



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



In the matter of:

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ISCR Case No. 18-01233

Applicant for Security Clearance

Appearances

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

08/19/2019

Decision

HARVEY, Mark, Administrative Judge:

Applicant filed his federal and state income tax returns for tax years 2013, 2014, 2015, and 2016 in 2019. His tax filings for those four years were not timely. He currently owes about \$65,000 in delinquent federal income taxes, and he does not have a payment plan which is agreeable to the IRS. He owes \$11,928 for delinquent state income taxes for tax year 2018. Guidelines G (alcohol consumption) and E (personal conduct) security concerns are mitigated; however, Guideline F (financial considerations) security concerns are not mitigated. Access to classified information is denied.

Statement of the Case

On August 7, 2017, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On September 4, 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, G, and E.

On October 22, 2018, Applicant responded to the SOR and requested a hearing. (HE 3) On January 2, 2019, Department Counsel was ready to proceed. On March 7, 2019, the case was assigned to an administrative judge, and on June 27, 2019, the case was transferred to me for administrative reasons. On June 13, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for July 18, 2019. (HE 1A) On July 2, 2019, DOHA rescheduled the hearing for July 31, 2019. (HE 1B)

During the hearing, Department Counsel offered 9 exhibits; Applicant offered 13 exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Transcript (Tr.) 21-25; Government Exhibit (GE) 1-9; Applicant Exhibit (AE) A-AE M). On August 9, 2019, DOHA received a transcript of the hearing.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

Findings of Fact

In Applicant's SOR response, he admitted SOR ¶¶ 1.a, 1.b, 1.c, 1.f, 2.b through 2.e, and 3.a through 3.e. (HE 3) He also provided extenuating and mitigating information. (HE 3) Applicant's admissions are accepted as findings of fact. Additional findings of fact follow.

Applicant is a 43-year-old aircraft maintenance specialist in flight test mechanics who has been employed by the same defense contractor since 2007. (Tr. 10, 13, 27) In 1995, he graduated from high school. (Tr. 10) He attended college for several years; however, he did not receive a degree. (Tr. 10) He served in the Navy from 1998 to 2001, and he received a general discharge under honorable conditions. (Tr. 10-11) In 2001, he married; in 2010, he separated from his spouse; and in 2012, he divorced. (Tr. 11-12, 28) His children are ages 13 and 16. (Tr. 12)

Financial Considerations

SOR ¶¶ 1.a and 1.b allege Applicant owes federal income taxes of \$19,010 for tax year 2011 and \$5,096 for tax year 2012. He filed his 2011 and 2012 federal income tax returns in April 2013. (Tr. 29-30) He has been aware that he owed federal income taxes since April 2013. (Tr. 30) More details about his payments to address delinquent taxes are contained in this section, *infra*.

SOR ¶¶ 1.c and 1.f allege Applicant failed to timely file his federal and state M tax returns for tax years 2013 through 2016. He said he filed his 2013 through 2016 federal

and state M tax returns in 2019. (Tr. 31) However, he might have filed those tax returns in the last half of 2018, based on the payments he made after June 2018, and his response to DOHA interrogatories indicating he planned to file his tax returns in June 2018. (GE 2) Filing was somewhat delayed by a flood around 2012 and 2013 and possibly by his divorce, which was final in 2012. (Tr. 31)

SOR ¶¶ 1.d and 1.e allege Applicant owes state M income taxes as follows: \$5,537 for tax year 2003; and a total of \$10,572 for tax years 2011 and 2012. SOR ¶ 1.g alleges in March 2014, a state M tax lien was filed against Applicant for \$7,597. On September 21, 2018, Applicant paid the state M tax authority \$20,000 by cashier's check, and state M released the hold on Applicant's driver's license. (AE J; AE K) In October 2018, Applicant paid the state M tax authority a total of \$7,934 by cashier's checks. (AE L; AE M) He currently has a 2018 state M tax debt of \$11,928, which is not alleged in the SOR. (Tr. 39) He has not made any payments to address his 2018 state M tax debt. (Tr. 40)

The documentation Applicant submitted is summarized in the following table.

Tax Year	Federal Tax Debt	Federal Tax Payment	State Debt	Exhibits
2011	\$14,296		\$5,080	GE 2 at 19; AE I
2012	\$3,565		\$5,713	GE 2 at 26; AE I
2013	\$8,601		\$0	Tr. 32-33, 65-67; AE C; AE I
2014	\$4,165		\$0	Tr. 33, 67; AE D; AE I
2015	\$9,274	\$4,025	\$5,570	Tr. 34, 67; AE E; AE I
2016	\$7,244		\$5,087	AE F; AE I
2017	\$11,017		\$6,114	AE G; AE I
2018	\$36,082	\$11,928	\$11,928	Tr. 36-40; AE H

Applicant's annual salary is about \$85,000. (Tr. 28) On May 1, 2019, the Internal Revenue Service (IRS) wrote Applicant and established a payment plan to address his tax debts for tax years 2011, 2012, 2015, 2016, and 2017. (AE A) It is unclear why some of the tax years were not listed that are depicted as delinquent in the above table. For example, the federal tax debt for tax year 2018 of \$36,082 does not appear to have been included in the installment agreement. Applicant's federal tax debt for 2018 was \$36,082, which resulted from withdrawals from his 401(k) account, which has been almost exhausted. (Tr. 36-37, 71) According to the May 1, 2019 IRS installment agreement, his monthly payments were supposed to be \$1,000 with the first payment due on May 25, 2019. (AE A) He provided page 1 of the agreement. (AE A) In May 2019, he paid \$100; in June 2019, he paid \$200; and in July 2019, he paid \$100. (AE B) He is renegotiating the payment plan because he believed the IRS erred and overestimated his gross annual income or ability to pay the tax debt. (Tr. 35) He planned to pay the IRS \$200 a month until the monthly payment to the IRS is renegotiated. (Tr. 36-37)

On April 29, 2019, Applicant paid the IRS \$42,463, which was used to address his tax debt for 2012. (Tr. 32, 65; AE B) From December 3, 2018 to July 8, 2019, he made one payment of \$3,563, one payment of \$2,022, six payments from \$1,000 to \$2,000, and seven payments from \$100 to \$500 during this time period. (AE B) He estimated that

he owed the federal government about \$65,000 after he was credited for his \$42,463 payment when his home was refinanced. (Tr. 32-35, 37) He hopes to net about \$45,000 on the sale of his residence, and he wants to use those funds to pay his tax debt. (Tr. 38) He is also working overtime to obtain additional income to address his delinquent tax debt. (Tr. 40)

Alcohol Consumption and Personal Conduct

SOR ¶¶ 2.a and 3.a allege that around 1999, Applicant was charged with driving under the influence of alcohol (DUI), and in 2000, he was charged with driving while license suspended. (Tr. 40-41, 45, 64) He received deferred prosecution for five years for the DUI, and the DUI charge was later dismissed after his successful completion of his probation; however, he was convicted of driving with a suspended license. (Tr. 41) His driver's license was suspended for one year. (Tr. 41-42)

SOR ¶ 2.b alleges in May 2000 while Applicant was in the Navy, he received disciplinary action for failure to obey an order. Applicant violated the order of a chief petty officer who told him to remove his sunglasses when he was on a vessel. (Tr. 43; GE 6 at 32) He had consumed alcohol ashore before the incident. (Tr. 44) He received nonjudicial punishment for disobeying the order of the chief petty officer. (Tr. 44)

SOR ¶ 2.c. alleges in September 2001, Applicant received a general discharge from the Navy due to alcohol rehabilitation failure. After the 1999 DUI, Applicant volunteered to attend alcohol counseling. (Tr. 45) After the incident with the chief petty officer in 2000, Applicant was discharged from the Navy for alcohol rehabilitation failure. (Tr. 45-47)

SOR ¶ 3.b alleges in December 2001, Applicant was charged with assault/domestic violence. He struggled with his spouse and took the keys to his truck from her. (Tr. 48-49) He conceded under state law the struggle constituted assault. (Tr. 49) He was not under the influence of alcohol. (Tr. 48) He attended anger management; he was convicted of assault; and he received probation for two years. (Tr. 47-49)

SOR ¶ 3.c alleges in June 2007, Applicant was charged with petty theft/shoplifting. He wanted to purchase sunglasses at a military exchange. (Tr. 49-50) A sales person would not assist him with the purchase. (Tr. 49-51) According to the January 29, 2008 Office of Personnel Management (OPM) personal subject interview (PSI), he took the tag off of the sunglasses and left his old sunglasses on the counter. (GE 2 at 67-68) During his February 14, 2013, and January 18, 2018 OPM PSIs, and at his hearing, he said he put some money on the counter, and then he took the sunglasses. (Tr. 51; GE 2 at 77, 85) The January 29, 2008 OPM PSI does not mention that he left money on the counter for the sunglasses. (GE 2 at 67-68) The theft charge was dismissed after he completed 40 hours of community service. (Tr. 52; GE 2 at 67-68)

SOR ¶ 3.d alleges in February 2009, Applicant was charged with second degree assault of his spouse. Applicant was upset because his spouse was mismanaging the family finances. (Tr. 52) Applicant took her phone from her and threw it against the wall.

(Tr. 52) When he took her phone, he grabbed her arm and left a red mark on her wrist. (Tr. 53) She did not testify against Applicant, and the charge was dismissed. (Tr. 53)

SOR ¶ 2.d alleges in June 2012, Applicant was charged with operating a vehicle while under the influence of alcohol (OWI). (Tr. 54-55) A police officer stopped him for speeding and gave him a breath alcohol test (BAT) because they could smell tequila on his breath. (Tr. 56) His BAT result exceeded .08. (Tr. 56) He pleaded guilty to this offense and received five years of probation before judgment, and he completed an alcohol-education class. (Tr. 57-58) After successful completion of probation, the charge was dismissed. (Tr. 57) He was allowed to consume alcohol during probation. (Tr. 57-59)

SOR ¶ 3.e alleges in January 2014, Applicant was charged with driving on a suspended license. His case was placed on the Stet docket. He explained that he completed all requirements for reinstatement of his driver's license, and the state erroneously failed to completely process and reinstate his driver's license. (Tr. 59) The charge was dismissed. (Tr. 59-60)

SOR ¶ 2.e alleges in June 2017, Applicant was charged with disorderly conduct. He was subsequently convicted of disturbing the peace/obstruct public area. He had consumed alcohol prior to this arrest. Applicant and a friend were wrestling or "roughhousing," and Applicant fell and cut his head on some concrete. (Tr. 60-61) Applicant had consumed a beer before the wrestling occurred. (Tr. 60) Applicant and his friend were taken to jail. (Tr. 61) Applicant said his conviction was equivalent to a traffic infraction. (Tr. 62)

SOR ¶ 3.f alleges the same information that is in SOR ¶¶ 2.a through 2.e. Applicant has not been charged with any offenses since June 2017, and he is not on probation. (Tr. 63) Applicant has not consumed sufficient alcohol to the extent to become intoxicated for about two years. (Tr. 68-69) He ended his alcohol consumption almost one year ago. (Tr. 64)

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: "(a) inability to satisfy debts"; "(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."

Applicant failed to timely file his federal and state income tax returns for tax years 2013 through 2016. The IRS wrote that his delinquent taxes for tax years 2011 and 2012 were included in his installment plan, which is an indication he still owes taxes for those tax years. The record establishes AG ¶¶ 19(a), 19(b), 19(c), and 19(f).

Seven financial considerations mitigating conditions under AG ¶ 20 are potentially 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).

Applicant's former spouse mismanaged the family finances, and he was divorced in 2012. Records were lost or damaged in a flood around 2012 or 2013. These are circumstances beyond his control that adversely affected his record collection and application of his time and energy to address his taxes. However, these circumstances are insufficiently detailed to prove he acted responsibly under the circumstances.

A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

Applicant's SOR does not allege he failed to pay his federal and state income taxes for tax years 2013 through 2018 in full when due. 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 allegation that he failed to pay his federal and state income taxes for tax years 2013 through 2018 in full when due will not be considered except for the five purposes listed above.

Applicant has taken an important step towards showing his financial responsibility. In 2019, he filed his state and federal income tax returns for tax years 2013 through 2016; however, his filings of tax returns for those tax years were not timely. He also paid over \$80,000 towards his delinquent federal and state tax debts in the last two years.

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. In regard to the failure to timely file federal and state income tax returns, the DOHA Appeal Board has commented:

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) (emphasis in original). 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 [his or her] 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 [his or her] longstanding prior behavior evidencing 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 employing 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).

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 in part 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.

There is insufficient evidence about why Applicant was unable to file his federal and state tax returns on time. Applicant does not currently have a plan in place that is agreeable to the IRS to address his delinquent federal tax debt of about \$65,000. He owes state M taxes of \$11,928 for tax year 2018. Applicant failed to establish mitigation of financial considerations security concerns.

Alcohol Consumption

AG ¶ 21 expresses the alcohol consumption security concern as follows.

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

AG ¶ 22 lists conditions that could raise a security concern and may be disqualifying in this case including:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; and

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

Applicant engaged in alcohol-related driving offenses involving DUI and OVI and offenses involving disturbing the peace and disobeying an order. He was discharged from the Navy due to alcohol-rehabilitation failure. He drank alcohol to intoxication as recently as two years ago. AG ¶¶ 22(a) and 22(c) are established.

AG ¶ 23 provides conditions that could mitigate security concerns including:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant was arrested or punished for four alcohol-related offenses in 1999, 2000, 2012, and 2017. These offenses resulted in nonjudicial punishment for disobeying an order in 2000, his discharge from the Navy, and one conviction in 2017 for disturbing the peace. He has not consumed sufficient alcohol to the extent of intoxication for about two years. He ended his alcohol consumption about one year ago. AG ¶ 23(b) applies. Alcohol consumption security concerns are mitigated.

Personal Conduct

AG ¶ 15 explains the security concern related to personal conduct as follows:

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 lists conditions that could raise a security concern and may be disqualifying in this case including:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior . . . ;

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant was arrested for DUI, OVI, assault, theft, driving on a suspended license, and disturbing the peace. He was convicted of driving with a suspended license, assault, theft, and disturbing the peace. His commander determined he committed the offense of disobeying an order during a nonjudicial punishment proceeding. The record establishes AG ¶¶ 16(d)(1) through (3) and 16(e)(1).

AG ¶ 17 lists conditions that could mitigate security concerns in this case including:

(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; and

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

AG ¶¶ 17(c), 17(d), 17(e) and 17(f) apply. Applicant and his spouse engaged in some arguments that became physical, and he was arrested twice for assault. The victim, Applicant's spouse, did not require hospitalization. He is no longer married and additional assault offenses are unlikely to occur. Applicant's theft of sunglasses, driving with a suspended license, and disobeying an order are either minor offenses or not recent or both. One driving with a suspended license was unsubstantiated. Applicant disclosed his offenses, and he is not vulnerable to exploitation, manipulation, and duress. Personal conduct security concerns are 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, G, 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 43-year-old aircraft maintenance specialist in flight test mechanics who has been employed by the same defense contractor since 2007. Applicant is a high school graduate, and he attended college for several years; however, he did not receive a degree. He served in the Navy from 1998 to 2001, and he received a general discharge under honorable conditions. In 2001, he married; in 2010, he separated from his spouse; and in 2012, he divorced.

Applicant presented some important mitigating evidence. With the end of his marriage, domestic violence allegations have not recurred. He ended his alcohol consumption almost one year ago. Applicant has also taken an important step towards showing his financial responsibility. He presented some circumstances beyond his control that adversely affected his finances and filing of his tax returns. In 2019, he filed his state and federal income tax returns for tax years 2013 through 2016. He also paid over \$80,000 towards his delinquent federal and state tax debts in the last two years.

The evidence against reinstatement of Applicant's security clearance is more substantial. Applicant filed his state and federal income tax returns for tax years 2013, 2014, 2015, and 2016 in 2019. His tax filings for those four years were not timely. He currently owes \$11,928 in delinquent state income taxes and about \$65,000 in delinquent federal income taxes, and he does not have a payment plan which is agreeable to the IRS to address his federal tax debt. When a tax issue is involved, an administrative judge is required to consider how long an applicant waits to file his or her tax returns, whether the IRS generates the tax returns, and how long the applicant waits after a tax debt arises to begin and complete making payments.

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 is that Applicant knew that he needed to file his state and federal income tax returns for several years. He had a legal requirement to timely file his tax returns. He may not have fully understood or appreciated the importance of timely filing of tax returns. He procrastinated. His actions in 2019 under the Appeal Board jurisprudence are too little, too late to fully mitigate security concerns.

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. Unmitigated financial considerations security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future.

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. Alcohol consumption and personal conduct security concerns are mitigated; however, financial considerations security concerns are not mitigated.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a, 1.b, 1.c, and 1.f:	Against Applicant
Subparagraphs 1.d, 1.e, and 1.g:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraphs 2.a through 2.e:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a through 3.f:	For 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