DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 18-02096
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: Eric A. Eisen, Esq.
01/29/2020

_____

Decision

_____

RIVERA, Juan J., Administrative Judge:

Applicant failed to timely file federal income tax returns for tax years 2012 through 2017 and state returns for tax years 2011 through 2017. He also failed to timely pay his state taxes for tax years 2011-2017. He addressed his delinquent income tax returns, tax debt, and a delinquent credit card debt after he submitted his 2016 security clearance application (SCA). His recent efforts are insufficient to establish a track record of financial responsibility. He failed to demonstrate good judgment, reliability, and willingness to comply with the law. The financial considerations security concerns are not mitigated. Foreign influence security concerns are mitigated. Clearance is denied.

Statement of the Case

Applicant submitted a SCA on May 27, 2016, seeking clearance eligibility for his position with a federal contractor. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) on September 28, 2018, alleging security concerns under Guideline F (financial considerations) and Guideline B (foreign influence). Applicant answered the SOR on December 6, 2018, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

DOHA assigned the case to another administrative judge on April 4, 2019, and issued a notice of hearing on July 17, 2019, convening a hearing on September 19, 2019. The case was reassigned to me on August 9, 2019. I convened the hearing as scheduled. At the hearing, the Government offered eight exhibits (GE 1 through 8). Applicant testified and submitted eight exhibits (AE 1 through 8). All exhibits were admitted without objection. I marked and made part of the record the Government's discovery letter (Hearing Exhibit (HE) 1). DOHA received the hearing transcript (Tr.) on October 7, 2019.

Procedural Issue

At the hearing, Applicant and the Government stipulated to the current currency exchange rate between the United States and France, and to the meaning (translation) of French and German documents that Applicant offered into evidence. (Tr. 8-9)

In Guideline B cases, I am required to consider, among other things, the nature of a nation's government, its relationship with the United States, and its human rights record to assess the likelihood that an applicant's family members are vulnerable to government coercion. I *sua sponte* considered a U.S. Department of State note concerning U.S. Relations with France. (*See*, HE 2; https://www.state.gov/u-s-relations-with-france/).

Findings of Fact

Applicant admitted that, as of September 28, 2018 (the date of the SOR) he: (1) had failed to timely file federal income tax returns for tax years 2013 through 2017 (SOR ¶ 1.a); (2) had failed to timely file state income tax returns for tax years 2011 through 2017 (SOR ¶ 1.b); was indebted to his state for an income tax lien issued in May 2017 for $9,481 (SOR ¶ 1.c); and (3) had an unpaid $7,333 judgment filed against him by a bank in November 2017 (SOR ¶ 1.d).

Applicant did not disclose in his 2016 SCA his failure to timely file federal and state income tax returns, and that he owed state taxes. He was interviewed by a government investigator in March 2017. During the interview, he volunteered his failure to file federal and state income tax returns for tax years 2013, 2014, and 2015. He failed to disclose he had not filed federal income tax returns for years 2012 and 2016, and state tax returns for tax years 2011, 2012, and 2016. Applicant told the investigator that he failed to file because he was living overseas and did not have all the required documents. He promised to file in the coming weeks. He also volunteered that he had failed to disclose in his 2016 SCA that his business credit-card account was cancelled for lack of payments in March 2016. He told the investigator that he had paid the credit-card account in full. He claimed both omissions were an oversight.

Under Guideline B, the SOR alleged, and Applicant admitted that: (1) his wife and three children are dual citizens of the United States and France (SOR ¶¶ 2.a and 2.b); (2) his in-laws are citizens and residents of France (SOR ¶ 2.c); (3) he owns a

home in France with an estimated value of $600,000, with a $200,000 mortgage (SOR ¶ 2.d); (4) he anticipated receiving $1,000 a month from the French government upon his retirement at age 65 (SOR ¶ 2.e); and (5) he anticipated receiving a $600,000 lump sum from the Swiss government upon his retirement at age 65 (SOR ¶ 2.f).

