



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



In the matter of: )  
)  
) ISCR Case No. 20-01753  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

06/16/2021

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant’s evidence is insufficient to demonstrate financial responsibility. He failed to timely file his federal and state income tax returns for several tax years. He also failed to pay income taxes as required and still owes the IRS delinquent taxes for several years. He failed to mitigate the financial considerations security concerns. Clearance is denied.

**Statement of the Case**

Applicant submitted his most recent security clearance application (SCA) on August 8, 2018. He was interviewed by a government investigator on January 11, 2019, and responded to the Defense Office of Hearings and Appeals (DOHA) interrogatories on April 29, 2019. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) on October 15, 2020, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on November 10, 2020, and requested a hearing before a DOHA administrative judge.

The case was assigned to me on February 19, 2021. DOHA issued a notice of hearing on March 26, 2021, setting the hearing for April 19, 2021. I convened the hearing as scheduled. At the hearing, the Government offered five exhibits (GE 1 through 5). Applicant submitted exhibits (AE) A through T with his answer to the SOR. At hearing, Applicant submitted AE U and V. Post-hearing, Applicant electronically submitted a number of documents that I marked together as AE W. AE W is comprised of eight Tabs, identified by Applicant's counsel as "Exhibits U through BB". I re-numbered AE W Tabs as 1 through 8, to avoid confusion with other exhibits previously admitted in evidence. All exhibits were admitted without objection. Applicant and his wife testified as reflected in a hearing transcript (Tr.) received by DOHA on May 7, 2021.

### **Findings of Fact**

In his SOR answer, Applicant admitted (with clarifications) the financial allegations in ¶¶ 1.a through 1.e (owing the IRS \$23,387 for TY 2014; \$27,308 for TY 2015; \$28,172 for TY 2016; and \$23,195 for TY 2017); and 1.g (failing to timely file state "3" income tax returns for TYs 2015 through 2018). He denied the SOR allegation in ¶ 1.f (failing to timely file state "1" income tax returns for TYs 2012 through 2017). His SOR admissions and those at his 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 69 years old. He graduated from high school in 1970, and enlisted in the U.S. Air Force in 1971, where he honorably served until he retired as a master sergeant (E-7) in 1993. He held a secret clearance during most of his time in the service. He was awarded, among others, the Meritorious Service Medal (3), the Air Force Commendation Medal with 1 Bronze Star, the Air Force Outstanding Unit Award (3), the Good Conduct Medal (7), and the National Defense Service Medal (2). (AE N) The Department of Veterans Affairs (VA) rated Applicant 90 percent disabled due to service connected injuries. He receives close to \$2,000 a month in VA disability compensation. (Tr. 73-74; AE V, pg. 4)

Applicant married in 1976 and divorced in 1996. He married his wife in 1997, and he has eight adult children and 18 grandchildren. Applicant's wife testified on his behalf. She stated that because of his military service and many family separations, she has been in charge of the family finances and the filing of their income tax returns for many years. Applicant received two associate's degrees from a service community college in 1993, and completed his bachelor's degree in computer science in 1998.

After his retirement from the service, Applicant worked for state "1" government between 1993 and 2008, except for the following periods: he was unemployed between June 2001 and November 2001; he worked as a gas station clerk between December 2001 and August 2002; and worked as a store department manager between June 2002 and April 2003.

In May 2008, Applicant moved to state “2,” and worked there as an independent contractor for a federal contractor providing support to federal agencies. In 2011, his contract ended and he moved to state “3” in 2012, to continue his work as an independent contractor for federal contractors. (Tr. 55) Between 2008 and 2018, he held secret and top-secret clearances working for federal contractors. He started working for his current employer and clearance sponsor, a federal contractor, in February 2021. He makes \$115,000 a year, plus a \$5,000 bonus from his employer.

In response to Section 26 (Financial Record) of his August 2018 SCA, Applicant stated that he was working with a tax specialist to prepare delinquent federal and state income tax returns for tax years 2014, 2015, 2016, and 2017. He claimed his filing of those income tax returns were delayed for many different reasons: in 2014, he had a loss of income from his rental property in state “2” and was forced to sell the property at a loss; in 2015, he was laid off, and had income complications due to unemployment compensation, filing for social security, and a new job with a significant loss in income; he lost income from a rental property in state “1”; he had expensive repairs to a rental property; he had rental management expenses from May 2016 to September 2017 for a property in state “1”; several family members passed away; he and his wife were living apart due to jobs or family issues; and he and his wife had many medical problems.

During his January 2019 Office of Personnel Management (OPM) interview, Applicant said his goal was to have all of his delinquent income tax returns filed by September 2019. He claimed that, in all the years in question, he had requested extensions to file, and had paid his taxes via income and retirement income deductions. He failed to submit documentary evidence to show he requested extensions to file his income tax returns for any of the years in question. The IRS transcripts for the TYs in question show that he paid part of the taxes owed via income deductions. The IRS transcripts do not show filing extensions were requested.

Applicant and his wife testified that she was in charge of the family finances and the filing of the income tax returns. They confirmed that they had filed their income tax returns late for tax years 2014 through 2017. They indicated they had been through at least six tax preparers between 2014 and 2020. (AE W-1)

The IRS Transcript for TY 2013 (dated February 19, 2020), indicates Applicant filed his 2013 income tax return on October 19, 2015. His filing status was married filing joint, and he was issued a \$967 refund. (Answer to the SOR, Attachment C)

The IRS Transcript for TY 2014 (dated May 18, 2021), indicates the IRS filed a substitute tax return for Applicant (married filing separate status) on July 22, 2019. According to the TY 2014 IRS transcript, Applicant’s balance owed plus accruals was \$23,213, as of May 31, 2021. (AE W-2)

The IRS Transcript for TY 2015 (dated May 18, 2021), indicates the IRS filed a substitute tax return for Applicant (married filing separate status) on July 1, 2019.

According to the TY 2015 IRS Transcript, Applicant's balance owed plus accruals was \$27,289, as of May 31, 2021. (AE W-2)

Applicant's federal and state income tax returns for TYs 2014 through 2016, were completed by a commercial tax preparer and mailed to the IRS on July 15, 2020. At hearing, Applicant claimed that based on those income tax returns, he was due a \$916 refund for TY 2014, and he owed the IRS \$1,916 for TY 2015. He asked the IRS to apply the \$916 refund from 2014 to his 2015 debt, and he issued a \$1,000 check to the IRS to pay his 2015 tax debt. The check was cashed by the IRS. (Likely, there would be no refund because he filed more than three years late.) (AE U(1.b))

The IRS Transcript for TY 2016 (dated May 18, 2021), indicates the IRS filed a substitute tax return for Applicant (with a married filing separate status) on July 1, 2019. According to the TY 2016 IRS Transcript, Applicant's balance owed plus accruals was \$25,760, as of May 31, 2021. (AE W-2)

Based on his income tax return for TY 2016, Applicant owed the IRS \$3,980 in back taxes. He issued a check for \$3,980, and attached it to Form 1040-V 2016 Payment Voucher, when he filed the 2016 income tax return on July 15, 2020. He indicated in his return that he was entitled to a \$1,535 refund from his state. (AE U(1.c))

The IRS Transcript for TY 2017 (dated May 18, 2021), indicates the IRS filed a substitute tax return for Applicant (with a married filing separate status) on February 24, 2020. According to the TY 2017 IRS Transcript, Applicant's balance owed plus accruals was \$21,445, as of May 31, 2021. (AE W-2)

Applicant's federal and state income tax returns for TY 2017, were completed by a commercial tax preparer and emailed to the IRS and state tax authority on October 28, 2020. The tax preparer sent an email to Applicant that same day indicating the IRS and the state tax authority had accepted his 2017 income tax returns. (AE A) Based on his tax preparer income tax return for TY 2017, Applicant owed the IRS \$4,397 in back taxes. He issued a check for \$2,397, and attached it to Form 1040-V 2017 Payment Voucher, when he filed the 2017 income tax return on January 20, 2021. He paid an additional \$2,000 on April 18, 2021. (AE U(1.d)). He received a \$1,662 refund for TY 2017 from his state on November 2, 2020. (AE U(1.g))

The IRS Transcript for TY 2018 (dated May 18, 2021), indicates Applicant filed his income tax return (married filing joint status) on December 7, 2020. According to the TY 2018 IRS Transcript, Applicant's balance owed plus accruals was \$24,827, as of May 31, 2021. (AE W-2)

Applicant's 2018 federal and state income tax returns were completed by a commercial tax preparer on November 9, 2020, and electronically submitted to the IRS and state "3" on that same date. State "3" indicated in a letter to Applicant that it had applied a 2020 refund to the tax due for TY 2018.

Based on his tax preparer income tax return for TY 2018, Applicant owed the IRS \$16,408 in back taxes. He also owed his state \$2,900 for delinquent taxes. (AE U(1.e, 1.g)). The state applied the 2014 refund (\$2,900) and the 2015 refund (\$2,625) to the TY 2018 deficiency. He paid the remainder, \$273, by check on March 12, 2021.

Applicant's 2019 federal and state income tax returns were completed by a commercial tax preparer on March 24, 2021, and electronically submitted to the IRS and state "3" tax authority on that same date. The IRS Transcript for TY 2019 (dated May 18, 2021), indicates Applicant did not file an income tax return. (AE W-2) Based on his tax preparer income tax return for TY 2019, Applicant owed the IRS \$7,580 in back taxes. He was due a state refund for \$1,291. (AE V, pg. 44)

Applicant's 2020 federal and state income tax returns were completed by a commercial tax preparer on May 12, 2021, and electronically submitted to the IRS and state "3" on that same date. Applicant submitted documentation showing that the IRS and the state tax authority accepted his TY 2020 income tax return on May 12, 2021. Applicant paid the federal taxes owed (\$1,874) by check on May 17, 2021. (AE W, Tab 7) Applicant anticipated a state tax refund of \$3,211. (I note that the 2020 IRS Transcript, dated May 18, 2021, is not up-to-date and does not reflect that Applicant filed his TY 2020 income tax return.)

Applicant submitted documentary evidence showing that he contacted the IRS on about September 17, 2019, and proposed to pay \$75,639, the balance owed then for TYs 2014 through 2016 (including applicable penalties and interest charges) by January 15, 2020. The IRS accepted the proposed payment plan. Applicant presented no documentary evidence to show that he paid the \$75,639, or that he made any payments pursuant to his payment plan.

On January 21, 2021, Applicant contacted the IRS and proposed to pay \$126,960 - the amount he owed for delinquent taxes for TYs 2014 through 2017 - by May 21, 2021. The IRS accepted his proposal and warned him that the debt would continue to accrue interest and penalties until paid in full. Applicant presented no documentary evidence to show that he made the \$126,960 payment, or made any payments toward his tax debt in accordance with the payment plan.

Concerning SOR ¶ 1.f (alleging Applicant's failure to timely file income tax returns for TYs 2012 through 2017 in state "1"), Applicant's documentary evidence shows that the last year he filed income tax returns in state "1" was in 2011. He moved to state "2" in 2008. However, his wife stayed in state "1" until 2009. As a non-resident, Applicant was required to file income tax returns in state "1" if he had any rental income, even if he had an overall loss on the property and owed no taxes. Applicant chose not to file income tax returns for state "1" for TYs 2012 through 2017 because he had negative income from his rental property. He claimed that his tax preparer advised him not to file if he would not owe any taxes. Applicant still owns a property in state "1" that is being rented by one of his daughters. (AE B; Tr. 45-47) Applicant's commercial tax preparer

opined that Applicant does not have any tax liability to states “1” and “2” after TY 2012, because he has been a resident of state “3” since 2012. (AE U(1.f))

Concerning SOR ¶ 1.g (alleging Applicant’s failure to timely file income tax returns for TYs 2015 through 2018 in state “3”), Applicant’s documentary evidence shows that he has been a resident of state “3” since 2012. (AE U(1.f)) The record evidence shows that Applicant failed to timely file his state “3” income tax returns for TY 2012 through 2020.

Applicant believes that he has learned a hard lesson as a result of his tax problems and the clearance process. He promised to timely file his federal and state income tax returns in the future and to expeditiously pay any owed taxes. He believes that his many years of valuable service to the federal government, in the Air Force and working for federal contractors, show he is not a security risk. Applicant considers himself to be a loyal American and a dedicated family man.

### **Policies**

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and 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 AGs 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 AGs 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 Security Executive Agent Directive (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. [First time SEAD used]

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 relating to financial problems:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. 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's financial problems are documented in the record. As alleged in the SOR, he failed to timely file state income tax returns for state "3" for TYs 2015 through 2018, and federal income tax returns for TY 2018. Moreover, he failed to pay income taxes as required and owes the IRS delinquent taxes for several years.

I note that the record shows that Applicant failed to timely file both federal and state "3" income tax returns for TYs 2013 through 2019. Because some of the years he failed to timely file his income tax returns or to pay his taxes were not alleged in the SOR, I will only consider them for the limited purpose of evaluating Applicant's evidence in mitigation.

