) Applicant now intends to consult a tax attorney for assistance in filing his delinquent tax returns. (Tr. 47.) Applicant has not made any payments toward his state X tax debts since moving to state Y in April 2016. (Tr. 52.)

Applicant focused on resolving his largest consumer credit debt. He testified that he made payments starting in January 2018 to fully satisfy the car loan deficiency in SOR ¶ 1.e. (Tr. 52, 62-64.) As of November 5, 2018, Equifax was reporting the account as having a zero balance after a \$1,127 payment made in October 2018. (GE 4.) Applicant had made no progress toward resolving the \$315 payday loan (SOR ¶ 1.d), the \$2,214 wireless phone debt (SOR ¶ 1.i), and the \$416 utility debt (SOR ¶ 1.h). (GE 4; Tr. 52, 66-70.) Applicant owes \$169 on a personal services debt placed for collection in the amount of \$489 in September 2017. The delinquent cable television debt (SOR ¶ 1.f) and \$114 insurance debt (SOR ¶ 1.j) were no longer on his credit record (GE 4), but there is no evidence that he made any payments toward them. Applicant acknowledges that he has not paid the insurance debt. (Tr. 70.) He was making timely payments of \$534 monthly on an automobile loan obtained for \$22,837 in December 2016. (GE 4.) He had to purchase a new car when his truck broke down. (Tr. 52, 65.)

Applicant's current salary is \$72,300 annually. (Tr. 36.) As of November 2018, he had \$230 in combined savings and checking deposits. He has about \$3,000 in retirement assets. (Tr. 70.) His spouse just started a new, full-time job with the state. She is paid \$36 an hour. For the past two years, she worked part time, about 20-30 hours a week at \$35-\$36 an hour, while attending school. (Tr. 71, 74-75.) Afterschool care for his son is about \$300 a month. (Tr. 66.) He and his spouse had previously paid \$700 a month for daycare. (Tr. 67.) Applicant believes he is "on track to do a lot better [financially]." (Tr. 72.) He estimates that after paying his routine bills, he has \$500 a month to put toward his debts, such as his taxes. (Tr. 73.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative

judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are articulated in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable 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.

Applicant acknowledges that he has yet to file his Federal and state income tax returns for tax years 2009 through 2014. With regard to his alleged failure to file timely tax returns for tax years 2015 and 2016, Applicant filed his returns for 2015 on the tax deadline in April 2016. He filed his returns for tax year 2016 in late September 2017, which would have been within the extended tax deadline if he applied for an automatic extension. There is no evidence showing that he filed for an extension, and his tax returns for 2016 do not indicate whether the IRS and states X and Y accepted his returns as timely. However, it does appear that his income tax returns for tax year 2016 were filed well before the SOR was issued in January 2018.

In July 2017, state X billed Applicant for \$7,810 in income taxes and penalties owed for tax years 2012 through 2015. Applicant now asserts that he has been told by the state that he will be entitled to refunds if he files his delinquent returns, but he presented no corroborating documentation. Disqualifying condition AG ¶ 19(f), "failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required," applies because of his noncompliance with his tax filing obligations for tax years 2009 through 2014 and the evidence of outstanding state X tax delinquency.

Available credit reports and Applicant's admissions establish a record of consumer credit delinquencies that raise Guideline F security concerns under AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations." Applicant had a vehicle voluntarily repossessed in 2013 when he could no longer afford the \$548 monthly payment. After resale at auction, he owed a \$7,755 deficiency balance on his auto loan that was ignored until January 2018. Six other accounts totaling \$3,876 were placed for collection.

Applicant has the burden of establishing that matters in mitigation apply. One or more of the following conditions under AG ¶ 20 may apply:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

(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; 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.

While acknowledging that Applicant's tax problems and consumer credit delinquencies were largely incurred before he moved to state Y, his ongoing failures to file his Federal and state income tax returns for tax years 2009 through 2014 and to address his past-due taxes to state X for tax years 2012 through 2015 constitute continuing conduct of security concern not mitigated under AG ¶ 20(a). Likewise, although his default of his car loan is not recent in that he stopped paying on his vehicle loan in 2012, the deficiency balance went unpaid before 2018. His wireless telephone debt in SOR ¶ 1.i became seriously delinquent in January 2017, so it is a relatively recent collection debt.

