



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



In the matter of:)
)
) ISCR Case No. 18-01092
)
Applicant for Security Clearance)

Appearances

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

03/04/2019

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s federal and state income tax returns were not timely filed for several years. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On January 9, 2017, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On August 31, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for 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 guideline.

On September 20, 2018, Applicant responded to the SOR, and he requested a hearing. (HE 3) On October 18, 2018, Department Counsel was ready to proceed. On October 22, 2018, the case was assigned to me. On October 25, 2018, the parties agreed on a hearing date of November 26, 2018. On November 19, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for November 26, 2018. (HE 1) The hearing was held as scheduled using video teleconference.

Department Counsel offered five exhibits; Applicant did not offer any exhibits; there were no objections to the documents; and they were admitted into evidence. (Tr. 16-17; GE 1-5) On December 6, 2018, DOHA received a copy of the transcript of the hearing (Tr.). The record initially closed on January 28, 2019, and I granted an extension to February 15, 2019. (Tr. 47; Applicant Exhibit (AE) A) On February 27, 2019, Applicant provided a 61-page telefax (includes cover sheet). (AE A)

Findings of Fact

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

Applicant is 57 years old, and he has been employed by various defense contractors since 1996. (Tr. 6, 8; GE 1) He is currently a logistician. (Tr. 8) He has no periods of unemployment over the previous 22 years. (Tr. 8) In 1980, he graduated from high school, and in 2008, he received an associate's degree. (Tr. 6) He served in the Marine Corps from 1980 to 1996. (Tr. 7) He received a medical discharge. (Tr. 7) He received a 60 percent disability rating from the Department of Veterans Affairs (VA). (Tr. 7-8) He has been married four times, and his most recent marriage was in 2012. (Tr. 8) His three children were born in 1980, 1981, and 1990. (Tr. 9)

Financial Considerations

Applicant's annual salary is \$92,000. (Tr. 18) He has held a security clearance since 1983. (Tr. 19-20) In 2013, his spouse lost her job. (Tr. 21) Her salary was about \$40,000 annually. (Tr. 21) From 2014 to 2016, she had 14 surgeries to her leg, and Applicant had health insurance. (Tr. 22) His spouse was unable to work, and they fell behind on their mortgage and some of their other bills. (Tr. 22) Starting in mid-2017, his spouse began receiving about \$1,000 monthly in disability payments. (Tr. 23, 43) When her disability payments started, she also received about \$32,000 in disability pay as a lump sum, and those funds were used to pay some debts. (Tr. 43) She has not been employed outside their home since 2014. (Tr. 23)

In 2017, Applicant spent \$1,700 to purchase furniture. (Tr. 25) In 2018, Applicant purchased two used vehicles and financed \$19,000 for one and \$17,000 for the other vehicle. (Tr. 24) In 2018, he borrowed \$2,000 against his motorcycle to pay their rent. (Tr. 25) When Applicant's spouse received the \$32,000 lump sum disability payment in mid-

2017, he did not use the funds from the lump sum disability payment to pay his delinquent tax debt because the tax debt was “out of sight, out of mind” at that time. (Tr. 43)

Applicant’s SOR alleges the following financial issues:

SOR ¶ 1.a alleges Applicant failed to timely file his federal income tax returns for tax years 2014 through 2016. When he completed his January 9, 2017 SCA, he explained that he had not filed his tax returns for tax years 2014, 2015, and 2016, and he intended to file them in 2017. (GE 1) Actually, he failed to timely file his federal income tax returns for tax years 2010, 2011, 2012, 2014, 2015, and 2017. (Tr. 28; AE A) His federal income tax returns were timely filed for tax years 2013 and 2016. (AE A) Currently, he does not owe federal taxes for tax years 2010 through 2013, and he resolved the federal income tax debt for those four years through a payment plan in 2014. (Tr. 34) He owes about \$6,000 of federal income taxes for tax years 2015 and 2016, and he does not have a payment plan to resolve this tax debt. (Tr. 33-34; AE A) His tax refunds for tax years 2017 and 2018 will be sufficient to fully resolve his delinquent federal income tax debt. (AE A at 3) The following table provides additional information about Applicant’s federal income taxes:

Tax Year and Return	Date Filed	Adjusted Gross Income ¹	Tax Owed (O) Tax Refund (R)	Exhibit
2010 Federal	Apr. 15, 2013	\$80,000	(O) \$1,028 ²	AE A at 22
2011 Federal		\$74,000		AE A at 26-27 ³
2012 Federal		\$72,000		AE A at 28-29 ⁴
2013 Federal	Apr. 15, 2014	\$94,000	(O) \$972 ⁵	AE A at 30-31
2014 Federal	Apr. 23, 2017	\$82,000	(R) \$1,626	AE A at 34-35
2015 Federal	Apr. 20, 2017	\$86,000	(O) \$2,755 ⁶	AE A at 38
2016 Federal	Apr. 15, 2017	\$84,000	(O) \$3,347 ⁷	AE A at 50
2017 Federal	Feb. 14, 2019	\$87,000	(R) \$1,114	AE A at 19, 21
2018 Federal		\$94,000	(R) \$4,731	AE A at 15

¹ Amounts of adjusted gross income are rounded to the nearest thousand to protect Applicant’s rights to financial privacy.

