



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



In the matter of:)
)
) ISCR Case No. 19-01824
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

10/29/2021

Decision

HARVEY, Mark, Administrative Judge:

Applicant failed to timely file his federal income tax returns for tax years (TY) 2006 through 2011. These tax returns were filed in 2013 or 2014. He has an outstanding federal income tax debt of about \$15,000. He has not filed his state income tax returns for TYs 2017 and 2018. He does not have a currently established payment plan with the IRS. Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On October 8, 2018, Applicant completed and signed his Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On November 26, 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), as amended; 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 Guideline F. (HE 2) Applicant provided an undated response to the SOR. (HE 3) On April 11, 2020, Applicant requested a hearing. (Transcript (Tr.) 13)

On September 21, 2020, Department Counsel was ready to proceed. Processing of the case was delayed due to the COVID-19 pandemic. On July 12, 2021, the case was assigned to me. On July 26, 2021, DOHA issued a notice of hearing, setting the hearing for August 25, 2021. (HE 1) His hearing was held as scheduled in the vicinity of Arlington, Virginia using the U.S. Cyber Command video teleconference system. (*Id.*)

During the hearing, Department Counsel offered three exhibits. (Tr. 18-20; Government Exhibits (GE) 1-GE 3) Applicant offered one exhibit. (Tr. 20-21; Applicant Exhibit (AE) A) There were no objections, and all proffered exhibits were admitted into evidence. (Tr. 20-21; GE 1-GE 3; AE A)

On September 1, 2021, DOHA received a transcript of the hearing. One document was received after Applicant's hearing, and admitted into evidence. (AE B) The record closed on October 15, 2021. (Tr. 62, 65, 69)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript. ISCR and ADP decisions and the Directive are available at website: https://doha.osd.mil/Doha/doha_sys.aspx.

Findings of Fact

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 1.a through 1.d with explanations. (Tr. 13-14; HE 3) Applicant's admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 47-year-old air conditioning technician, and a DOD contractor has employed him since September 2018. (Tr. 6-7, 26) He worked as a building manager on a base when he was a federal civilian employee from about 2013 to 2015. (Tr. 7-8) In 1994, Applicant received a General Educational Development diploma. (Tr. 6) He completed an air conditioning technical school. (Tr. 6) In 1995, he married, and his two children are ages 25 and 26. (Tr. 7-8) He has never served in the military. (Tr. 8) He has completed some training on a multitude of security issues. (Tr. 25)

Financial Considerations

In 2008, the economy declined, and Applicant's income was reduced. (Tr. 37-38) He lost his house and a car. (Tr. 22) He had two young children, and he decided to move to seek employment. (Tr. 22) Instead of paying his federal income taxes, he used his savings to support his family. (Tr. 22) His income was reduced after he moved, and he was underemployed. (Tr. 22, 38) When his daughter started college, Applicant had to file his tax returns to enable her to apply for student loans and grants. (Tr. 22) Applicant and his spouse set up a payment arrangement with the IRS in which he was supposed to

make \$300 monthly payments. (Tr. 23, 48) Around 2013 or 2014, his spouse lost her employment for about six months because she was having serious medical problems. (Tr. 23, 39-40; AE B) After making payments for about six months, they defaulted on the IRS payment arrangement due to a vehicle accident. (Tr. 23, 49; AE B) Applicant's mother moved into his home in lieu of a long-term care facility. (AE B) He expressed his concerns about the IRS's establishment of payment arrangements, asserting the IRS wanted unreasonable amounts of monthly payments. (Tr. 23-24)

Applicant's current annual gross pay is about \$62,000, which is double his pay in 2008. (Tr. 23, 27) His and his spouse's adjusted gross income (AGI) in 2015 on his federal income tax return was \$51,300, and in 2016, his AGI was \$55,500. (GE 2 at 8, 10) Applicant's current annual net pay is about \$45,000. (Tr. 27) His spouse's annual net pay is about \$20,000. (Tr. 29) His children are financially independent of Applicant and his spouse. (Tr. 30) His daughter is a registered nurse, and his son has enlisted in the Navy. (Tr. 30) Applicant and his spouse lease a 2019 truck and purchased a 2020 Mustang. (Tr. 34-36) The monthly payments on the two vehicles total \$1,480, and his monthly rent is \$1,050. (Tr. 33-37)

In August 2021, Applicant paid a tax attorney \$1,000 and promised to pay him \$500 monthly for the next four months. (Tr. 24, 30-31; AE A) His tax attorney did not give him a prediction on when he would have a new payment plan with the IRS or when his tax returns were going to be filed for TYs 2019 and 2020. (Tr. 55-56) Applicant was worried about losing his employment and defaulting on any payment arrangement that he made with the IRS. (Tr. 31-32) He promised to correct his tax situation. (Tr. 25)

SOR ¶¶ 1.a and 1.c allege that Applicant failed to timely file his federal income tax returns for TYs 2006 through 2013, 2017, and 2018. (HE 2) He did not timely file his federal income tax returns for TYs 2006 through 2011 because he did not believe he had sufficient funds to pay his taxes at the end of the year. (Tr. 38-39) In 2013 or 2014, the IRS assisted him, and he successfully filed his tax returns for TYs 2006 through 2013. (Tr. 40-41; GE 2 at 5) He timely filed his federal income tax returns for TYs 2014, 2015, and 2016. (Tr. 40-42; GE 2 at 5) He said he filed his federal income tax return for TY 2017 in March 2018. In his July 13, 2019 response to DOHA interrogatories, he said he had not filed his federal income tax returns for TYs 2017 and 2018. (GE 2 at 5) He was sure that he filed his TY 2017 and 2018 federal income tax returns. (Tr. 43-46) He did not have documentation showing when his TY 2017 federal income tax return was filed. (Tr. 46) He believed he timely filed his federal income tax return for TY 2018. (Tr. 46) I have credited Applicant with timely filing his TY 2017 and 2018 federal income tax returns, and with mitigation of SOR ¶ 1.c.

Applicant has not filed his state and federal income tax returns for TYs 2019 and 2020, and he intends for his tax attorney to file these overdue tax returns. (Tr. 40, 44, 51-52) He did not request any filing extensions for his federal income tax returns. (Tr. 52) He tried several times to telephone the IRS for help in 2020; however, he was unable to reach anyone that could help. (Tr. 53-54) He was unable to predict when his federal income tax returns for TYs 2019 and 2020 would be filed. (Tr. 56) His failure to timely file his federal income tax returns for TYs 2019 and 2020 is not alleged in the SOR, and this issue will

not be considered, except for the application of mitigating conditions and under the whole-person concept.

SOR ¶ 1.b alleges and Applicant admitted he has a federal income tax debt of about \$15,500 for TYs 2006 through 2016. (Tr. 47; SOR response; GE 2 at 5) He may owe more federal income taxes for TYs 2017 and 2018. (Tr. 47) He had a payment plan in 2013 with the IRS in which he paid \$300 monthly for about six months; however, he did not have documentation concerning that payment plan. (Tr. 48-49) The payment plan was interrupted by a vehicle accident; however, Applicant did not provide details about why the vehicle accident caused his IRS payment plan to end. (AE B) Funds were needed for a down payment possibly for a new vehicle. (AE B) He is waiting for his tax attorney to arrange a payment plan for his IRS debt. (Tr. 48)

SOR ¶ 1.d alleged and Applicant admitted he failed to timely file his state income tax returns for TYs 2017 and 2018. (Tr. 50-51; SOR response) He did not know whether he owed state taxes. (Tr. 56)

In his response to interrogatories, Applicant provided a chart showing his federal income tax filings and amounts owed. (Tr. 58) He also provided IRS tax transcripts for TYs 2015 and 2016. (Tr. 58; GE 2 at 8-11) In the event of conflicts, Applicant said the IRS tax transcripts were definitely correct. (Tr. 58-59) His chart showed he owed federal income taxes ranging from \$1,000 to \$2,000 for each TY from 2006 to 2013 for a total of \$15,500. (GE 2 at 5) The IRS tax transcript for TY 2015 showed a tax debt of \$1,070, and his chart showed \$1,000. (GE 2 at 5, 8) The IRS tax transcript for TY 2016 showed a tax debt of \$2,269, and his chart showed a tax debt of \$1,500. (GE 2 at 5, 10) He did not provide any other IRS tax transcripts.

Applicant has not received financial counseling. (Tr. 56) He does not use a written budget. (Tr. 56)

Applicant's spouse described him as "a hard-working, honorable, and trustworthy" person. (AE B) She indicated he received praise for his diligence from his employer. (*Id.*) Applicant's spouse and Applicant intend to pay their taxes. (*Id.*)

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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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 Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. 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.

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required." The record establishes AG ¶ 19(f). Discussion of this disqualifying condition is contained in the mitigation section, *infra*.

The financial considerations mitigating conditions under AG ¶ 20 are as follows:

(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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board 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).

Applicant described several circumstances partially or fully beyond his control that adversely affected his finances: (1) the decline in the economy in 2008; (2) Applicant's income was reduced; (3) he was underemployed or unemployed; (4) his family expenses for housing, vehicles, and his daughter's college education; (5) a vehicle accident; (6) his wife's illness and unemployment; (7) his mother moved into his home in lieu of a long-term care facility; (8) his difficulties obtaining assistance from the IRS; and (9) the COVID-19 pandemic. Applicant did not provide sufficient evidence of how these circumstances caused him to be unable to timely file his state and federal income tax returns, and to resume his IRS payment plan.

Applicant's failed to timely file his federal income tax returns for TYs 2006 through 2011 (filed in 2013 or 2014). He has an outstanding federal income tax debt of about \$15,000. He has not filed his federal income tax returns for 2019 and 2020. 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 (9th Cir. 1973); *United States v. McCabe*, 416 F.2d 957 (7th Cir. 1969); *O'Brien v. United States*, 51 F.2d 193 (7th Cir. 1931). For purposes of this decision, I am not weighing Applicant's failure to timely file his federal income tax returns against him as crimes. In regard to the failure to timely file federal 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. 15-01031 at 4 (App. Bd. June 15, 2016) (citations omitted); 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 & n.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 (App. Bd. June 15, 2016), the Appeal Board explained that in some situations, even if no taxes are owed when tax returns are not timely filed, grant of access to classified information must nevertheless be denied. In ISCR Case No. 15-1031 (App. Bd. June 15, 2016) the applicant filed his 2011 federal income tax return in December 2013, his 2012 federal tax return in September 2014, and his 2013 federal tax return in October 2015. He received federal tax refunds of at least \$1,000 for each year. Nevertheless, the Appeal Board reversed the Administrative Judge's decision to grant access to classified information.

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 addition to his federal income tax issues, Applicant has not filed his state income tax returns for TYs 2017 through 2020. He may owe state income taxes.

Applicant provided some important evidence of mitigation under AG ¶ 20(g) because he has hired a tax attorney to help him get his overdue tax returns filed, and to establish a payment plan with the IRS. He filed all of his federal income tax returns up to TYs 2019 and 2020. However, under the DOHA Appeal Board jurisprudence, this is too little, too late to mitigate security concerns. He did not establish he was unable to make greater progress sooner filing his federal and state income tax returns. He should have acted more aggressively to establish a payment plan to address his federal income tax debt. Applicant failed to establish mitigation of financial considerations security concerns.

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 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 is a 47-year-old air conditioning technician, and a DOD contractor has employed him since September 2018. He worked as a building manager when he was a federal civilian employee from about 2013 to 2015. He completed an air conditioning technical school. He has completed some training on a multitude of security issues. Several circumstances partially or fully beyond his control adversely affected his finances. His spouse described him as "a hard-working, honorable, and trustworthy" person. (AE B) She indicated he received praise for his diligence from his employer. Applicant and his spouse intend to file their overdue tax returns and to pay their taxes.

Applicant failed to timely file his federal income tax returns for TYs 2006 through 2011 (filed in 2013 or 2014). See SOR ¶ 1.a. He has an outstanding federal income tax debt of about \$15,000. See SOR ¶ 1.b. He does not have a current payment plan with the IRS. He has not filed his state income tax returns for TYs 2017 and 2018. See SOR ¶ 1.d. He has not filed his state and federal income tax returns for TY 2019 and 2020.

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).

In ISCR Case No. 14-05476 (App. Bd. Mar. 25, 2016), the Appeal Board reversed a grant of a security clearance for a retired Navy E-9 and cited his failure to timely file state tax returns for TYs 2010 through 2013 and federal tax returns for TYs 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 suggests 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 Appeal Board reversed the favorable decision of the administrative judge in a case where the applicant filed his 2009, 2010, and 2011 tax returns in February 2014 and his 2012 tax return in August 2015 all before the SOR was issued. ISCR Case No. 15-03481 at 3 (App. Bd. Sept. 27, 2016). The applicant owed less than \$1,800 in federal income taxes for those four TYs at the time of the decision. *Id.* The Appeal Board found the timing of the filing of his tax returns to be an important factor stating:

Applicant did not resolve his tax filing delinquencies until after submission of his security clearance application and after undergoing his background interview. Taking action to resolve the delinquent tax filings well after the initiation of the security clearance process undercuts a determination that those actions constitute a good-faith effort to resolve the delinquencies. *Id.* at 5.

Applicant may not have fully understood or appreciated the importance of the requirement to timely file his state and federal income tax returns, and the requirement to pay his federal income taxes in the context of his eligibility for access to classified information. He did not establish he was unable to make greater progress sooner in the resolution of his tax issues. His actions under the Appeal Board jurisprudence are too little, too late to fully mitigate security concerns. See ISCR Case No. 15-03481 at 5 (App. Bd. Sept. 27, 2016). Applicant's failure to timely file his tax returns and pay his federal income taxes "may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about his reliability, trustworthiness, and ability to protect classified or sensitive information." AG ¶ 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. Applicant's evidence did not overcome the *Dorfmont* presumption.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Unmitigated financial considerations 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 and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant

Conclusion

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

Mark Harvey
Administrative Judge