



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



In the matter of:)
)
) ISCR Case No. 18-00816
)
Applicant for Security Clearance)

Appearances

For Government: Liam Apostol, Esq., Department Counsel
For Applicant: *Pro se*
04/23/2019

Decision

HARVEY, Mark, Administrative Judge:

Applicant has several unresolved debts including delinquent federal income taxes. He did not make sufficient progress resolving his delinquent debts. He refuted the allegation that he failed to disclose his delinquent debts on his May 11, 2016 Questionnaire for National Security Positions (SF 86) or security clearance application (SCA) with intent to deceive. (Government Exhibit (GE) 1) Personal conduct security concerns are refuted; however, financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On May 11, 2016, Applicant completed and signed an SCA. (GE 1) On April 3, 2018, 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, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; 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 him, 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 and personal conduct guidelines.

Applicant provided an undated response to the SOR. (HE 3) Applicant requested a hearing. (Transcript (Tr.) 15-16) On June 27, 2018, Department Counsel was ready to proceed. From July 13, 2018, to February 6, 2019, the case was assigned to other administrative judges, and on February 7, 2019, the case was transferred to me for administrative reasons. On July 16, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling Applicant's hearing for August 17, 2018. (HE 1A) On December 31, 2018, DOHA issued a notice scheduling Applicant's hearing for January 17, 2019. (HE 1B) The hearing was delayed at Applicant's request for medical reasons. (HE 1C) On February 19, 2019, DOHA issued a notice of hearing, setting the hearing for March 8, 2019. (HE 1D) The hearing was held as scheduled using video teleconference.

Department Counsel offered seven exhibits; Applicant did not offer any exhibits; there were no objections to the documents; and they were admitted into evidence. (Tr. 20-24; GE 1-7) On March 19, 2019, DOHA received a copy of the transcript of the hearing (Tr.). The record was initially scheduled to close on April 10, 2019. (Tr. 93-94, 101) I granted an extension at Applicant's request until April 22, 2019. (HE 4) Applicant did not provide any post-hearing exhibits.

Procedural Issue

Department Counsel moved to withdraw SOR ¶¶ 1.n and 1.o because the allegations were duplicated elsewhere in the SOR. (Tr. 16) Applicant did not object, and I granted the motion. (Tr. 17) I made a notation on the SOR documenting my decision. (Tr. 17; HE 2)

Applicant said he sent some materials to Department Counsel; however, the documents were not received. (Transcript (Tr.) 13) I asked Applicant to send them to Department Counsel and myself via email. (Tr. 13-14; HE 5) On April 20, 2019, I reminded Applicant that I had not received any documentation from him and that his suspense was on April 22, 2019. (HE 5)

Findings of Fact

In Applicant's SOR response, he admitted the allegations in SOR ¶¶ 1.c, 1.d, 1.k, and 1.v. (HE 3) Applicant's admissions are accepted as findings of fact.

Applicant is a 56-year-old pilot and maintenance specialist for unmanned aerial vehicles (aircraft piloted by remote control or onboard computers) and drones. (Tr. 7-8, 25) He has worked for the same government contractor since July 2014. (Tr. 25) He served in the Air Force for almost 28 years, and he honorably retired from the Air Force Reserve in 2008 as a master sergeant. (Tr. 8, 28) He served in Panama in Operation Just Cause, in Southwest Asia in Desert Shield/Desert Storm, in Kosovo, Iraq, and Afghanistan. (Tr. 8-9) His most recent deployments have been to Iraq and Africa. (Tr. 26)

In 1981, Applicant graduated from high school, and in 2003, he received a bachelor's degree in management. (Tr. 7-8) In 1997, he married, and in 2014, he divorced. (Tr. 9-10) His children are ages 12 and 14. (Tr. 10)

Financial Considerations

Applicant attributed his financial problems to his spouse's failure to maintain his finances while he was deployed overseas. (Tr. 19) She used illegal drugs. (Tr. 38) She failed to make payments on two houses, and they were lost to foreclosure. (Tr. 38) After they divorced in 2014, Applicant's spouse did not pay her share of marital debts. Around the time of his divorce, he owed his brother \$50,000 "and some other people." (Tr. 29) Applicant was deployed in 2015 when the Internal Revenue Service (IRS) started garnishing his pay, and that is when he first learned he had problems with his federal income taxes. (Tr. 74) Applicant has been in the United States without being deployed overseas since March 2017. (Tr. 26) He was injured during his last deployment. (Tr. 26) His current annual salary is about \$105,000. (Tr. 27) He has custody of his children; however, he does not receive any child support from his former spouse. (Tr. 29-30)

