



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



In the matter of:)
)
 REDACTED) ISCR Case No. 19-01949
)
 Applicant for Security Clearance)

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel
For Applicant: *Pro se*

01/13/2021

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant and her estranged spouse owe approximately \$70,875 in delinquent Federal income taxes for tax years 2013 and 2014 and some \$25,000 in past-due state income taxes. Her spouse handled their income tax returns and filed them jointly. Applicant was unaware of any income tax delinquency when she completed her security clearance application (SCA) in August 2017, so the personal conduct security concern was not established. Financial considerations security concerns are not mitigated because neither Applicant nor her spouse have taken any steps to address their Federal income tax delinquency. Clearance eligibility is denied.

Statement of the Case

On April 28, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for her. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within*

Industry (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

Applicant submitted an undated response to the SOR and requested a decision based on the written record. On September 23, 2020, she requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On October 8, 2020, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On October 23, 2020, Applicant waived the 15-day advance notice of the hearing required under ¶ E3.1.8 of the Directive. On October 26, 2020, I scheduled a hearing for November 5, 2020.

The hearing was held as scheduled. Department Counsel appeared by video teleconference, and Applicant appeared in person. At the hearing, six Government exhibits (GEs 1-4, GE 6-7) were admitted in the record without any objections. I withheld ruling on the admissibility of a February 2020 credit report (GE 5), pending submission by the Government of a complete copy. Applicant offered one exhibit, which was accepted into the record as Applicant Exhibit (AE) A. She testified at the hearing, as reflected in a transcript (Tr.) received on November 16, 2020. At the request of the Government and without any objection from Applicant, the SOR was amended under Directive ¶ E3.1.17 based on Applicant's testimony to add an allegation under Guideline F, as follows:

b. You are indebted to the state of [name omitted] in the approximate amount of \$25,000 for delinquent income taxes.

On November 5, 2020, Department Counsel submitted a complete copy of GE 5, which was accepted into the record without any objection. I held the record open to November 27, 2020, for Applicant to submit additional exhibits. On November 9, 2020, Applicant submitted a letter from her state's division of taxation, which was accepted into the record as AE B without objection on November 12, 2020. No additional documents were received by the November 27, 2020 deadline for further evidence.

Findings of Fact

The amended SOR alleges under Guideline F that Applicant owes \$70,875 in delinquent Federal income taxes (SOR ¶ 1.a) and approximately \$25,000 in delinquent state income taxes (SOR ¶ 1.b). Under Guideline E, Applicant is alleged to have deliberately falsified an August 2017 Electronic Questionnaire for Investigations Processing (security clearance application or SCA) by denying an inquiry into whether she failed to file or pay Federal, state, or other taxes when required within the last seven years (SOR ¶ 2.a). Applicant admits the tax delinquencies but asserts that her husband handled their returns, and she had "no idea, until this process, that [they] had a problem." She stated in response to the SOR that her husband told her "the tax debt is due [to] his business." Applicant

denies that she intentionally falsified her SCA, as she “answered what [she] knew to be true” at that time. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 71-year-old secretary with a high school education. (GE 1; Tr. 30.) She has worked for a succession of defense contractors in support of the U.S. Navy since 1983, staying on in her job as the contract changed hands every five years. She seeks to retain a secret clearance, which she has held since 1983. (Tr. 58.) Her clearance was last renewed in July 2007. When the contract changed in October 2007, the Navy attested to Applicant being “both an exemplary employee and a wonderful person.” Her contributions reportedly went beyond those required in the current or previous contract. The letter was signed by the department’s director of contracts and by 47 of her co-workers. (AE A.) Applicant has worked for her current employer since October 2016, when the company acquired the contract on the Navy base. (GE 1; Tr. 49-51.) She testified that all of her work, which involves data entry, is unclassified. (Tr. 50-51.)

Applicant and her spouse have been married since July 1968. They purchased a home together in October 1992, and have a son age 49 and a daughter age 47. (GE 1.) Applicant and her spouse have never legally separated, despite a “rocky” relationship over the last 20 years. “A good couple [of] times a year,” she would move in with her daughter for weeks or even a couple of months and then return to her husband. She and her spouse kept separate bedrooms when they were in the same household. (Tr. 25, 30-32.) Applicant has not lived with her spouse since June 2019. (Tr. 32.)

Applicant and her spouse have always maintained separate finances, and they paid their own bills. (GE 4; Tr. 31.) He took care of the house. (Tr. 31.) They have never had a joint bank account. (Tr. 26.) Her spouse retired from a job on the base at age 55. (Tr. 49.) He is now age 71. (GE 1.) He has a dog-breeding business in which Applicant is not involved, and she is not aware of the details of his finances, including his debts or his expenses. (GE 4; Tr. 63-64.)