Applicant's SOR admissions, and those at the hearing, are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 61-year-old employee of a federal contractor. He graduated from high school in 1976, completed a bachelor's degree in 1981, and a master's degree in 1988. All his education was completed in U.S. academic institutions. While in college, he started working part time for a federal agency. After earning his master's degree, Applicant was hired full time by the federal agency and worked abroad between 1989 and 1999. The federal agency granted him access to classified information at the top-secret level. While employed with the federal agency, Applicant contributed into its thrift savings plan and currently has a balance of about $201,000. (AE 7)

After leaving the federal agency, Applicant worked for a large international corporation between 1999 and 2004, and lectured at a French University between 2000 and 2005. Between 2004 and 2012, Applicant worked for a private company in Switzerland, and between around 2011 and 2012, he worked for a private company in a Middle Eastern country. He worked for a private company in France between 2012 and 2014. He returned to the United States in 2014, because his father was ill. He has been working as vice-president for a federal contractor, his clearance sponsor, since 2014.

Applicant married a French citizen in 1986 in France. They have three children, ages 31, and 28 (twins). His wife and children are now dual citizens of the United States and France. He testified that he still provides financial assistance to all of his children. His older daughter lives in France in the house Applicant purchased in 2005 for about $620,000. He estimated the value of the property at $650,000 when he completed his 2016 SCA. At hearing, Applicant claimed the property value was currently closer to $400,000. He submitted no documentary evidence concerning the current value of his French property.

Applicant opened a bank account in France while he was working there between 1989 and 1999. He currently maintains approximately $9,000 in the account to pay for his living expenses when he travels to France, for his daughter's financial assistance, and to pay the mortgage on the home in France. Additionally, he disclosed having a Swiss bank account with about $150 (GE 2), and a Swiss retirement account with an estimated value of $600,000. At the time he completed the 2016 SCA, Applicant believed he was entitled to French social security benefits, which he estimated at $1,000 per month after age 65.

Applicant claimed that while working for the U.S. federal agency in France, he always filed his income tax returns and paid his taxes on time. He stated that he later

paid income taxes to Switzerland, because he worked there, and property taxes to France, because he owns a house there. He explained that he was "getting lazy and filing his taxes in batches, two or three years at a time." (Tr. 35-36) Applicant mistakenly believed he owed no taxes to the federal government because he was taking minimum deductions and the first $100,000 of income was not taxable under the foreign income tax deduction. (Tr. 36-37)

Applicant filed his federal income tax return for tax year 2012 in March 2017. For tax year 2013, he filed his federal income tax return in March 2019. The 2013 IRS account transcript indicates he was assessed a penalty for filing his 2013 return late ($216), and paid interest for late payment of taxes ($233). For tax year 2014, he filed his federal income tax return in December 2018. The 2014 IRS account transcript indicates he had filed for an extension of time to file his 2014 tax return, but did not file the return until 2018.

For tax year 2015, Applicant filed his federal income tax return in June 2019. The 2015 IRS account transcript indicates he was assessed a penalty for late filing, and paid a penalty for late payment of taxes ($558) and was charged interest ($1,416). For tax year 2016, he filed his federal income tax return in July 2018. The 2016 IRS account transcript indicates he had a $6,800 credit. For tax year 2017, he filed his federal income tax return in December 2018. The 2017 IRS account transcript indicates he had a $14,661 credit. For tax year 2018, he timely filed his federal income tax return in April 2019.

Applicant filed his state income tax returns for years 2011 through 2017 in 2019. As of August 26, 2019, he had an outstanding state tax debt of about $107,668, plus $2,587 for penalties and interest accrued. He paid his state tax debt in full in August 29, 2019. The state tax judgment against him was removed upon payment of the tax debt. (AE 3, SOR ¶ 2.c) Additionally, he presented documentary evidence showing that a bank lien filed against his property was released after payment of the debt in July 2019. (AE 1 and 2; SOR ¶ 2.d)

At his hearing, Applicant explained that there were numerous reasons for his failure to timely file his income tax returns: (1) he was distracted about his tax filing obligations because he had to return to the United States in 2014 to be with his father who was seriously ill and passed away in 2014; (2) he was earning about $500,000 a year abroad, and when he returned to the United States, he lost half of his earnings; (3) after his father died in 2014, the executor of the estate failed to resolve the estate and there were tax problems associated with it; (4) he was unconcerned about filing his federal income tax returns because he believed he was paying any taxes owed through his withholdings; (5) in 2013, he started to receive income from his beach rental property and he did not know how to file the income tax returns; and (6) he failed to seek help from a tax professional.

Concerning his Swiss retirement account with an estimated value of $600,000, Applicant received a lump-sum payment of $491,504 and transferred the money to a

United States bank, except for $43,000 Swiss francs that Switzerland retained, in 2019. Applicant testified that he used the lump-sum payment to pay off all of his delinquent debts and past-due taxes. (AE 6; Tr. 46)

Concerning the anticipated $1,000 a month French social security pension upon his retirement at age 65, Applicant testified that he was mistaken about it. He now believes that he needed to work and contribute into the French retirement system for 10 years to vest into the French social security pension plan. Because he only worked and contributed during seven years, he now believes he is not entitled to any pension.

In 2011, Applicant purchased land in a U.S. state to build a beach retirement home. He completed construction of the home in 2013. Since then, he has been using the beach property as a business property where he rents it most of the year, except for the time when he and his family use it during the summers. Applicant's beach property has an estimated market value of $1.2 million. He owes $261,000 on the house mortgage, plus an additional $170,000 on a home equity loan. (AE 5)

Applicant anticipates retiring in the United States in about five years, after paying all of his mortgages. He intends to live at his U.S. beach property, and to travel to France once in a while to visit his daughter and his wife's relatives. He was issued a French "green card" when he lived in France, but it expired in July 2019. He claimed he cannot renew it because he no longer lives in France. It is not clear whether he and his wife owning property in France is a consideration for his eligibility to renew his French "green card." (Tr. 74)

Applicant expressed remorse for not filing his income tax returns on time. He claimed that he has learned a hard lesson and promised to timely file his income tax returns and to pay his taxes in the future. Applicant presented little documentary evidence to show that he had contact with the IRS, the state tax authority, or his bank creditor before he submitted his 2016 SCA.

At the hearing, Applicant highlighted his work abroad in an important position for a federal agency for about 10 years. During that period, he represented U.S. interests in several foreign countries. He believes his past employment and behavior have proven that he is not a security risk. Applicant noted that his current earnings are sufficient to pay his financial obligations and living expenses. Moreover, he established that the value of his assets in the United States exceeds the value of his assets in any foreign country, including France. I find that he participated in financial counseling provided by his attorney.

Applicant submitted reference statements from two long-time friends, one of which was also a professional colleague, and a retired U.S. major general. His references consider Applicant to be trustworthy, reliable, diligent, and a loyal American patriot. They recommended Applicant's eligibility for a clearance without reservations. (AE 8)

Relations between the United States and France are active and friendly. The two countries share common values and have parallel policies on most political, economic, and security issues. Differences are discussed frankly and have not generally been allowed to impair the pattern of close cooperation that characterizes relations between the two countries. (U.S. Department of State, *U.S. Relations with France*, *See*, https://www.state.gov/u-s-relations-with-france/)

Policies

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; and DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended. The case will be adjudicated under the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Eligibility for access to classified information may be granted "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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any

reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

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.

Applicant failed to timely file his federal income tax returns for tax years 2012 through 2017, and his state returns for tax years 2011 through 2017. Additionally, he failed to timely pay his federal income tax for two tax years, and his state tax for tax years 2011 through 2017. AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(c) a history of not meeting financial obligations;" and "(f) failure to file . . . annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required." The record establishes both disqualifying conditions AG ¶¶ 19(c) and (f), requiring additional inquiry about the possible applicability of mitigating conditions.

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).

Considering the evidence as a whole, I find that none of the mitigating conditions are sufficiently established by the evidence to mitigate the financial considerations concerns. AG ¶ 20(a) does not apply because Applicant failed to file income tax returns and to pay taxes repeatedly over many years and he only recently corrected his tax problems.

Applicant's father illness and passing away, him losing half of his earnings, and the problems resolving his father's estate could be considered as circumstances beyond Applicant's control that adversely affected his record collection and application of his time and energy to address his taxes. Notwithstanding, these circumstances are insufficient to show he was financially responsibly under the circumstances.