Applicant's finances were negatively impacted by the deaths of his sister and his parents, which are circumstances contemplated within AG ¶ 20(b). Following the death of his father in 2006, Applicant had to cover most of the financial obligations for his household, which included his three nephews, his niece, and his mother. Applicant had financial responsibility in 2009 for his youngest nephew and his niece after his mother died. He may not have known beforehand that his sister would claim the children as dependents for income tax purposes, given he had legal guardianship of the children. However, it would mitigate only the tax delinquency that resulted from him claiming three exemptions for income withholding in 2009. Applicant had a legal obligation to file timely tax returns whether or not he owed taxes, and it was a matter within his control. Applicant did not act responsibly under AG ¶ 20(b) by not filing his income tax returns for six consecutive tax years and by not adjusting his tax withholdings before 2015 to accurately reflect his tax status after his nephew came of age and his niece moved in with his sister in 2010.

Regarding his handling of his consumer credit accounts, Applicant incurred some unexpected financial costs for his brother's funeral in 2012. After his son was born in

November 2012, Applicant had to pay court-ordered child support, which set him back financially. Even so, a significant element of financial responsibility is keeping in contact with one's creditors to attempt to resolve debts. Applicant credibly asserts that he made tax payments to state X to fully satisfy his state income tax delinquency for tax years 2009 through 2011. A July 2017 state tax billing reflects that payments totaling \$783 were applied to his state X tax liability for tax year 2012. It is likely that his state tax liabilities for 2009 through 2011 have been paid, given those tax years were not included on the recent notice of tax delinquency and the state applied some payments received to his tax debt for tax year 2012. It is also noted that Applicant paid a significant amount to resolve his defaulted vehicle loan. These payments to address his state taxes and his vehicle loan are viewed favorably, but some concern persists because of his failure to give adequate priority to complying with his tax-filing obligation when he knew it was of concern to the DOD.

Applicant's tax payments to state X until April 2016 and his more recent satisfaction of his defaulted vehicle loan in 2018 warrant some application of AGs ¶¶ 20(c), 20(d), and, with respect to his state taxes, also 20(g). Applicant has shown good financial judgment in making timely payments on a car loan obtained in late December 2016, and by filing with his spouse's help his income tax returns for tax years 2015 through 2017. These tax filings suggest that Applicant may comply with tax-filing deadlines in the future. Yet, even where tax problems have been corrected and an applicant is motivated to prevent such problems in the future, the administrative judge is not precluded from considering an applicant's trustworthiness in light of longstanding prior behavior evidencing irresponsibility. See e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 2015). The Appeal Board has long held that the failure to file tax returns suggests a problem with complying with well-established government rules and systems. See e.g., ISCR Case No. 14-04437 (App. Bd. Apr. 15, 2016.) The Appeal Board recently reiterated that a person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See ISCR Case No. 17-01471 (App. Bd. Oct. 23, 2018). It is difficult to understand Applicant's delay in filing his tax returns, particularly where it may be in his self-interest to do so, given his claim that he will be entitled to a refund of state X taxes and not owe the \$7,810 currently being demanded by the state. Applicant testified that he intends to retain a tax attorney for assistance in filing his delinquent returns. His intention is not enough to fully mitigate the security concerns that persist because of his unresolved tax matters.

Concerning his unresolved collection debts, Applicant's income of \$72,300 annually would appear to be sufficient for him to make some debt payments. He testified that his financial situation is improving and that he has about \$500 a month that could be put toward his debts. However, he had yet to contact some of his creditors, including the IRS about a tax debt for 2010 of approximately \$1,300. Promises to pay a debt at some future date are not a substitute for financially responsible behavior.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

The security clearance adjudication involves an evaluation of an applicant's judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). Applicant has worked for his employer since December 2016. He candidly disclosed his tax filing and debt issues on his May 2017 SF 86 and indicated at that time that he would file his delinquent tax returns within 30 days. Those tax returns had not been filed as of his November 2018 hearing, which casts doubt on his reliability. The Appeal Board has repeatedly held that the government need not wait until an applicant mishandles or fails to safeguard classified information before denying or revoking security clearance eligibility. See, e.g., ISCR Case No. 08-09918 (App. Bd. Oct. 29, 2009) (citing *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969)). It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Applicant's failure to give priority to such an important obligation as filing tax returns required by law causes lingering doubt about his security worthiness that has not been fully mitigated.

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-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.j:	Against Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge