



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



In the matter of: )  
 )  
 [Name Redacted] ) ISCR Case No. 18-01045  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

03/05/2019

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant was not timely in filing his federal income tax returns for tax years 2014 through 2016, and he became seriously delinquent on two loans and on a debt owed to the government. He is credited with making payments toward his delinquent debts, but he still owes more than \$15,000 on a defaulted car loan. His income tax returns for 2015 and 2016 were not filed until they became an issue for his security clearance eligibility. Clearance is denied.

**Statement of the Case**

On July 6, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing a security concern 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.

On July 17, 2018, Applicant responded to the SOR allegations and requested a decision based on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On October 15, 2018, the Government submitted a File of Relevant Material (FORM), consisting of seven exhibits (Items 1-7). DOHA forwarded a copy of the FORM to Applicant, and instructed him to respond within 30 days of receipt. Applicant received the FORM on October 29, 2018. The deadline for his rebuttal to the FORM was extended to December 14, 2018. On December 3, 2018, Applicant submitted a timely response that was accepted without any objections by the Government on December 4, 2018. On January 30, 2019, the case was assigned to me to determine whether it is clearly consistent with national security to grant or continue a security clearance for Applicant. I received the case assignment on February 4, 2019, and accepted Applicant's FORM response in the record as Applicant Exhibit (AE) A.

### **Findings of Fact**

The SOR alleges under Guideline F that Applicant failed to timely file his federal income tax returns for tax years 2014 through 2016 (SOR ¶ 1.a), and that as of July 6, 2018, he owed charged-off balances of \$17,381 (SOR ¶ 1.b) and \$892 (SOR ¶ 1.d) to a credit union, and collection balances of \$1,121 (SOR ¶ 1.c) and \$328 (SOR ¶ 1.e) to the U.S. government. In his Answer to the SOR (Item 2), Applicant indicated that his tax returns for tax years 2014 through 2015 have been filed and he had paid off the \$1,121 debt in 2016. He admitted that he owed the credit union, but indicated that he had been repaying the debts on a monthly basis. Applicant denied the debt in SOR ¶ 1.e based on lack of knowledge. After considering the FORM, which includes Applicant's Answer to the SOR (Item 2), and AE A, I make the following findings of fact.

Applicant is 30 years old and unmarried. He has attended college but has not earned a degree. He served honorably on active duty in the U.S. military from August 2006 to August 2012, and he held a DOD secret clearance granted to him in 2006. He was in the active reserve from October 2014 until March 2017, when he was given a general discharge under honorable conditions. He was not able to fulfill his drill service on the scheduled dates because he was either working out of the country or attending school in a distant state. (Items 4, 7.)

On his discharge from active duty, Applicant lived with his parents and was unemployed for a year. From August 2013 to May 2014, he attended college full time. In July 2014, he began working as a weapons technician for a defense contractor. (Item 4; AE A.) Applicant earned \$18,341 in wages from July 2014 through December 2014. He allowed the April 15, 2015 deadline for filing his federal income tax return for tax year 2014 to pass without filing his tax return.<sup>1</sup> (AE A.) He cites his focus on completing his tasks as a

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<sup>1</sup> The SOR does not allege a failure to file state income tax returns. A record of the state tax authority indicates that Applicant does not have a filing requirement for tax years 2014 through 2017, and no tax liabilities or pending tax assessments for those tax years. (Item 5.)

weapons technician, the difficulty in transitioning from the military to civilian life, and fear of losing his new job as the reasons why he “neglected to start on [his] taxes on time.” Applicant acknowledges that it was irresponsible of him to not file his return on time. (AE A.)

In mid-September 2015, Applicant began working remotely as a weapons technician for another company at an hourly wage of \$14.50. He was paid \$1,000 to assist him with his relocation expenses. (Item 4; AE A.) While living and working outside of the United States until May 2016, Applicant filed his federal income tax return for 2014 on April 15, 2016. On his wages of \$18,341, he overpaid his federal income taxes by \$1,391. The IRS applied \$1,292.94 of his tax refund to his tax liability for tax year 2013. Applicant did not file his federal income tax return for tax year 2015 by the April 18, 2016 deadline for that return. (Item 5; AE A.)

About six months into his new job, Applicant decided to continue his college studies toward a degree in electrical engineering. (AE A.) In May 2016, Applicant resigned from his job without giving the required two-week notice, and he enrolled in college in the United States. He had to repay the \$1,000 to his former employer because he did not stay in his job for a year. (Item 4; AE A.) In June 2016, he paid two debts, of \$1,121 and \$125 in government overpayments (SOR ¶ 1.c), that were in collections. He used funds from his GI bill and student financial aid to pay the debts. (Items 2, 5-7.)

Applicant was unemployed while a full-time student from May 2016 to May 2017. He became seriously delinquent on an auto loan that he obtained for \$28,091 in November 2014 for a 2013 model-year vehicle. The loan was to be repaid at \$565 a month for five years. The loan became seriously delinquent in September 2016 because he lacked income to make the payments. The creditor repossessed the vehicle and sold it. A past-due deficiency balance of \$17,984 was charged off in January 2017 (SOR ¶ 1. b). (Items 5-7.)

In May 2017, Applicant began working for a defense contractor as a maintenance technician. On May 16, 2017, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). He responded negatively to the financial record inquiries, including to questions regarding whether he had failed to file or pay federal, state, or other taxes within the last seven years; whether he had defaulted on any loans in the last seven years; and whether he had any bills or debts turned over for collection in the last seven years. (Item 4.)

A check of Applicant's credit on July 22, 2017, revealed that Applicant owed a charged-off balance of \$17,984 on the auto loan; that the same credit union had placed a \$1,460 charged-off balance for collection after nonpayment since January 2017 (SOR ¶ 1.d); that a personal loan had been charged off for \$2,311 in July 2016 but paid in collection (not alleged in SOR); that a \$265 insurance debt had been in collection since May 2015 (not alleged in SOR); and that a \$181 utility services debt was placed for collection in December 2015 (not alleged in SOR). (Item 7.) Applicant had repayment plans in place with the credit union to address his debts in SOR ¶¶ 1.b and 1.d. On June 9,

2017, he arranged to repay the debt in SOR ¶ 1.d, which was a personal loan taken out to pay living expenses, at \$100 a month. On July 3, 2017, Applicant agreed to make payments of \$200 a month toward his auto loan deficiency. (Item 2.)

On January 9, 2018, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). When asked whether he had failed to file or pay federal, state, or other taxes on time, Applicant indicated that he had not yet filed his federal income tax return for tax year 2016, but that he had received an extension to April 2018 from the IRS.<sup>2</sup> When asked about any debt to the federal government, Applicant indicated that he had paid the government creditor named in SOR ¶ 1.c. The debts arose because of overpayments that he recalled receiving in May 2016. He explained that he paid the debts to clear his credit history for the security clearance required for his employment. He described his current financial situation as poor. He had other financial issues that were being repaid, including the loans in SOR ¶¶ 1.b and 1.d. When confronted about the insurance debt in collection on his credit report, Applicant indicated that he had paid that debt in April 2017. The debt was for insurance on his repossessed vehicle. He also related that, in April 2017, he had paid the \$2,311 defaulted loan in collection. Applicant did not recognize the \$181 collection debt for utility services that was on his credit record. Applicant was given five business days to provide documentation confirming payment or repayment arrangements for his debts. (Item 5.) There is no evidence that he provided evidence of payments or payment arrangements within the five days.

As of March 9, 2018, Applicant's credit report from Equifax reflected outstanding balances of \$17,381 on his defaulted auto loan (SOR ¶ 1.b) and \$892 on the personal loan with the credit union (SOR ¶ 1.d). A government debt of \$328 (SOR ¶ 1.e) from July 2017 was in collection. His credit report had not been updated to show the repayment of the debt in SOR ¶ 1.c. No other delinquencies were on his credit report. (Item 6.)

DOHA sent interrogatories to Applicant asking in part whether he had ever failed to file his federal income tax returns on time. On June 18, 2018, Applicant responded affirmatively and indicated that he had yet to file his federal and state income tax returns for tax years 2015 and 2016, but that he had no outstanding federal or state tax liabilities. Account transcripts from the IRS showed that he filed his federal income tax return for tax year 2014 on April 15, 2016, but that he had yet to file his federal income tax returns for tax years 2015, 2016, and 2017 as of June 12, 2018. (Item 5.)

On July 6, 2018, the DOD CAF issued the SOR to Applicant because of his failure to timely file federal income tax returns for tax years 2014 through 2016 and because of consumer credit delinquencies totaling \$19,722. (Item 1.) In response to the SOR, on July 17, 2018, Applicant provided documentation from the credit union showing that he was in compliance with his repayments on the loans in SOR ¶¶ 1.b and 1.d. He had made

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<sup>2</sup> Applicant did not provide any corroborating documentation to support his claim that he had an extension of the filing deadline for tax year 2016 to April 2018, which was beyond the October 2017 extended deadline to which he would have been entitled had he filed Form 4848 on or before the April 18, 2017 tax-filing deadline for tax year 2016.

payments to reduce the respective loan balances to \$16,181.43 and \$392.34 as of July 17, 2018. Applicant provided documentation corroborating his claimed resolution of the debt in SOR ¶1.c in 2016. Applicant denied any knowledge of the \$328 government debt in SOR ¶1.e. He asserted that his delinquent federal income tax returns for tax years 2014 through 2016 (Item 2.)

On October 15, 2018, DOHA sent Applicant a FORM in response to his request for a decision based on the written record.<sup>3</sup> In rebuttal to the FORM, Applicant submitted IRS account transcripts dated August 21, 2018, which showed that he filed his federal income tax return for tax year 2014 on April 15, 2016, but that he had not filed his federal income tax returns as of his July 17, 2018 response to the SOR allegations. He filed his federal income tax return for tax year 2015 on August 5, 2018, more than two years beyond the tax-filing deadline of April 18, 2016. On adjusted gross income of \$44,280, Applicant underpaid his federal income taxes by \$938. He filed his federal income tax return for tax year 2016 on August 7, 2018, more than a year after the tax-filing deadline of April 18, 2017. On adjusted gross income of \$15,654, he owes \$365 in federal taxes for 2016. On August 3, 2018, Applicant filed his income tax return for tax year 2017. His income tax return was due on April 17, 2018, unless he applied for an extension of the deadline to October 2018. There is no evidence that he filed a Form 4868 requesting an extension. On adjusted gross income of \$40,447 for tax year 2017, Applicant overpaid his federal income taxes by \$2,841. (AE A.)

Regarding his late tax filings for tax years 2015 through 2017, Applicant explained that he could not file his income tax returns until he paid the \$1,000 owed his previous employer and he could not afford to do so:

The islands policy was for me to stay at least one year in the country to keep the \$1,000 payment. I then owed this amount back to [his previous employer]. It was mainly this exact situation in filing my taxes 2015, 2016 and 2017 became a struggle. I have always filed my taxes through Turbo Tax. As I attempted to do so the site informed me that nothing could be done to file taxes until that debt was paid off. I was not making a sufficient amount of income at that time, and could not afford to pay off the debt in one whole payment. Between rent and food it was difficult to manage this debt. Between 2015 through 2017 income has been straining my ability to pay this debt and getting the taxes filed on time.

My last resort was to talk to tax preparer [name and email omitted] and seek advice how to tackle this situation. He advised me after 3 years of not knowing that I can indeed file all of my taxes through him without having to pay my \$1,000 dollar first. I finally completed them all. I now have a high paying job to manage any debt now. (AE A.)

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<sup>3</sup> The FORM was sent to Applicant through an employer other than that listed on his August 2016 SF 86. No information was provided about when Applicant changed employers or about his income with his current employer other than his statement that he has a high-paying job. See AE A.

## 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 admits that he defaulted on two loans with a credit union and on two debts resulting from government overpayment, although only the larger debt of \$1,121 was alleged in the SOR. His March 2018 credit report includes a \$328 collection debt to the government, which has been past due since July 2017. He disputes the debt (SOR ¶ 1.e) based on lack of knowledge.

Under ¶ E3.1.14 of the Directive, the government has the burden of presenting evidence to establish controverted facts. The Appeal Board held in ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010) that a credit report is sufficient to meet the government's burden of producing evidence of delinquency:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

Applicant submitted no documentation to indicate the debt is not his responsibility. Whether he owes the debt or it was erroneously reported on Applicant's credit, the other delinquencies in SOR ¶¶ 1.b-1.d are sufficient to establish AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations."

The evidence shows that Applicant did not timely file his federal income tax returns for tax years 2014 through 2016 as alleged in the SOR. He filed his federal income tax return for tax year 2014 in April 2016, a year after it was due. He inexplicably claimed during his January 2018 OPM interview that he had an extension to April 2018 to file his federal income tax return for tax year 2016, which would have been beyond even the extended deadline for that tax year. His federal income tax returns for tax years 2015 and 2016 were not filed until August 2018, after he received the SOR. His federal income tax return for tax year 2017 may well have also been filed belatedly, although his August 2018 filing would have been within the extended deadline of October 2018. There is no evidence that he filed the Form 4868 needed to request an extension of the filing deadline. Even so, the Government did not allege late filing for tax year 2017 and so it cannot be considered in disqualification. However, it is properly considered for other purposes, such as assessing his reform.<sup>4</sup>

IRS transcripts show that Applicant overpaid his federal income taxes for tax year 2014 by \$1,391, although \$1,292.94 was applied to his tax liability for tax year 2013. He underpaid his federal income taxes for tax year 2015 by \$938 and his federal income taxes for tax year 2016 by \$365. Guideline F security concerns are established when an individual fails to comply with his tax filing obligations whether or not any taxes are owed. 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.

The burden is on Applicant to mitigate the negative implications for his financial judgment raised by his failure to timely comply with his income tax filing obligation for three consecutive years and by his seriously delinquent debts. Application of the aforesaid disqualifying conditions triggers consideration of the potentially mitigating conditions under AG ¶ 20. Six of the seven mitigating conditions warrant some consideration and could potentially apply in whole or in part. They are:

(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;

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<sup>4</sup> 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 a SOR may be considered, as follows:

(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 the whole-person analysis under Directive Section 6.3.



(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.

Applicant defaulted on the debts in SOR ¶¶ 1.b-1.d in 2016. Available credit information shows that the debt in SOR ¶ 1.e was placed for collection in July 2017. The delinquencies did not occur so long ago to be mitigated under AG ¶ 20(a). AG ¶ 20(b) also does not apply because the loss of income that led him to default on the debts was within his control. Applicant decided to quit working and return to college as a full-time student. While his decision to resume his education is considered an investment in his future, he knowingly put his self-interest ahead of his financial responsibilities.

Applicant has a case for some mitigation of his consumer delinquencies under AG ¶¶ 20(c) and 20(d), however. He satisfied the debt in SOR ¶ 1.c in June 2016. In the summer of 2017, he entered into repayment arrangements with the credit union to address his defaulted car loan (SOR ¶ 1.b) and personal loan (SOR ¶ 1.d). He paid \$2,900 over the next year to reduce the balance of the car loan to \$16,181.43. He paid \$2,000 over the next year to reduce the balance of the personal loan to \$392.34 as of mid-July 2018. The creditor confirms that he was in compliance with his payment arrangements toward both debts.

An applicant is not required, as a matter of law, to establish that he has paid off every debt in the SOR. He is required to demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Given Applicant's track record of payments on his defaulted loans with the credit union, he is likely to have continued his payments. Based on his established payment plans, the personal loan in SOR ¶ 1.d has likely been fully satisfied by the close of the record in December 2018, although Applicant did not address the debt when he responded to the FORM. Assuming he made monthly payments of \$200 toward the car loan deficiency balance (SOR ¶ 1.b), he would have reduced that debt by another \$1,000 to approximately \$15,000, which is still a sizeable delinquency. He indicated in response to the FORM that he now has a high-paying job to manage any debts, but he provided no

details about his income or expenses, so it is difficult to conclude when he will pay off the debt. However, he has demonstrated a good-faith effort to address that debt under AG ¶ 20(d). He established a track record of payments toward the debt before the SOR was issued, although there is no evidence that he has had any financial counseling, which is required for full mitigation under AG ¶ 20(c). Neither AG ¶ 20(c) nor AG ¶ 20(d) can reasonably apply to the debt in SOR ¶ 1.e. Applicant has not made any effort to even investigate the debt which is on his credit report. His denial based on a lack of knowledge is not enough to successfully dispute it under AG ¶ 20(e).

Regarding Applicant's federal tax issues, his belated filing of his income tax returns for tax years 2014 through 2016 is some indication that the problem of his noncompliance with his tax-filing obligation "is being resolved or is under control" under AG ¶ 20(c). 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.)

Moreover, the Appeal Board has reaffirmed that the timing of the corrective action is an appropriate factor to consider in applying AG ¶ 20(g). See e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018) (citing ISCR Case No. 17-01807 at 3-4 (App. Bd. Mar. 7, 2018)). In reversing favorable clearance grants to applicants with tax issues by DOHA judges in ISCR Case No. 17-01382 (App. Bd. May 16, 2018) and ISCR Case No. 16-01211 (App. Bd. May 30, 2018), the Appeal Board noted that applicants who only begin to address their delinquent tax returns after having been placed on notice that their clearance might be in jeopardy may not comply with laws, rules, and regulations when their immediate interests are not imperiled. Applicant did not disclose on his SF 86 that he had delinquent tax returns that had not been filed. When the OPM investigator asked him about any tax issues in January 2018, Applicant admitted that he had yet to file his 2016 tax return, although he failed to disclose that he had not filed his 2015 federal income tax return as well. He knew or should have known then that his federal tax returns were an issue for his clearance, and he did not file his tax returns for tax years 2015 and 2016 until August 2018, after he received the SOR. He claimed in rebuttal to the FORM that Turbo Tax would not permit him to file his delinquent returns before he paid a \$1,000 debt that he owed to a former employer. The more likely scenario is that Applicant used Turbo Tax to complete his 2015 federal income tax return and learned that he underpaid his income taxes by \$938, as shown on the IRS transcript. He could not pay the debt and so did not file his return. Even assuming that he in good faith believed that he could not file his federal income tax returns before he paid that debt, he did not adequately explain why he waited to consult with a professional tax preparer. Applicant has yet to demonstrate a track record of compliance with tax-filing deadlines. According to IRS transcripts, he owes \$938 for tax year 2015 and \$365 for tax year 2017. There is no evidence that he has paid those debts. Concerns persist about his reform of his federal income tax issues.

## 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.

Applicant's active duty service in the U.S. military is viewed favorably. His difficulty in finding a good-paying job after his discharge does not excuse or mitigate his failure to file timely tax returns. He earned \$44,280 in 2015, \$15,654 in 2016, but \$40,447 in 2017, which was well over the minimum threshold required for filing. Applicant was not fully candid about his noncompliance with his income tax filing obligations.

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). It is not intended as a debt collection process or designed to punish applicants for past mistakes or shortcomings. At the same time, Applicant owes a considerable debt to a credit union. His repeated noncompliance with his tax-filing obligation raises significant security concerns about whether he can be counted on to abide by laws, rules, and regulations. 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). For the reasons noted above, I am unable to conclude that it is clearly consistent with the national interest to grant Applicant access to classified information.

## 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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.d:	For Applicant
Subparagraph 1.e:	Against Applicant

## **Conclusion**

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

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Elizabeth M. Matchinski  
Administrative Judge