² Tax debt for tax year 2010 was paid on May 28, 2015. (AE A at 23)

³ Applicant provided an IRS Wage and Income Transcript and not an IRS Account Transcript for tax year 2011. (AE B at 26-27) His IRS Wage and Income Transcript shows income information and some deductions. It does not show when his federal income tax return was filed or whether any additional taxes were owed after his tax return was filed.

⁴ See note 3, *supra*.

⁵ Tax debt for tax year 2013 was paid on March 17, 2017. (AE A at 31)

⁶ Applicant’s federal income tax account balance owed for tax year 2015 is \$1,889. (AE A at 38)

⁷ Applicant’s federal income tax account balance owed for tax year 2016 is \$4,391. (AE A at 50)

SOR ¶ 1.b alleges Applicant failed to timely file his state income tax returns for tax years 2010 through 2013. He said he filed his state tax returns for tax years 2010 through 2013, in 2014. (Tr. 26) He filed his state tax returns for tax years 2014, 2015, and 2016, in 2017. (Tr. 26-27) At the time of his hearing, he had not yet filed his state tax returns for tax year 2017. (Tr. 27) He may have owed about \$1,500 for tax years 2010 through 2013, and he paid that debt. (Tr. 32) He started a payment plan for tax years 2014, 2015, and 2016; however, he was unable to complete it because of medical bills for his spouse's surgeries. (Tr. 32) He believed he had a state tax lien for about \$1,100, and he paid it. (Tr. 31, 33)

Applicant said he did not have the funds to pay his taxes, and he decided to "wait three years and then take care of it." (Tr. 29) He acknowledged this was not the correct approach for handling taxes. (Tr. 29) He promised to call the state tax authority the day after his hearing to request supporting documentation and to provide the information to Department Counsel. (Tr. 31, 33) He was unsure about what tax documentation he had at home. (Tr. 35)

SOR ¶ 1.c alleges Applicant had a delinquent mortgage account that went into foreclosure. In 2007, he purchased a residence and financed about \$154,000. (Tr. 36) The purchase of the residence was financed with a loan from the Department of Veterans Affairs (VA),⁸ and repayment was guaranteed by the VA. (Tr. 37-38; GE 2-4) In July 2015, he began to fall behind on his mortgage payments. (Tr. 36) In February 2016, he stopped making payments. (Tr. 36) His credit reports show a zero balance, and the debt is resolved.

SOR ¶ 1.d alleges an account placed for collection for \$740. Applicant said the debt was in a payment plan, and Applicant agreed to provide proof of the payment plan and payments after his hearing. (Tr. 38)

⁸ The VA loan guarantee is as follows: "For loans between \$45,000 and \$144,000, the minimum guaranty amount is \$22,500, with a maximum guaranty, of up to 40 percent of the loan up to \$36,000, subject to the amount of entitlement a veteran has available." As to whether the VA loss on a loan must be repaid, the VA explains:

Must the loan be repaid?

Yes. A VA guaranteed loan is not a gift. It must be repaid, just as you must repay any money you borrow. The VA guaranty, which protects the lender against loss, encourages the lender to make a loan with terms favorable to the veteran. But if you fail to make the payments you agreed to make, you may lose your home through foreclosure, and you and your family would probably lose all the time and money you had invested in it. If the lender does take a loss, VA must pay the guaranty to the lender, and the amount paid by VA must be repaid by you. If your loan closed on or after January 1, 1990, you will owe the Government in the event of a default only if there was fraud, misrepresentation, or bad faith on your part. Factsheet VAP 26-4 is available on the VA website at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&cad=rja&uact=8&ved=0CD4QFjAA&url=http%3A%2F%2Fwww.benefits.va.gov%2Fhomeloans%2Fdocs%2Fvap_26-4_online_version.pdf&ei=q4QbUzSCaST0QH0mlDwAg&usq=AFQjCNFv0-ay6SGFdfcDFlaE7aENpSq0cA.

SOR ¶ 1.e alleges an account placed for collection for \$465. Applicant said the debt was in a payment plan, and Applicant agreed to provide proof of the payment plan and payments after his hearing. (Tr. 39)

SOR ¶ 1.f alleges a medical debt placed for collection for \$150. The medical debt does not appear on his most recent credit report, and Applicant is credited with resolving this debt. (Tr. 39)

SOR ¶ 1.g alleges a judgment filed against Applicant in 2013, for \$3,752. Court records indicate, on May 27, 2015, Applicant paid this debt in full. (Tr. 40, 44; SOR response at 3) This debt is resolved.

SOR ¶ 1.h alleges a judgment filed against Applicant in 2011, for \$815. The debt was satisfied in January 2014. (SOR response at 5) This debt is resolved.