I also note that Applicant averred that the income tax returns filed for him by the IRS (when he failed to timely file his income tax returns) were incorrect. He anticipates owing less taxes after the IRS considers the correct income tax returns with the exemptions, credits, and deductions he was entitled to receive. The IRS will generally adjust accounts to reflect the correct figures. Notwithstanding, he still owes income taxes for several years.

AG ¶ 19 provides 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 established these disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

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

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, 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; 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 claimed that the filing of his income tax returns were delayed for many different reasons: he had losses of income from his rental properties; he was forced to sell a property at a loss; he was laid off at the end of contracts; he had complications due to unemployment compensation; he filed for social security; he had a new job with a significant loss in income; he had expensive repairs to a rental property; he had rental management expenses; several family members passed away; during periods, he and his wife were living apart due to having jobs in different states or family issues; and he and his wife suffered medical problems.

Some of these circumstances were beyond Applicant's control and could have adversely affected his record collection and application of his time and energy to address his taxes. However, these circumstances when considered in light of his age, education, years of service, and the number of years without timely filing income tax returns or paying his taxes, are insufficient to prove he acted responsibly under the circumstances.

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.

Notwithstanding the lack of any tax debt owed when he filed his tax returns, the Appeal Board provided the following principal rationale for reversing the grant of a security clearance:

Failure to comply with Federal and/or state tax laws suggests that an applicant has a problem with abiding by well-established Government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information. . . . By failing to file his 2011, 2012, and 2013 Federal income tax returns in a timely manner, [that

applicant] did not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information.

ISCR Case No. 15-01031 at 4 (App. Bd. June 15, 2016) (citations omitted).

AG ¶ 20(g) applies because Applicant has filed all of his late income tax returns, albeit on or after July 2020. He also made payment arrangements with the IRS to pay his tax debt in 2019 and again 2021. However, he failed to present documentary evidence of any payments made pursuant to those payment arrangements. Moreover, 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.

Under all the circumstances, including the jurisprudence from the DOHA Appeal Board, he failed to establish mitigation of financial considerations security concerns.

SOR ¶ 1.f alleged that Applicant failed to timely file income tax returns for TYs 2012 through 2017 in state "1". I find that he was a non-resident of state "1" after 2008. He was required to file income tax returns in state "1" because he had rental property income, albeit negative income, and he would owe no taxes. Applicant averred he did not file his income tax returns based on the incorrect advice from his tax preparers. I find this allegation for Applicant.

Considering the record as a whole, I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to timely file his income tax returns or to pay his delinquent income taxes. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. Only AG ¶ 20(g) applies because he filed his late income tax returns, but it does not mitigate the security concerns. The other mitigating conditions are not 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. SEAD 4, App. A, ¶¶ 2(a) and 2(d). 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 Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant, 69, honorably served in the Air Force 22 years and retired as a master sergeant (E-7). He held a secret clearance during most of his time in the service. He was awarded, among others, the Meritorious Service Medal (3) and the Air Force Commendation Medal with 1 Bronze Star. The VA rated Applicant 90 percent disabled due to service-connected injuries. Applicant and his wife have eight grown-up children and 18 grandchildren. Because of his military service and many family separations, his wife has been in charge of the family finances and the filing of the income tax returns for many years. Applicant has worked for federal contractors from 2008 to present, holding secret and top-secret clearances.

The evidence against grant of Applicant’s security clearance is substantial. As alleged in the SOR, he failed to timely file state income tax returns for state “3” for TYs 2015 through 2018, and federal income tax returns for TY 2018. Moreover, he failed to pay income taxes as required and still owes the IRS delinquent taxes for several years.

As noted previously, the record evidence shows Applicant failed to timely file federal and state income tax returns in state “3” for TYs 2013 through 2019. I note again that some of the years he failed to timely file his income tax returns or to pay his taxes were not alleged in the SOR. Thus, I will only consider them for the limited purpose of evaluating Applicant’s evidence in mitigation.

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).

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 has known that he needed to file his state and federal income tax returns for several years. Whether he knew he was going to receive refunds or had sufficient or insufficient funds to pay any taxes owed, he had a requirement to timely file his tax returns. He did not fully understand or appreciate the importance of timely filing of tax returns in security clearance determinations. He also procrastinated paying his delinquent income taxes and still owes taxes for several years. His recent actions in July 2020 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. Financial considerations security concerns are not mitigated 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 - 1.e:	Against Applicant

Subparagraph 1.f:

For Applicant

Subparagraph 1.g:

Against Applicant

**Conclusion**

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

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JUAN J. RIVERA  
Administrative Judge