From May 2011 to May 2015, Applicant was not deployed, except for some brief trips overseas. (Tr. 91) He was employed in fracking for almost two years in the United States. (Tr. 31, 91) He was mostly deployed from May 2015 to March 2017. (Tr. 92)

Applicant's SOR alleges the following financial issues:

SOR ¶ 1.a alleges a mortgage account that went to foreclosure and resulted in a deficiency balance of \$21,525. Applicant said he was overseas when his residence and a rental property were foreclosed. He denied that he owed anything, and he said he received a letter from the creditor indicating he did not owe the debt. (Tr. 40) Applicant's March 6, 2018 Equifax credit report shows the \$21,525 as a "past due" amount; the account became delinquent in 2012; and the property was sold. (GE 3) His December 31, 2018 Equifax credit report does not list this debt. (GE 2)

SOR ¶¶ 1.b and 1.f allege delinquent utility accounts for \$1,671 and \$551. Applicant said his wife paid the debts in SOR ¶¶ 1.b and 1.f around 2010 or 2011. (Tr. 41-42, 48-49)

SOR ¶¶ 1.c, 1.d, 1.e, 1.g, 1.i, 1.s, 1.t, and 1.u, allege eight medical debts placed for collection for \$1,125, \$969, \$759, \$480, \$81, \$2,715, \$917, and \$711. SOR ¶¶ 1.k and 1.v allege delinquent medical debts for \$84 and \$93. Over the last five years, Applicant has received some medical treatments. Around 2015, he was taken by ambulance to a hospital for emergency treatment. (Tr. 43) He did not have documentation on the ten medical SOR debts, or if he did, he did not provide it. When he contacted the medical providers, they were unable to locate supporting documentation. (Tr. 45, 51, 68-69) He wanted to determine whether the bills were for himself or his former spouse. (Tr. 45-47, 58-59) He had medical insurance, and he wanted to determine whether the medical bills were his responsibility or the responsibility of his insurance. (Tr. 46-47, 58) He believed he paid the debts in SOR ¶¶ 1.i and 1.v for \$81 and \$93; however, he was

unable to obtain documentation showing payment. (Tr. 59, 69) Applicant accepted responsibility for the medical debt in SOR ¶ 1.s for \$2,715, and the creditor offered to settle the debt for \$735. (Tr. 66-67) He was waiting for the creditor for SOR ¶ 1.s to send him a settlement bill. (Tr. 67) None of the 10 medical debts were shown on his December 31, 2018 Equifax credit report. (Tr. 48; GE 2) Applicant is credited with resolving all of the medical debts except for the debt in SOR ¶ 1.s, which he admitted was unresolved.

SOR ¶¶ 1.h, 1.i, 1.j, and 1.m allege miscellaneous delinquent debts for \$295, \$245, \$205, and \$3,415. Applicant said he successfully disputed the debt in SOR ¶ 1.h. (Tr. 52-54) He did not think the debts in SOR ¶¶ 1.i and 1.j were legitimate debts, and he contacted the original creditors. (Tr. 55-57) He did not understand why the debts in SOR ¶¶ 1.i and 1.j were on his credit report. (Tr. 55-57) Applicant said he did not owe the debt in SOR ¶ 1.m because his former spouse improperly opened the account without his permission. (Tr. 60) He said the creditor for SOR ¶ 1.m is pursuing his former spouse for payment of the debt. (Tr. 61)

SOR ¶ 1.p alleges a mortgage account was foreclosed in 2011. Applicant said the foreclosure was actually in 2012. (Tr. 61) His spouse received a check from the creditor for \$3,800. (Tr. 62) He blamed his spouse for not paying the mortgage while he was deployed. (Tr. 63-64) He believed the creditor owed him money from the sale of his residence. (Tr. 63)

SOR ¶¶ 1.q, and 1.r allege two bank debts owed to the same bank, which were placed for collection for \$8,624 and \$4,577. Applicant contacted the creditor and learned there were two accounts; however, he believed one of them was his spouse's responsibility. (Tr. 64-65) He believed the smaller debt was his responsibility. (Tr. 65) He did not provide any evidence of payments to address either debt. (Tr. 66)

SOR ¶ 1.w alleges a charged-off bank debt for \$17,797. Applicant contacted the creditor, and in December 2018, the creditor offered to settle the debt for \$8,000. (Tr. 70-71) Applicant accepted the settlement offer; however, he wanted to resolve the IRS debt first. (Tr. 72)