SOR ¶ 1.i allege a judgment filed against Applicant in 2011, for \$13,967. On September 24, 2018, the creditor wrote this debt was paid. (Tr. 44; SOR response at 6)

SOR ¶ 1.j alleges a telecommunications debt placed for collection for \$1,309. Applicant said the debt was in a payment plan, and Applicant agreed to provide proof of the payment plan and payments after his hearing. (Tr. 40-41) As of February 15, 2019, he had made payments of \$523 towards this debt. (AE A at 7-9)

After the hearing, I sent Applicant an email asking for payment plans and payments on the debts in SOR ¶¶ 1.d, 1.e, and 1.j. (Tr. 41; AE B) He provided proof of a payment plan to address the debt in SOR ¶ 1.j. (AE A at 7-9)

I also requested: (1) IRS tax transcripts for tax years 2010 to 2016; (2) proof of payments or status of state taxes for tax years 2010 to 2016; and (3) front and back of first page of state tax returns for tax years 2010 to 2016. (Tr. 41-42; AE B)⁹ I suggested he provide any other documentation relevant to his case. (Tr. 41-42; 47-48; AE A) The initial suspense was January 28, 2019, and I gave him an extension until February 27, 2019. (AE B)

Applicant requested information from the state tax authority about his taxes verbally, and he made a written request on February 25, 2019. (AE A at 11)

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

⁹ 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).

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.

AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts"; "(c) a history of not meeting financial obligations"; and "(g) failure to file annual Federal, state, or local income tax returns as required" Applicant's SOR alleges, and he admitted that he failed to timely file his federal tax returns for tax years 2014 and 2015. SOR ¶ 1.a alleges his federal income tax return for tax year 2016 was not timely filed; however, he is credited with timely filing his federal income tax return for tax year 2016. SOR ¶ 1.b alleges and the record establishes that he failed to timely file his state tax returns for tax years 2010, 2011 and 2012. . SOR ¶ 1.b alleges his state income tax return for tax year 2013 was not timely filed; however, he is credited with timely filing his state income tax return for tax year 2013. Several other debts became delinquent and judgments were entered against him. The Government established the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(g) requiring additional inquiry about the possible applicability of mitigating conditions.

Seven mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;¹⁰

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

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

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

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

No mitigating conditions fully apply to SOR ¶¶ 1.a and 1.b; however, Applicant presented some important mitigating information. His spouse became unemployed, and she had medical debts resulting in a significant, unexpected reduction in his family's

¹⁰The 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)).

income. These unusual circumstances were beyond Applicant's control and caused or contributed to Applicant's financial problems. He established payment plans for several debts; he paid three large judgments; the VA resolved his mortgage debt; his remaining unresolved delinquent debts total about \$1,500, and are relatively insignificant. He is credited with mitigation of the debts in SOR ¶¶ 1.c through 1.j.

Applicant failed to timely file his federal income tax returns for tax years 2010, 2011, 2012, 2014, 2015, and 2017, and state tax returns for those same six tax years.¹¹ 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

¹¹ Applicant's SOR does not allege that he failed to timely file his federal tax returns for tax years 2010, 2011, 2012, and 2017, and state tax returns for tax years 2014, 2015, and 2017. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

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

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). Applicant's failure to timely file his federal tax returns for tax years 2010, 2011, 2012, and 2017, and state tax returns for tax years 2014, 2015, and 2017, will not be considered except for the five purposes listed above.

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

Applicant repeatedly failed to timely file his tax returns. The magnitude of his state tax debt is unclear. Financial considerations security concerns are not mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 57 years old, and he has been employed by various defense contractors since 1996. He is currently a logistician. He has no periods of unemployment over the previous 22 years. In 2008, he received an associate’s degree. He served in the Marine Corps from 1980 to 1996, and he received a medical discharge. He received a 60 percent disability rating from the VA.

When Applicant’s spouse was unable to work outside their home because of medical problems, the family income was significantly reduced and debts became delinquent. Applicant is credited with the reduction of his delinquent debts by paying three judgments. The VA paid his mortgage debt. He has shown enough financial progress to mitigate all of his non-tax delinquent SOR debts.

Applicant’s history of failing to timely his federal tax returns for tax years 2010, 2011, 2012, 2014, 2015, and 2017, and state tax returns for those same six tax years, raises unresolved financial considerations security concerns. He may owe state income

taxes.¹² When an issue involving taxes arises, an administrative judge is required to consider how long an applicant waits to file their tax returns, whether the IRS or a state generates the tax returns, and how long the applicant waits after a tax debt arises to begin and complete making payments.¹³ The primary problem here is that Applicant has repeatedly been late filing his tax returns. He did not provide a good reason for not timely filing his federal and state income tax returns.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations and personal conduct 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 and 1.b:	Against Applicant
Subparagraphs 1.c through 1.j:	For Applicant

¹² 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.”).

¹³ 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 national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

MARK HARVEY
Administrative Judge