Applicant has taken important steps towards showing his financial responsibility. He filed all his delinquent federal and state tax returns and paid all of his delinquent taxes. The state tax judgment against him was removed upon payment of the tax debt. Additionally, the bank lien filed against him was released after full payment of the debt in July 2019.

Notwithstanding, Applicant's filings of federal tax returns for tax years 2012 through 2017, and his state tax returns for tax years 2011 through 2017, were not timely. Additionally he failed to timely pay his federal taxes for at least two tax years (he was assessed interests and penalties), and he did not timely pay his state taxes for tax years 2011 through 2017.

Concerning an applicant's 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).

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).

AG ¶ 20(g) applies because he filed his tax returns and paid 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 this case, Applicant submitted his SCA in 2016. He did not start to file his federal income tax return for tax year 2012 until 2017. There is insufficient evidence about why Applicant was unable to file his federal and state tax returns on time. Applicant's failure to file his federal and state income tax returns in a timely manner, and his failure to pay his debts does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information. *See*, ISCR Case No. 14-01894 at 5 (App. Bd. Sept. 27, 2016). Under all the circumstances, including the jurisprudence from the DOHA Appeal Board, he failed to establish mitigation of financial considerations security concerns.

Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

> Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to

> pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

Applicant's wife and children are dual citizens of the United States and France. His in-laws are citizens and residents of France. His older child is a resident of France. He owns a home with an estimated value of $650,000, with an outstanding mortgage of about $200,000, and he maintains a French bank account for his convenience.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

> (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
>
> (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and
>
> (f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

The Government did not submit evidence of a significant threat of terror and ongoing human rights problems in France. Applicant's foreign contacts may create a potential conflict of interest, but there is no evidence of a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. Disqualifying condition AG ¶ 7(a) is not established. Disqualifying conditions AG ¶¶ 7(b) and (f) are established because of Applicant's close family connections with his in-laws in France, and his substantial property interest in that country.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

> (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;
>
> (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and
>
> (f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict of could not be used effectively to influence, manipulate, or pressure the individual.

I considered the totality of Applicant's family ties to France as well as each individual family tie. Guideline B is not limited to countries hostile to the United States. The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields.

The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant is a loyal U.S. citizen. After completing his master's degree, he worked with an important federal agency abroad for almost 10 years. He returned to the United States when his father was ill. He has remained in the United States and credibly

testified that he intends to retire and live in the United States. I find his French property and other financial interests abroad are outweighed by the assets he has in the United States.

Applicant's ties to France (mostly via his wife and in-laws) are outweighed by his deep and long-standing relationships and loyalties in the United States. I find that it is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and the interests of France. Moreover, Applicant has demonstrated that there would be no conflict of interest because he can be expected to resolve any conflict of interest in favor of the United States. AG ¶¶ 8(a), 8(b), and 8(f) are applicable.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. Security Executive Agent Directive (SEAD) 4, App. A, ¶¶ 2(a) and 2(d). I have incorporated my comments under Guideline F and Guideline B in my whole-person analysis. Some of these factors were addressed under those guideline, but some warrant additional comment.

Applicant is a 61-year-old employee of a federal contractor. He has about 10 years of service for a federal agency working abroad. He held a clearance while working for the federal agency. Additionally, he has an impressive work resume detailing important work for multinational corporations in high-paying positions. He has been working for a federal contractor, his security sponsor, since 2014.

The evidence against grant of Applicant's security clearance is substantial. 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. *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 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, expenditures for his children's college tuition and expenses, and spouse's serious 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). *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 testified that he timely filed his state and federal income tax returns while working for the federal agency. He knew he had a requirement to timely file his federal and state tax returns while working for multinational corporations abroad and after he returned to the United States in 2014. He procrastinated and failed to demonstrate good judgment and reliability. He has a problem complying with well-established rules. His recent actions to resolve his tax problems are insufficient 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. 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 and 1.b:	Against Applicant
Subparagraphs 1.c and 1.d:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 1.a-1.f:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national security interest of the United States to continue Applicant's eligibility for a security clearance. Clearance is denied.

_____
JUAN J. RIVERA
Administrative Judge