SOR ¶ 1.x alleges a federal tax lien filed in November 2014 for \$20,711. Applicant said his spouse lied to him about filing their tax returns for tax years 2007 to 2014. (Tr. 19, 31, 73) She had a power of attorney. (Tr. 73) Applicant was "taking home \$16,000 a month" while he was deployed overseas. (Tr. 73) He deployed overseas, and the IRS began garnishing his pay. (Tr. 31) After he learned about his tax problems, he hired a tax company to work on his taxes. (Tr. 31) The tax company lost his documentation, and in 2016, he stopped working with the tax company that lost his documentation. (Tr. 31, 76)

In April 2018, Applicant sought the assistance of an expert in tax-exempt status and contractor taxes. (Tr. 19, 32, 38) He believed the IRS owed him refunds because some of his income overseas was tax exempt. (Tr. 32) The expert was unable to timely complete his tax returns because Applicant's documentation was in storage. (Tr. 33) He described his tax situation as a "big mess" and asserted he is contacting his creditors to "clear everything up." (Tr. 20, 34)

Applicant intended to file or refile his federal income tax returns for 2007 to 2014, and he plans to file his tax returns for 2015, 2016, and 2017. (Tr. 35-36, 79) He filed tax returns for tax years 2007 to 2014 in the beginning of 2016. (Tr. 80) He also filed a tax return in 2015 for tax year 2014. (Tr. 79) He was reluctant to file his tax returns for tax years 2015, 2016, and 2017 because the IRS might take his refunds to address the \$20,000 debt that Applicant believed was erroneous. (Tr. 37) He believed the IRS erroneously believed he made a profit on his home that was foreclosed. (Tr. 81) He said the IRS owed him \$100,000 to \$120,000. (Tr. 79) He wanted to file everything together. (Tr. 38, 75)

I requested that Applicant provide the following documents: his IRS tax account transcripts;¹ his DD Form 214; the IRS power of attorney he gave to his spouse to file his tax returns without his knowledge; proof of any payments, payment plans, or settlement negotiations relating to any SOR creditors; and a recent credit report from the three major credit reporting companies. (Tr. 93-94) I explained that he could also provide performance evaluations, awards, letters of recommendation, and any other documentation that he believed would help him obtain reinstatement of his security clearance. (Tr. 96)

Personal Conduct

Applicant's May 11, 2016 SCA asked about his delinquent debts including debts in collections and charged-off debts in the previous seven years. Applicant denied that he had debts meeting this criteria; however, in the comments sections of his SCA he said his spouse "did not pay bills, caused all financial issues to include foreclosure, bad debts, not paying income taxes or filing income taxes for many years. I have taken steps to resolve all the financial issues and clear my bad credit." (GE 1 at 33-34) He disclosed his delinquent tax debt of \$21,000, for tax year 2014, and he said it was satisfied in April 2016. (Tr. 89; GE 1 at 30) He said, "I have filed and [am] paying installments to correct the issue currently. I have an install[ment] agreement with the IRS and [am] completing them currently." (GE 1 at 30) He said he was unaware of his delinquent debts when he completed his May 11, 2016 SCA. (Tr. 83) He had difficulty completing the security clearance application while deployed overseas due, in part, to problems with the Internet and saving the document. (Tr. 84)

During Applicant's June 1, 2017 Office of Personnel Management (OPM) personal subject interview (PSI), Applicant volunteered that his spouse failed to file and pay their federal income taxes in the amount of \$21,000 for tax year 2014. (Tr. 92) He said he was making monthly payments to the IRS of \$428, and his payments would be complete in two months. (Tr. 92; GE 7 at 6-7) He was unable to provide the status of numerous delinquent debts the OPM investigator asked him about during this PSI. (GE 7)

¹ 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).

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing 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 “(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.” The SOR alleges and the record established the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(f) 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;²

(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

² 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 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)).

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 all SOR allegations; however, Applicant presented some important mitigating information about his finances. Several circumstances that were partially or fully beyond his control adversely affected his finances or filing of tax returns: (1) he was deployed overseas to combat or conflict areas; (2) his spouse lied to him about paying debts and/or filing his tax returns; (3) his spouse did not pay his share of marital debts; (4) he was divorced in 2014; and (5) these multiple factors cumulatively caused his delinquent debts or distracted him from taking care of his finances.

Applicant’s SOR indicates all several delinquent debts are in charged-off status on his credit report. A “charged-off debt” is an accounting entry. A creditor considers a debt owed to the creditor to be an asset. When the value of the asset is in doubt, the creditor is required to change the status of the debt to reflect its current status. When the debt appears to be uncollectible, the creditor should change the status for accounting purposes from being an asset to charged-off status. Notwithstanding the change to charged-off status, a creditor may still sell the debt to a collection agent, and the debtor may still pay or settle the debt. Eventually, the charged-off debts will be dropped from the debtor’s credit report. “[T]hat some debts have dropped off his [or her] credit report is not meaningful evidence of debt resolution.” ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer.³ Debts may be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid, a creditor fails to timely respond to a credit reporting company’s request for information, or when the debt has been charged off. “Mere evidence that debts no longer appear on credit reports is not reason to believe that they are not legitimate or that they have been satisfactorily resolved.” ISCR Case No. 16-02941 at 2 (App. Bd. Dec. 29, 2017) (citing ISCR Case No. 14-03747 at 2-3 (App. Bd. Nov. 13, 2015)).

