



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



In the matter of:

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ISCR Case No. 18-01118

Applicant for Security Clearance

Appearances

For Government: Brittany Muetzel White, Esq., Department Counsel

For Applicant: *Pro se*

10/24/2019

Decision

HARVEY, Mark, Administrative Judge:

Applicant has known that the Internal Revenue Service (IRS) sought additional taxes from him for several years. Applicant failed to timely file his federal income tax returns for tax years 2013 and 2015. Applicant did not provide honest answers to questions about filing and paying his taxes on his March 18, 2016 Questionnaire for National Security Positions or security clearance application (SCA). Financial considerations and personal conduct security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On March 18, 2016, Applicant completed and signed an SCA. (Government Exhibit (GE) 1) On June 13, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under 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 interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine

whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines F (financial considerations) and E (personal conduct). (HE 2) On July 5, 2018, Applicant responded to the SOR and requested a hearing. (HE 3)

Applicant's hearing was initially scheduled for December 3, 2018; however, the hearing was cancelled when Applicant lost sponsorship for a security clearance. On September 4, 2019, Department Counsel was ready to proceed. On September 9, 2019, the case was assigned to me. On September 12, 2019, DOHA issued a notice of hearing, setting the hearing for October 2, 2019. (HE 1) The hearing was held as scheduled.

During the hearing, Department Counsel offered three exhibits; Applicant offered four exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 14-18, 33-34, 45-46; GE 1-3; Applicant Exhibit (AE) A-AE D) On October 15, 2019, DOHA received a transcript of the hearing. Applicant provided four post-hearing exhibits, which were admitted without objection. (AE E-AE H) The record closed on October 16, 2019. (Tr. 49-51)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits. All tax-related amounts are rounded to the nearest thousand if equal to or over \$1,000, and to nearest \$100 if below \$1,000.

Findings of Fact

In Applicant's SOR responses, he admitted all of the SOR allegations. (HE 3) He also provided extenuating and mitigating information. (HE 3) His admissions are accepted as findings of fact.

Applicant is a 38-year-old information assurance security officer or a cybersecurity analyst for a defense contractor. (Tr. 5-6) In 2000, he graduated from high school, and he attended college for one year. (Tr. 5) He has no military service. (Tr. 6) He has never married, and he has two children ages five and nine. (Tr. 21-22) His only unemployment in the last five years was for five or six months in 2018 to 2019. (Tr. 7)

Financial Considerations

SOR ¶ 1.a alleged Applicant failed to timely file his federal income tax returns for tax years 2012 through 2016. Applicant admitted he failed to timely file his federal income tax returns. He explained why he did not timely file his tax returns as follows:

I claimed kids that I thought were mine at the time, unfortunately. And that came back as a very big hit on my taxes in me owing. And in my mind I stated that, you know what? The Government can keep all taxes that I have. I don't require that money back. But coming into, you know, working with the Government in my job field, especially with this -- this -- with getting my clearance to continue my job I see the importance of filing regardless if I don't mind if the Government keeps my money or not.

(Tr. 20-21) In his SOR response, he said he “assum[ed] that the Federal government would be satisfied with the tax withholdings being deducted from [his] pay without taking action to file a return” and in response to the security-clearance process he has taken action to file all required returns.

The IRS represented in May 9, 2018 tax transcripts that Applicant filed federal income tax returns and owed the following federal income tax debts as follows:

Tax Year	Date of Tax Return	Adjusted Gross Income	IRS Claim of Taxes Owed	Citation
2011	Mar. 2018	\$42,000	refund \$2,000	GE 3
2012	Oct. 2013	\$57,000	\$2,000 (refund \$400)	Tr. 22-23; GE 3; AE E
2013	May 2018	\$57,000	\$2,000 (owe \$2,000)	Tr. 25; GE 3; AE E
2014	Apr. 2015	\$59,000	\$0 (owe \$200)	Tr. 25-26; GE 3; AE E
2015	Mar. 2018	\$60,000	\$0 (owe \$0)	Tr. 26-27; GE 2, 3; AE F
2016	June 2017	\$64,000	\$306 (owe \$300)	Tr. 27; GE 3; AE F

