



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



In the matter of:)
)
) ISCR Case No. 19-03489
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

10/29/2021

Decision

HARVEY, Mark, Administrative Judge:

Applicant failed to timely file her federal and state income tax returns for tax years 2015 through 2018. She has 11 delinquent debts totaling \$40,962. She failed to present sufficient mitigating evidence relating to her finances under Guideline F (financial considerations). Eligibility for access to classified information is denied.

Statement of the Case

On October 23, 2018, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Item 3). On March 4, 2020, the Defense Counterintelligence and Security Agency, 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; Department of Defense (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. (Item 1)

The SOR detailed reasons why the 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. (Item 1)

On January 28, 2021, Applicant provided a response to the SOR, and she requested a decision without a hearing. (Item 2) On July 14, 2021, Department Counsel completed a File of Relevant Material (FORM). On July 21, 2021, Applicant received the FORM. Applicant did not respond to the FORM. On October 9, 2021, the case was assigned to me.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits. Redacted 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, she admitted the SOR allegations in ¶¶ 1.a, 1.b, 1.f through 1.o, 1.r, and 1.s. (Item 2) She denied the SOR allegations in 1.c, 1.d, 1.e, 1.p, and 1.q. Applicant's admissions are accepted as findings of fact. Additional findings follow.

Applicant is 60 years old, and she has been employed as a technical support specialist since December 2014. (Item 3 at 11) She was unemployed from March 2014, to December 2014. (*Id.* at 12) From October 2010, to September 2012, she worked for a federal contractor as an operations analyst. (*Id.* at 13) From November 2007, to October 2010, she worked for a federal contractor as a technical support specialist. (*Id.* at 14-15) She was awarded a bachelor's degree in 1985, and an associate's degree in 2015. (*Id.* at 10; Item 4 at 6) She has not served in the military. (Item 3 at 17) She has had the same cohabitant since 2002. (*Id.* at 19) She has never married, and she does not have any children. (*Id.* at 19-20)

Financial Considerations

Applicant indicated several reasons for her debts becoming delinquent: (1) job loss for herself and her cohabitant (unemployment); (2) decrease in pay (underemployment); (3) her cohabitant's illness; and (4) her mother's illness and death in 2018. (Item 3 at 30; Item 4) The SOR alleges she failed to timely file her state and federal income tax returns for tax years 2014 through 2018 (SOR ¶¶ 1.a and 1.b).

Applicant admitted that she failed to timely file her federal and state income tax returns for tax years 2014 through 2018. (Item 2) In her October 23, 2018 SCA, she said she did not file her federal and state income tax returns for tax years 2015, 2016, and 2017 because she was unable to pay fees to prepare her tax returns. (Item 3 at 31-32) She planned to schedule an appointment to complete her federal and state income tax returns. (*Id.*)

On January 7, 2020, Applicant responded to DOHA interrogatories. (Item 4) Her December 2019 IRS account transcript for tax year 2014 shows she timely filed her federal income tax return. (*Id.* at 19-20). She said she provided her federal and state tax information to a tax professional for tax years 2015, 2016, 2017, and 2018. (*Id.* at 13, 15)

The SOR alleges Applicant has 17 delinquent debts totaling \$105,927 as follows:

SOR ¶¶ 1.c and 1.d allege Applicant owes federal and state income taxes of \$13,000 and \$4,500, respectively. (Item 1) In her October 23, 2018 SCA, she said she owed \$13,000 to the federal government for income taxes starting in 2014. (Item 3 at 30) She said that she started a \$100 monthly payment plan, and “will be making arrangements to resume payments.” (*Id.* at 31) She owed \$4,500 in state income taxes starting in 2014, and she planned to pay the debt when her house is sold. (*Id.* at 31, 33)

On March 28, 2019, an Office of Personnel Management (OPM) investigator interviewed Applicant, and she said she had not filed and/or paid her federal income taxes for tax years 2014 through 2017. (Item 4 at 7) She planned to file her tax returns and pay all of her taxes upon the sale of her house and the settlement of her mother’s estate. (*Id.*) In January 2015, the state filed a \$4,500 tax lien against her. (*Id.*)

On April 29, 2019, Applicant paid the IRS \$16,000 resolving her federal income tax debt for tax year 2014. (Item 4 at 19-20). On June 27, 2019, Applicant paid the state tax lien, and the state tax authority withdrew the lien. (*Id.* at 23). She did not indicate the source of the funds to pay these debts; however, the funds presumably came from the sale of her house.

SOR ¶ 1.e alleges a charged-off mortgage debt for \$42,907. (Item 1) Applicant’s June 1, 2021 credit report shows this debt was paid in April 2019. (Item 7 at 4)

SOR ¶¶ 1.f, 1.g, 1.h, 1.j through 1.o, 1.r, and 1.s allege delinquent debts for the following amounts: 1.f (\$7,510); 1.g (\$8,099); 1.h (\$5,650); 1.j (\$2,847); 1.k (\$2,730); 1.l (\$1,784); 1.m (\$1,697); 1.n (\$1,413); 1.o (\$1,217), 1.r (\$4,483), and 1.s (\$3,532). (Item 1)

In her October 23, 2018 SCA, Applicant said she owed the creditor in SOR ¶ 1.f (\$7,000), the financial issue began in January 2015, and monthly withholdings were pending. (Item 3 at 34; Item 4 at 7) She said she owed the creditor in SOR ¶ 1.o (\$1,200), the financial issue began in January 2015, and she met with a lawyer to discuss her options. (Item 3 at 36)

In her October 23, 2018 SCA, Applicant said she owed credit card debts for the following amounts and the financial issue began in the dates indicated: \$7,000 (January 2015); \$3,500 (January 2015); and \$4,500 (December 2017). (Item 3 at 37-40) In her SCA, she listed the names of the credit card companies, and the SOR listed the names of the current collection agents from her credit reports. Thus, some of these three debts may be included in her SOR. Her intention for the three debts was to meet with a lawyer to discuss her options. In her SCA, she also disclosed a home loan for \$10,000 that became delinquent in December 2017, and she intended to sell her home to resolve this debt. (*Id.* at 38-39) The \$10,000 home loan debt is not listed in her SOR.

SOR ¶ 1.i alleges a delinquent debt for \$3,593. (Item 1) Applicant’s June 1, 2021 credit report shows the debt in SOR ¶ 1.i was paid in May 2017. (Item 7 at 5-6)

SOR ¶ 1.p alleges a delinquent debt for \$838. (Item 1) Applicant's June 1, 2021 credit report shows the debt in SOR ¶ 1.p was paid in March 2020. (Item 7 at 5)

SOR ¶ 1.q alleges a delinquent debt for \$127. (Item 1) This debt is shown on Applicant's September 12, 2019 credit report, but not on her June 1, 2021 credit report. (Item 6 at 3; Item 7) She denied responsibility for the debt in SOR 1.q in her SOR response, and she is credited with mitigating the debt in SOR ¶ 1.q.

SOR ¶¶ 1.r and 1.s allege delinquent debts for 1.r (\$4,483) and 1.s (\$3,532), which are owed to the same bank. (Item 1) In her October 23, 2018 SCA, Applicant said she owed the creditor in SOR ¶¶ 1.r and 1.s \$5,000, the financial issue began in January 2015, and she met with a lawyer to discuss her options. (Item 3 at 35-36)

Applicant's June 1, 2021 credit report shows the following SOR debts as currently delinquent: 1.f (\$7,510); 1.i (\$1,784); 1.k (\$2,730); and 1.n (\$1,413). (Item 7 at 2-4) Her June 2, 2021 credit report does not list some of her SOR debts, and this credit report does not indicate any of the other SOR debts are in a delinquent status.

In sum, Applicant is credited with mitigation of the following SOR debts: 1.c (\$13,000); 1.d (\$4,500); 1.e (\$42,907); 1.i (\$3,593); 1.p (\$838); and 1.q (\$127). She did not provide evidence that she filed her federal and state tax returns for tax years 2015 through 2018 or that she resolved 11 delinquent debts totaling \$40,962 in SOR ¶¶ 1.f through 1.h, 1.j through 1.o, 1.r, and 1.s.

In the FORM, Department Counsel described Applicant's security-significant behavior and noted the absence of mitigation. The FORM informed Applicant that she had 30 days from the receipt of the FORM **"in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. . . .** If Applicant does not file any objections or submit any additional information . . . [her] case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. (FORM at 3-4 (emphasis added)) Applicant did not provide any response to the FORM.

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 [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. 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: "(a) inability to satisfy debts"; "(c) a history of not meeting financial obligations"; and "(f) failure to file . . . or failure to pay annual Federal, state, or local income tax as required."

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(f) requiring additional inquiry about the possible applicability of

mitigating conditions. Discussion of the disqualifying conditions 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 beyond her control, which adversely affected her finances as follows: (1) unemployment; (2) underemployment; (3) her cohabitant’s illness; and (4) her mother’s illness and death in 2018. However, “[e]ven if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current. Applicant did not provide supporting documentary evidence that she maintained contact with her creditors. She did not provide enough information about how these circumstances adversely affected her income and expenses.

Applicant did not provide proof of resolution of 11 SOR debts totaling \$40,962. A debt that became delinquent several years ago is still considered recent because “an applicant’s ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions.” ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

Several of Applicant’s delinquent debts have been either charged off or dropped from her credit report or both. “[A] creditor’s choice to charge-off a debt for accounting purposes does not affect the debtor’s obligation to the creditor.” ISCR Case No. 15-02760 at 3 (App. Bd. Dec. 29, 2016). “[N]on-collectability of a debt does not preclude consideration of the debt and circumstances surrounding it in a security clearance adjudication.” ISCR Case No. 15-05049 at 3 (App. Bd. July 12, 2017) (emphasizing security significance of debts despite being charged off).

“[T]hat some debts have dropped off his [or her] credit report is not meaningful evidence of debt resolution.” ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer. See Title 15 U.S.C. § 1681c. See Federal Trade Commission website, *Summary of Fair Credit Reporting Act Updates at Section 605*, <https://www.consumer.ftc.gov/articles/pdf-01111-fair-credit-reporting-act.pdf>. Debts may be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid, a creditor fails to timely respond to a credit reporting company’s request for information, or when the debt has been charged off.

Applicant did not describe any financial counseling. She did not provide documentary evidence showing she was not responsible for any of the 11 unresolved SOR debts. She did not provide sufficient documentation about why she was unable to

make greater documented progress resolving the 11 debts totaling \$40,962 in SOR ¶¶ 1.f through 1.h, 1.j through 1.o, 1.r, and 1.s.

The most critical financial considerations issue is Applicant's failure to timely file her federal and state income tax returns for tax years 2015 through 2018. 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 her federal income tax returns against her 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 this case, Applicant provided some important evidence of mitigation under AG ¶ 20(g) because she paid her delinquent federal and state tax bills for tax year 2014 of over \$20,000. However, there is insufficient evidence showing Applicant’s multiple failures to timely file her tax returns were prudent good-faith decisions. She did not establish she was unable to make greater progress sooner filing her federal and state income tax returns for tax years 2015 through 2018. Under the Appeal Board’s jurisprudence, Applicant failed to establish mitigation of financial considerations security concerns raised by her noncompliance with her tax-filing obligations and her ongoing delinquencies totaling \$40,962.

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 60 years old, and she has been employed as a technical support specialist since December 2014. She was unemployed from March 2014, to December 2014. From October 2010, to September 2012, she worked for a federal contractor as an operations analyst. From November 2007, to October 2010, she worked for a federal contractor as a technical support specialist. She was awarded a bachelor's degree in 1985 and an associate's degree in 2015.

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 tax years 2010 through 2013 and federal tax 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 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 tax years at the time of the decision. *Id.* The Appeal Board found the timing of the filing of his tax returns to be important, 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 has not established that she filed her federal and state income tax returns for tax years 2015 through 2018. She may not have fully understood or appreciated the importance of this requirement in the context of her eligibility for access to classified information. Even after receipt of the FORM, she did not provide evidence that she filed these overdue tax returns. She did not establish she was unable to make greater progress sooner in the resolution of her tax issues. Her 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 her tax returns “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. 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
Subparagraphs 1.c, 1.d, and 1.e:	For Applicant
Subparagraphs 1.f, 1.g and 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j through 1.o:	Against Applicant
Subparagraphs 1.p and 1.q:	For Applicant
Subparagraphs 1.r and 1.s:	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