Applicant was overseas when his residence and a rental property were foreclosed. The foreclosures were his spouse’s fault because she did not make the mortgage payments. He indicated at least one foreclosure occurred in 2012, and from then on he was on clear notice that his spouse could not handle his finances. I have credited Applicant with mitigating the debts in SOR ¶¶ 1.a through 1.q, 1.t, 1.u, and 1.v. His spouse might be responsible for the debts; they might be the responsibility of his medical insurance; and/or they might be paid.

³Title 15 U.S.C. § 1681c. See Federal Trade Commission website, Summary of Fair Credit Reporting Act Updates at Section 605, <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf>.

Applicant admitted responsibility for three substantial debts in SOR ¶¶ 1.r (\$4,577), 1.s (\$2,715), and 1.w (\$17,797). He said he had some settlement discussions with these creditors; however, he had not reached any settlements or made any payments. He did not make sufficient progress addressing these three debts.

Applicant did not establish that he had filed all required federal income tax returns.⁴ 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 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”

⁴ Applicant's SOR does not allege that he did not timely file some of his federal income tax returns. 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)). Applicant's failure to timely file some of his federal income tax returns will not be considered except for the five purposes listed above.

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 failed to timely file some of his federal income tax returns. It is unclear how much he owes the IRS. Financial considerations security concerns are not mitigated.

Personal Conduct

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

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes one condition that could raise a security concern and may be disqualifying in this case, "(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . used to conduct investigations, . . . determine security clearance eligibility or trustworthiness. . . ." ⁵ Applicant's May 11, 2016 SCA asked about his delinquent debts including debts in collections and charged-off debts in the previous seven years. He answered, "no," and denied that he had debts meeting this criteria. His answers to these questions are incorrect.

On his May 11, 2016 SCA in the comments sections, Applicant disclosed his financial problems, including a "foreclosure, bad debts, not paying income taxes or filing income taxes for many years." Although he did not provide a list of his delinquent debts, he did highlight to security officials that he had significant financial problems. He honestly and sincerely believed his answers to questions on the SCA were accurate. He did not intend to deceive security officials about his financial predicament. He has refuted the allegation that he intentionally failed to disclose information, and he intended to deceive security officials about his finances. Personal conduct security concerns are refuted.

⁵ The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

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

Applicant is a 56-year-old pilot and maintenance specialist for unmanned aerial vehicles and drones. He served in the Air Force for almost 28 years, and he honorably retired from the Air Force Reserve in 2008 as a master sergeant. He served in Panama for Operation Just Cause, in Southwest Asia for Desert Shield/Desert Storm, in Kosovo, Iraq, Africa, and Afghanistan. In 2003, he received a bachelor's degree in management. In 1997, he married, and in 2014, he divorced. He has custody of his children, who are ages 12 and 14.

Five circumstances that were partially or fully beyond his control adversely affected his finances or filing of tax returns: (1) he was deployed overseas to combat or conflict areas; (2) his spouse lied to him about paying debts and/or filing his tax returns; (3) his spouse did not pay her share of marital debts after their divorce in 2014; (4) he was divorced in 2014; and (5) these multiple factors cumulatively caused his delinquent debts or distracted him from taking care of his finances. Applicant is credited with mitigation of most of the SOR debts.

Most importantly, Applicant has a history of delinquent federal income taxes. He admitted a tax debt from taxes for tax year 2014 of over \$20,000. The IRS garnished his pay. He revealed he had not filed his tax returns for tax years 2015, 2016, and 2017.⁶ When an issue involving taxes arises, an administrative judge is required to consider how

⁶ 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.").

the tax debt arose and the payment history on the tax debt.⁷ Applicant did not provide a good reason for failing to act more aggressively to address his delinquent debts and unfiled tax returns once he returned to the United States in March 2017.

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. Personal conduct security concerns are refuted; however, financial considerations security concerns are not 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 through 1.q:	For Applicant
Subparagraphs 1.r and 1.s:	Against Applicant
Subparagraphs 1.t, 1.u, and 1.v:	For Applicant
Subparagraphs 1.w and 1.x:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

⁷ 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).

Conclusion

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

MARK HARVEY
Administrative Judge