In the column above, the IRS claimed amount is the first amount, and the amount determined by Applicant’s subsequent tax filing is in parenthesis. Applicant owed the following amounts when he filed his state tax returns: 2012 return undated (refund: \$300); 2013 return dated October 2019 (amount owed: \$100); 2014 return undated (amount owed: \$200); 2015 return dated October 2019 (amount owed: \$100); and 2016 return dated April 2017 (refund: \$1,000). (AE E; AE F) Applicant explained that somehow the state tax returns for tax years 2013 and 2015 were not recorded when sent, and they had to be refiled in October 2019. (AE H, email) Applicant is credited with intending to file his state tax returns the same month in 2018 as he filed his federal income tax returns. Information from federal income tax returns is easily transferred to state tax returns, and Applicant did not have any reason not to file his state tax returns when he filed his federal income tax returns. However, he was negligent in that he should have retained a copy of his state tax returns when he filed them; he should have been able to show that he paid the commercial tax preparer who prepared his federal income tax return to generate both a federal and state tax return; and he should have noticed when his payments to the state for tax years 2013 and 2015 were not cashed or deducted from his accounts.

On April 2, 2018, a state tax lien for \$2,000 was vacated and withdrawn. (Tr. 31-33; AE C) On February 6, 2018, Applicant established a nine-month payment plan with the state tax authority wherein he agreed to pay \$46 a month. (Tr. 31) He said he timely made all of his payments, and his state tax debt is resolved. (Tr. 31, 34) After he filed his state tax returns for tax years 2013 and 2015 in October 2019, he owed additional taxes. (AE H) Starting November 15, 2019, Applicant has a payment agreement with the state tax authority to pay \$65 monthly for three months. (AE H) He timely filed his 2017 and 2018 federal and state tax returns. (Tr. 28-29; AE A; AE B; AE G) He owes a small state tax debt which is less than \$40 for tax year 2018. (Tr. 35)

In May 2018, Applicant agreed to begin making monthly payments to the IRS of \$25 for the first year and \$80 for the second year to address his federal income tax debt for tax years 2012, 2015, and 2016. (Tr. 35-36; GE 2) The IRS letter is inconsistent with the tax information presented in the above table. He made the following monthly

payments to the IRS from March 2018 to September 2019: March 2018 (\$31); June 2018 through May 2019 (\$50); and June 2019 through September 2019 (\$85). (AE E) His payments were made to address tax debts from tax years 2012, 2017, and 2018. (AE E) It is unclear why Applicant's federal income tax return for tax year 2012 shows a refund of \$400; however, the IRS applied the most recent 15 payments up to September 2019 to address his federal income tax debt for tax year 2012. (AE E) Applicant did not provide an explanation for this inconsistency.

In sum, Applicant failed to timely file his state and federal income tax returns for tax years 2011 (filed March 2018), 2013 (filed May 2018), and 2015 (filed March 2018). His 2011, 2013, and 2015 tax returns were filed after he completed his March 18, 2016 SCA, and after his June 21, 2017 Office of Personnel Management (OPM) personal subject interview (PSI), but before the SOR was issued on June 13, 2018. The magnitude of his current federal income tax debt is unclear. His state and federal income tax debts are in the process of being resolved through payment plans.