Applicant’s spouse filed their income tax returns as married filing jointly. He filed them electronically in recent years and did not inform Applicant that they had any issues with their taxes. (GEs 3-4; Tr. 33.) For the earlier years when they filed paper returns, her spouse told her to “sign here,” and she did not review the returns before they were submitted. Applicant assumed her spouse was doing the right thing and that they were “all set” with respect to the taxes. She never asked to see any documents regarding the taxes. He kept any refunds they received. (Tr. 39-40.)

Applicant and her spouse were issued refunds of \$9,344 in Federal income taxes for tax year 2013 and \$10,919 for tax year 2014. In April 2016, the IRS examined their returns for both years. The IRS assessed additional taxes of \$29,308 for 2013 and \$26,919 for 2014; tax penalties of \$5,861 for 2013 and \$5,383 for 2014; and interest of \$2,175 for 2013 and \$980 for 2014. Their refund for tax year 2015 was applied to reduce their tax debt for 2013 by \$7,615 in April 2016. In September 2016, the IRS issued a notice of intent to levy for tax year 2013, which was refused or unclaimed. In November 2016, the IRS issued a

notice of intent to levy for tax year 2014, which was signed for by someone other than Applicant, likely Applicant's spouse. On April 15, 2017, the IRS intercepted their income tax refund of \$7,335 for tax year 2016 and applied it to their tax liability for 2013. On May 1, 2017, the IRS issued a first levy for tax year 2013. The levy was likely on social security benefits of Applicant's spouse, given the IRS records show a final notice on November 28, 2016, "before levy on social security benefits." (GE 3.)

On August 17, 2017, Applicant completed an SCA to update her security clearance eligibility. She responded negatively to all of the financial record inquiries on the SCA, including the following: "**In the past seven (7) years** have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?" (GE 1.)

As of November 2017, Applicant and her spouse's joint mortgage on their marital home was \$21,232 past due on a balance of \$281,759. Applicant had no other adverse credit accounts on her credit report. (GE 7.) On August 7, 2018, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant reported that she and her spouse separated in June 2018, and she moved in temporarily with their daughter. When questioned about her finances, she did not dispute the delinquent mortgage, but she was unaware of it because her spouse handled the mortgage. Applicant described her finances as good. (GE 2.)

The mortgage on the marital home was listed as \$26,313 past due as of March 2019. (GE 6.) On April 23, 2019, their lender foreclosed on the mortgage. (GE 4.) On May 22, 2019, Applicant responded to financial interrogatories from the DOD CAF. She provided documentation showing that she and her spouse had a zero principal balance on the mortgage loan because of the foreclosure. In response to an inquiry into whether there were any additional delinquent accounts, Applicant answered affirmatively and listed an unpaid Federal tax delinquency of \$68,785. She disclosed that no payment arrangements had been made, and she stated in part:

My husband always took care of filing our taxes. I knew there was a problem a few years back, but it was about his business My name is not on the business at all. Through this process, I found out how much we owe. It is a small business that he runs at home. He says he didn't do anything wrong, but I guess interest is being added. I have been told that there are tax relief programs, and I am going to look into them. (GE 4.)

Applicant clarified at her hearing that the "problem" had to do with her spouse's business. Applicant testified that she overheard him discussing an issue about his business. She denied knowing about any tax problem. (Tr. 34.) Applicant learned about the tax debt in approximately May 2019, when she contacted the IRS so that she could respond to DOD CAF interrogatories. (Tr. 34-35, 61.) She was told by the IRS that she could file as an innocent spouse. She had not done so because she "just didn't want trouble." (Tr. 61.)

On January 21, 2020, in response to interrogatories, Applicant provided DOHA with IRS account transcripts for tax years 2013 through 2018. The IRS had taken her and her spouse's income tax refunds of \$5,030 for 2017 and \$1,130 for 2018 and applied them to their outstanding tax liability for 2013. Their Federal income tax delinquency totaled \$70,875 (\$24,534 for 2013 and \$46,341 for 2014), and they were not in a payment plan to address the debt. They had no outstanding Federal tax liability for tax years 2015 through 2018. In response to an inquiry into whether she owed any outstanding state taxes, Applicant responded that, to her knowledge, she did not owe state taxes. She requested tax transcripts from the state but had not received a response. Applicant provided the following additional information for consideration in determining her security clearance eligibility:

I have been working here, at the same place for 36 years. I have never been in trouble, or have done anything wrong. I am 70 years old and have never done the taxes. They were always done by my husband. I need this job to pay my bills. (GE 3.)

