



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



In the matter of: )  
)  
) ISCR Case No. 18-00110  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: Daniel P. Meyer, Esq.

01/08/2020

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant failed to timely file her federal and state income tax returns for tax years 2009, 2010, and 2014. For most of the previous 10 years, she has owed delinquent taxes beginning with tax year 2007. She did not prove she was unable to timely file her tax returns or make greater progress sooner on paying her tax debt. Personal conduct security concerns are refuted; however, financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 24, 2014, Applicant completed and signed a Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On January 18, 2019, 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 August 20, 2019, Applicant responded to the SOR and requested a hearing. (HE 3)

On September 16, 2019, Department Counsel was ready to proceed. On October 15, 2019, the case was assigned to me. On October 16, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for November 14, 2019. (HE 1) The hearing was held as scheduled.

During the hearing, Department Counsel offered 7 exhibits; Applicant offered 16 exhibits with her SOR response; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 8-9, 12-13; GE 1-7; Applicant Exhibits (AE) 1-16) I granted Applicant's request for additional time to submit documentation. On November 26, 2019, DOHA received a transcript of the hearing. On December 13, 2019, Applicant provided one exhibit, which was admitted into evidence without objection. (AE 17) The record closed on January 1, 2019. (Tr. 37, 39; AE 17; HE 5)

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

### **Findings of Fact**

In Applicant's SOR response, she admitted all of the SOR allegations. (HE 3) Her admissions are accepted as findings of fact.

Applicant is 61 years old, and she owns a corporation that provides engineering information technology services to the federal government. (Tr. 14, 25-26, 31) Her corporation employs about 20 people, and the gross revenue is about \$3 million dollars annually. (Tr. 25) Her employees must have a top secret clearance with access to sensitive compartmented information (SCI) to provide necessary services to the federal government. (Tr. 14) She has a bachelor's degree in business administration with a minor in computer science and a master's degree in business administration with a focus on technical communications. (Tr. 14)

Applicant married in 1983, and her two children were born in 1985 and 1987. (Tr. 32) Her husband is employed as a quality engineer at a large computer company. (Tr. 32) Applicant is from a large family. (Tr. 15) She had 10 siblings. (Tr. 15) Two of her brothers were ill for several years. (Tr. 15-16) One brother died in 2009, and the other brother died in 2015. (Tr. 15-16) A third brother suffered from autism and lived with her mother. (Tr. 16) Applicant provided financial support for three of her brothers, one sister, and her mother, who has dementia. (Tr. 15-16) Applicant is a cancer survivor. (Tr. 38) For many years, she has been focused on building her companies. (Tr. 18)

## Financial Considerations and Personal Conduct

When Applicant submitted her December 24, 2014 SCA, she disclosed that she owed the Internal Revenue Service (IRS): about \$30,000 for tax year 2008; about \$10,000 for tax year 2010; about \$11,000 for tax year 2011; about \$5,000 for tax year 2012; and about \$5,000 for tax year 2013. (GE 1) She said she was “working on putting a payment plan in place.” (GE 1)

During Applicant’s July 11, 2016 Office of Personnel Management (OPM) personal subject interview (PSI), Applicant said she paid the IRS \$1,000 monthly and paid her tax debts as follows: for tax years 2008, 2010, 2011, and 2012 she paid the taxes around 2015; and for tax year 2013, she plans to pay this debt in August 2016. (GE 6 at 10-11) She plans to complete payments on her \$50,000 federal tax lien by August 2016. (GE 6 at 11) These statements about resolution of her federal income tax debts were not accurate.

Applicant withdrew funds from her 401(k) accounts and paid or is paying her tax debts. (Tr. 20) At the time of her hearing, all of her tax returns were filed, and she has payment plans with the state and the IRS. (Tr. 18) Her November 21, 2019 IRS payment plan indicates she agreed to pay the IRS \$54,889 by March 13, 2020. (Tr. 18, 21; AE 17B) Applicant said her remaining tax debt is solely for tax year 2018. (Tr. 30) Department Counsel asked for proof of recent payments; however, Applicant did not provide proof of any payments in 2019. (Tr. 23) I requested IRS tax transcripts for tax years 2017 and 2018; however, they were not provided. (Tr. 30-31; AE 17)

The following table summarizes the information from Applicant’s tax transcripts. The adjusted gross income is rounded to nearest \$1,000 to protect Applicant’s financial privacy.