Personal Conduct

Two questions in Section 26 of Applicant's March 18, 2016 SCA asked about filing and paying federal or state income taxes when required during the previous seven years. In response to one question, Applicant disclosed that he failed to file or pay his 2011 state taxes. (GE 1) He said in the comments section that he was audited and his deduction or exemption for two dependents was denied, and he owed about \$1,000 to the state. *Id.* He said he had an established payment arrangement to pay \$50 monthly to the state. *Id.* The second question asked whether he had any other instances when he failed to file or pay federal or state income taxes in the previous seven years as required, and he answered, "no." *Id.*

During Applicant's June 21, 2017 OPM PSI, he disclosed that he had not filed or paid his state and federal income tax returns for tax year 2015. (AE D at 11) He said he did not want to deal with taxes anymore and was fearful because of the audit of his 2011 taxes. *Id.* He said he did not list the failure to file a tax return for tax year 2015 on his SCA because he overlooked the question. *Id.* The OPM PSI does not include anything about his not timely filing his income tax returns for tax years 2011 and 2013. (AE D) Applicant clarified that he believed the tax audit related to taxes prior to 2010 and not tax year 2011 as indicated in his March 18, 2016 SCA. (Tr. 45)

At his hearing, Applicant said he did not disclose his failure to timely file his federal income tax returns as follows:

To be honest why I was very bad with this stuff with taxes and stuff like that, I answered to the best of my ability at that time. Until and when it was brought to my attention that it wasn't, I called IRS, called State as well to make sure that, you know, I'd get all this stuff straightened away.

(Tr. 37)

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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the 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 in this decision should be construed to suggest that it is based, 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, Secretary of Defense, and DNI 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 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 for financial problems:

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. . . . 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.

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(b) unwillingness to satisfy debts regardless of the ability to do so”; “(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 record establishes AG ¶¶ 19(b), 19(c), and 19(f).

AG ¶ 20 lists financial considerations mitigating conditions which may be applicable in this case:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn,

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

(c) the individual has received or is receiving financial 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;

(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 DOHA 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).

The SOR alleges and the record establishes that Applicant failed to timely file his state and federal income tax returns for tax years 2013 (filed May 2018) and 2015 (filed March 2018); however, they were filed before the SOR was issued on June 13, 2018. His state and federal income tax debts are in established payment plans.

A willful failure to timely make (means complete and file with the IRS) a federal income tax return is a misdemeanor-level federal criminal offense. Title 26 U.S.C, § 7203, willful failure to file return, supply information, or pay tax, reads:

Any person . . . required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to . . . make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor

A willful failure to make return, keep records, or supply information when required, is a misdemeanor without regard to existence of any tax liability. *Spies v. United States*, 317 U.S. 492 (1943); *United States v. Walker*, 479 F.2d 407 (9th Cir. 1973); *United States v. McCabe*, 416 F.2d 957 (7th Cir. 1969); *O'Brien v. United States*, 51 F.2d 193 (7th Cir. 1931). For purposes of this decision, I am not weighing Applicant's failure to timely file his federal income tax returns against him as a federal crime.

Applicant's SOR does not allege he failed to timely file when due his federal income tax return for tax year 2011 and his state tax returns for tax years 2013 and 2015. His SOR does not allege that he owed delinquent federal income taxes for several years. He is currently making payments on his federal income tax debt for tax year 2012. Moreover, he did not disclose his failure to file these tax returns and his delinquent federal income taxes on his March 18, 2016 SCA. 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. Apr. 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)). The non-SOR allegations will not be considered except for the five purposes listed above.

Applicant has taken an important step towards showing his financial responsibility. Applicant filed all required tax returns, and his state and federal income tax debts are in payment plans. He assured he will timely file all future tax returns.

In ISCR Case No. 15-01031 at 2 (App. Bd. June 15, 2016), the Appeal Board reversed the grant of a security clearance, and noted the following primary relevant disqualifying facts:

Applicant filed his 2011 Federal income tax return in December 2013 and received a \$2,074 tax refund. He filed his 2012 Federal tax return in September 2014 and his 2013 Federal tax return in October 2015. He received Federal tax refunds of \$3,664 for 2012 and \$1,013 for 2013.

Even if no taxes are owed when tax returns are filed, the Appeal Board provided the following principal rationale for reversing the grant of a security clearance:

Failure to comply with Federal and/or state tax laws suggests that an applicant has a problem with abiding by well-established Government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information. . . . By failing to file his 2011, 2012, and 2013 Federal income tax returns in a timely manner, [that applicant] did not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information.