Tax Year	Date Return Filed	Adjusted Gross Income	Taxes Due (-) or Refund (+) Owed as of Jan. 12, 2018, June 18, 2018, or July 2, 2018	Taxes Currently Due (-) or Refund (+)	Exhibit
2007	Oct. 17, 2008	\$1,110,000	-\$2,697	\$0	GE 5; AE 4
2008	Apr. 15, 2009	\$325,000	-\$24,642	\$0	AE 5
2009	Feb. 28, 2011	\$124,000	-\$25,525	\$0	AE 6
2010	Apr. 20, 2013	-\$8,000	\$0	\$0	AE 7
2011	Apr. 19, 2013	-\$19,000	\$0	\$0	AE 8
2012	Oct. 10, 2013	-\$30,000	\$0	\$0	AE 9
2013	Oct. 17, 2014	\$81,000	-\$5,086 to \$0	\$0	AE 10
2014	May 31, 2016	\$119,000	\$0	\$0	AE 11
2015	Oct. 17, 2016	\$432,000	-\$91,088	\$0	AE 12
2016	Oct. 16, 2017	\$387,000	-\$22,292	\$0	AE 13

The SOR alleges the following financial allegations:

SOR ¶¶ 1.a and 1.j allege Applicant failed to timely file her federal and state income tax returns for tax years 2007 through 2016 under Guideline F. SOR ¶ 2.a cross-alleges the same allegations under Guideline E.

SOR ¶ 1.b alleges Applicant owes the IRS \$2,690 for tax year 2007. On February 26, 2018, Applicant paid the IRS \$2,693, and on March 19, 2018, Applicant paid the IRS \$26. (AE 14 at 1-2) In 2018, she paid her IRS debt for tax year 2007. (AE. 4)

SOR ¶ 1.c alleges Applicant owes the IRS \$24,642 for tax year 2008. On February 26, 2018, Applicant paid the IRS \$24,517. (AE 14 at 3) In 2018, she paid her IRS debt for tax year 2008. (AE 5)

SOR ¶ 1.d alleges Applicant owes the IRS \$25,524 for tax year 2009. On February 27, 2018, Applicant paid the IRS \$3,870, and on March 2, 2018, she paid \$26,500. (AE 14 at 4-6) In 2018, she paid the IRS debt for tax year 2009. (AE 6)

SOR ¶ 1.e alleges Applicant failed to timely pay, as required, the IRS for tax year 2010. Her 2010 IRS tax transcript shows her tax per return was \$1,221, and her withholding was \$7,619. (AE 7) On April 15, 2011, \$6,772 was transferred from her IRS account for tax year 2010 to pay her taxes for tax year 2008. (AE 7) On February 27, 2018, she paid the IRS \$4,294. (AE 14 at 7) Her IRS tax transcript for tax year 2010 shows a zero balance owed. (AE 7) It is unclear why additional taxes were paid in 2018.

The SOR does not allege a failure to timely pay federal income taxes for tax years 2011 and 2012. On February 28, 2018, Applicant paid the IRS \$7,063 for tax year 2011. (AE 14 at 8) On February 28, 2018, she paid the IRS \$7,760 for tax year 2012, and on March 20, 2018, she paid the IRS \$75 for tax year 2012. (AE 14 at 9-10) She paid her IRS debts for tax years 2011 and 2012. (AE 8, 9)

SOR ¶ 1.f alleges Applicant owes the IRS \$5,085 for tax year 2013. When Applicant filed her tax return, she owed \$12,873, and she had previously paid \$9,620. (AE 10) She made three payments to the IRS in 2018 as follows: \$7,153 (March 2, 2018); \$1,200 (March 8, 2018); and \$4,050 (March 8, 2018). (AE 14 at 11-13) Her IRS tax transcript shows a zero balance owed for tax year 2013. (AE 10)

SOR ¶ 1.g alleges Applicant owes the IRS \$91,087 for tax year 2015. When Applicant filed her tax return, she owed \$12,873, and she had previously paid \$9,620. (AE 10) On March 1, 2018, she paid \$90,950, and her IRS tax transcript shows a zero balance owed for tax year 2015. (AE 10; AE 14 at 14) It is unclear why her taxes significantly increased after she filed her tax return.

SOR ¶ 1.h alleges Applicant owes the IRS \$22,291 for tax year 2016. When Applicant filed her tax return, she owed \$92,258, and she had previously paid \$27,380. (AE 13) Applicant made the following significant payments in 2018: \$15,179 (March 19, 2018); \$20,000 (April 23, 2019); \$10,000 (August 23, 2018); \$10,000 (September 17,

2018); and \$4,987 (November 17, 2018). (AE 13, AE 14 at 15-20) Her tax debt was also reduced due to transfers of overpayments for tax years 2008, 2012, and 2013. (AE 13) Applicant's IRS tax transcript indicates she has a zero balance for tax year 2016, and two refunds totaling \$2,204 were transferred to non-IRS debts. (AE 13) The transfers to address non-IRS debts are an indication that as of November 2018 all IRS debts were paid. (AE 13)

SOR ¶ 1.i alleges the IRS filed a tax lien for \$50,875 against Applicant in about October 2013. SOR ¶ 1.k alleges a state tax authority filed a tax lien for \$8,854 against Applicant, and SOR ¶ 1.l alleges Applicant owes a state tax authority \$17,705. On March 4, 2019, the state tax authority indicated Applicant owed \$12,390; the monthly installment amount is \$710; and the first monthly payment is due on March 15, 2019. (AE 16) On October 28, 2019, the state tax authority wrote the balance due is \$40,455. (AE 17D) A payment plan requiring monthly payments of \$1,300 for 36 months was established with the first payment due on November 15, 2019. (AE 17D)

According to Applicant's IRS tax transcripts, Applicant had an adjusted gross income (AGI) of more than \$300,000 in four of ten of the tax years from 2007 to 2016. (AE 4-13) For tax year 2007, she said she was sued by another company based on an allegation of non-compete, and "trying to defend that ate up most of" her \$1,110,000 income in 2007. (Tr. 24) Her taxable income for 2007 was \$1,058,000. (AE 4) She explained that she could not utilize all of the funds indicated in her AGI on her federal income tax returns because she used the funds to make payroll, and she does not have a line of credit. (Tr. 23) She did not provide documentation showing the funds spent for litigation or payroll. For tax years 2010, 2011, and 2012, she had negative income because she was starting a new company. (Tr. 29) Applicant's current budget indicates she has sufficient income to pay her tax debts. (AE 17A)

Applicant described her tax issues as an anomalous period in her life that she has resolved, except for the two payment plans with the IRS and state tax authority. (Tr. 33) She has never been arrested or convicted. (Tr. 33; GE 1) She passed a DOD lifestyle polygraph. (Tr. 33) She has built a profitable company and provided important support to the U.S. Government. She assured her tax problems will not recur. (Tr. 33)

## **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 [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## Analysis

### Financial Considerations

AG ¶ 18 articulates the security concern 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." She filed her federal tax returns within the extension periods for tax years 2007, 2008, 2013, 2015, and 2016. She did not have any income for tax years 2011 and 2012, and no income taxes were indicated on her IRS tax transcripts for tax years 2011 and 2012. She may not have been required to file a federal tax return for those two years. See IRS Publication 501, *Dependents, Standard Deduction, and Filing Information*. Three of her tax returns were not timely filed: her tax return for tax year 2009 was filed on February 28, 2011; her tax return for tax year 2010 was filed on April 20, 2013; and her tax return for tax year 2014 was filed on May 31, 2016.

Applicant did not pay her federal income taxes when due for tax years 2007, 2008, 2009, 2013, 2015, and 2016. 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).