ISCR Case No. 15-01031 at 4 (App. Bd. June 15, 2016) (citations omitted). AG ¶ 20(g) applies because he filed his tax returns and paid some of his required taxes; however, the timing of the filing of his tax returns is an important aspect of the analysis. In ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017) the Appeal Board reversed the grant of a security clearance, discussed how AG ¶ 20(g) applied, and noted:

The timing of the resolution of financial problems is an important factor in evaluating an applicant's case for mitigation because an applicant who begins to resolve financial problems only after being placed on notice that his clearance was in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his own interests. In this case, Applicant's filing of his Federal income tax returns for 2009-2014 after submitting his SCA, undergoing his background interview, or receiving the SOR undercuts the weight such remedial action might otherwise merit.

In sum, Applicant failed to timely file his federal tax return for tax year 2011 and his state and federal tax returns for tax years 2013 and 2015. He filed his returns for tax years 2011, 2013, and 2015 after he completed the SCA and his OPM interview. Applicant failed to establish mitigation of financial considerations security concerns.

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 employment qualifications, award benefits or status, determine national

security eligibility or trustworthiness. . . .” 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)).

Applicant failed to disclose that he did not timely file his federal income tax return for tax year 2013 on his March 18, 2016 SCA. He read the question and provided comments related to his state tax return for tax year 2011. He did not overlook the tax-related questions, and he did not answer them to the best of his ability. He did not give a credible explanation for his failure to disclose this failure to timely file his 2013 federal income tax return and that he had a delinquent federal income tax debt. SOR ¶¶ 2.a and 2.b and AG ¶ 16(a) are established.

AG ¶ 17 provides seven conditions that could mitigate security concerns in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant deliberately and improperly failed to disclose the scope of his tax problems on his March 18, 2016 SCA. This falsification by intentionally failing to disclose the existence and magnitude of his tax problem was serious, improper, and raised a security concern. No mitigating conditions apply. Personal conduct 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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guidelines F and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 38-year-old information assurance security officer or a cybersecurity analyst for a defense contractor. He attended college for one year. He has two children ages five and nine. His only unemployment in the last five years was for five or six months in 2018 to 2019.

Applicant filed his 2011 federal income tax return in March 2018, his 2013 federal and state income tax returns in May 2018, and his 2015 federal and state income tax returns in March 2018. He has had delinquent federal income taxes for several years. He is currently making payments to address a federal income tax debt for tax year 2012. His

state and federal income tax debts are in established payment plans that are acceptable to the state and IRS.

The Appeal Board's emphasis on security concerns arising from tax cases is instructive and binding on administrative judges. 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 his failure to timely file state tax returns for tax years 2010 through 2013 and federal returns for tax years 2010 through 2012. Before the retired E-9's 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, expenditures for his children's college tuition and expenses, and spouse's serious medical and mental health 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)). See *also* 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 primary problem here relates to Applicant's handling of his federal and state income taxes and his failure to honestly answer questions on his SCA. Applicant knew that he needed to timely file his federal and state income tax returns. He had a legal requirement to timely file his tax returns and pay his taxes. His actions under the Appeal Board jurisprudence are too little, too late to fully mitigate security concerns. Applicant's failure to "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 [his] reliability, trustworthiness, and ability to protect classified or sensitive information." AG ¶ 16.

Applicant failed to disclose his delinquent federal income tax debt and his failure to timely file his federal tax returns for tax years 2011 and 2013 and his state tax returns for tax year 2013 on his March 18, 2016 SCA. His falsification of his March 18, 2016 SCA occurred in a security context, and it raises a serious security concern. The protection of national security relies on applicants to self-report conduct that jeopardizes security, even when that disclosure might damage the applicant's career. Applicant cannot be trusted to disclose potentially derogatory information. He did not establish his reliability, trustworthiness, and ability to protect classified information.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Unmitigated financial considerations and personal conduct security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time.

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
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of 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