Applicant presented some important mitigating information. Applicant, two of her brothers, and her mother had serious medical problems which resulted in substantial medical bills. She was sued and left her corporation, and she did not earn any income for three years. These are circumstances partially or fully beyond her control that adversely affected her finances. However, these circumstances are insufficiently detailed to prove she acted responsibly under the circumstances. Applicant is credited with mitigating SOR allegation ¶ 1.e because she did not owe delinquent taxes for tax year 2010; and SOR allegations ¶¶ 1.i and 1.j because the two tax liens were included in her other SOR tax debts.

Applicant did not timely file her state and federal income tax returns for tax years 2009, 2010, and 2014. According to the January 12, 2018 tax transcripts for tax years 2007, 2008, 2009, 2013, 2015, and 2016, Applicant owed taxes for those six tax years until 2018. She did not establish that she was unable to timely file her tax returns and to make greater progress sooner paying her tax debts.

Applicant's SOR does not allege she did not pay her federal taxes in full when due for tax year 2018, and she currently has a tax debt of \$54,889. SOR ¶ 1.l alleges a state tax debt for \$17,705, and on October 28, 2019, the state tax authority wrote the balance due is \$40,455. The SOR does not allege her incorrect statement to the OPM investigator about the status of her tax debts. 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.

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 the existence of any tax liability. *Spies v. United States*, 317 U.S. 492 (1943); *United States v. Walker*, 479 F.2d 407 (9<sup>th</sup> Cir. 1973); *United States v. McCabe*, 416 F.2d 957 (7<sup>th</sup> Cir. 1969); *O'Brien v. United States*, 51 F.2d 193 (7<sup>th</sup> Cir. 1931). For purposes of this decision, I am not weighing Applicant's failure to timely file her federal income tax returns against her 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.

AG ¶ 20(g) applies in part because she paid all of her delinquent federal income taxes except for tax year 2018. She has payment plans to address her state and federal tax debts. However, the timing of her payments of her delinquent taxes are an important aspect of the analysis. 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). 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, there is insufficient evidence about why Applicant was unable to timely file her tax returns for tax years 2009, 2010, and 2014. She did not establish she was unable to make greater progress resolving her delinquent tax debts sooner. She has a \$54,889 federal tax debt for tax year 2018, and a state tax debt of \$40,455. She did not provide proof of any payments to address these two debts in 2019. There are not clear indications her financial problems are under control. 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 includes two conditions that could raise a security concern and may be disqualifying include:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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; 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.

SOR ¶ 2.a cross-alleges the conduct in SOR ¶¶ 1.a and 1.j, specifically, that Applicant failed to timely file her state and federal tax returns for tax years 2007 through 2016. She failed to timely file her federal and state tax returns for tax years 2009, 2010, and 2014. AG ¶ 16(c) is not established because the failure to timely file her tax returns for tax years 2009, 2010, and 2014 are alleged and fully addressed under Guideline F. AG ¶ 16(e) is not established because filing three state and federal tax returns late more than three years ago is not sufficiently embarrassing or derogatory to affect her personal, professional, or community standing. It is also significant that all taxes were paid for those three years. She has refuted SOR ¶ 2.a as a security concern.

### **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 E and

F 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 61 years old, and she owns a corporation which provides engineering information technology services to the federal government. Her corporation employs about 20 people, and the gross revenue is about \$3 million dollars annually. She has a bachelor's degree in business administration with a minor in computer science and a master's degree in business administration with a focus on technical communications. Applicant, two of her brothers, and her mother have had serious medical problems. She provided financial support for her three brothers, one sister, and her mother, who has dementia. She was focused on building her companies. Applicant made substantial contributions to her companies and the national defense. There is no evidence of security violations.

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 *a/so* 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 problems here relate to Applicant’s handling of her federal and state income taxes. Applicant knew that she needed to timely file her income tax returns and pay her taxes. She may not have fully understood or appreciated the importance of these requirements in terms of her access to classified information. She did not establish she was unable to make greater progress sooner resolving her tax issues. Her 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 [her] reliability, trustworthiness, and ability to protect classified or sensitive information.” AG ¶ 18.

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. Applicant refuted personal conduct security concerns; however, unmitigated financial considerations 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
Subparagraphs 1.a through 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f through 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant’s eligibility for a security clearance. Eligibility for access to classified information is denied.

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Mark Harvey  
Administrative Judge