In early to mid February 2020, Applicant received a notice at her current address that the state intended to garnish her wages to collect her and her spouse's joint tax delinquency of \$25,000. She does not know for which year or years the taxes are owed. (Tr. 40-41.) Information from the state concerning the levy (AE B) does not reflect the tax year(s) in question. Applicant asserts that she was "in shock" when she learned about the tax debt because she had asked her spouse if they owed state income taxes, and he told her no. She denies ever seeing any notices, as her husband got the mail and "left [her] in the dark." (Answer; Tr. 38.) He apparently has had a girlfriend since 2000 and made sure that Applicant "did not see a lot of things," including the telephone bills. (Tr. 38.) The same day Applicant received the notice that the state intended to attach her wages, she contacted the state's tax division, which agreed to lower the garnishment amount to \$150 per pay period. That amount is less than the maximum allowable levy. (Answer; AE B; Tr. 41-43.) She has been repaying the state income taxes from her pay since then. (Tr. 25-26.) Her spouse is not paying anything towards their state or Federal tax delinquencies. (Tr. 25, 41.) Applicant testified that she "keep[s] begging him to just try and do something with the federal [taxes], and he hasn't." (Tr. 25.) They are not currently living together, and she has not talked to him recently, but when she brought it to his attention in the past, he told her he would take care of it. (Tr. 26-27.)

Applicant filed her own income tax returns for 2019. She owed \$577 in Federal income taxes, which she paid when she submitted her return. Her state income tax refund of approximately \$477 was taken by the state. (Tr. 44-45.) Applicant has not contacted the IRS about establishing an installment agreement to repay the Federal income tax delinquency of approximately \$70,875. She asked the IRS to remove her name from the debt but was denied. She wanted her spouse to take care of the debt because it was not her fault, and she does not have much money. (Tr. 45-46, 54.) At her hearing, she indicated that she would contact the IRS. (Tr. 54.) Despite the record being held open after her hearing, she presented no evidence of having done so.

Applicant earns about \$50,000 a year. (Tr. 48.) She testified that she has about \$300 in discretionary income every month after she pays her recurring expenses. (Tr. 53.) She has about \$2,000 in her checking account as of November 2020 because she was paid for her unused leave time. (Tr. 63.) As of January 2020, Applicant owed \$28,914 in revolving credit on six credit-card accounts. She was making payments on terms acceptable to the creditors. The only negative credit entry on her credit report was the mortgage loan, which had a zero balance after foreclosure. (GE 5.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has 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). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant’s eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that 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. Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a

determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are articulated in AG ¶ 18:

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.

Applicant and her estranged spouse owed \$70,875 in delinquent Federal income taxes for tax years 2013 and 2014 as of January 2020. The current balance is likely higher, given the continuing accrual of penalties and interest on the unpaid balance. They also owed around \$25,000 in past-due state income taxes. The record does not show the tax years owed or the current tax balance. Applicant testified credibly that her wages have been garnished at \$150 every two weeks since April 2020 in repayment, so she had paid around \$2,250 toward the state tax debt as of her hearing. Her state income tax refund of \$477 for tax year 2019 was taken by the state and applied to the state income tax delinquency. Applicant did not intend to evade paying taxes, as the evidence shows that she relied on her spouse to file their returns, and he did not inform her about any outstanding tax liabilities. Nevertheless, she is legally liable for the taxes owed on the joint returns her spouse filed for them. Guideline F security concerns are established because of

the sizeable Federal and state income tax delinquencies. Disqualifying conditions AG ¶¶ 19(a), “inability to satisfy debts,” and 19 (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,” clearly apply.

AG ¶ 19(b), “unwillingness to satisfy debts regardless of the ability to do so,” has some applicability as well, even though the tax delinquencies were incurred without her knowledge. Applicant has known since about the Federal tax debt since May 2019 and done little to resolve it apart from an initial contact with the IRS, who refused to remove her name from the debt. She did not follow up on a suggestion from the IRS that she file an innocent spouse form, explaining that she did not want “trouble.” She stated at her November 2020 hearing that she would contact the IRS, but she presented no evidence of having done so. Even so, this case is primarily one of an inability to repay the debt rather than an unwillingness to do so. Her annual income from her employment of \$50,000, from which she is repaying the state income tax delinquency at \$150 each pay period.

Applicant has the burden of establishing sufficient mitigation to overcome the financial concerns raised by such sizeable income tax delinquencies. Regarding possible mitigation under the AGs, one or more of the following conditions under AG ¶ 20 may apply in whole or in part:

- (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 person has received or is receiving 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.

AG ¶ 20(a) cannot reasonably apply, even though the tax debts were incurred some time ago. The Federal tax underpayments (and likely the state as well) are for tax years 2013 and 2014. IRS account transcripts show that the Federal tax underpayments were assessed on examination of the returns in April 2016. In all fairness to Applicant, she was

unaware of any outstanding tax liabilities before she contacted the IRS in May 2019 so that she could respond to DOD CAF interrogatories. However, the tax debts are considered recent because they remain unpaid. Applicant's ongoing failure to address her and her spouse's Federal income tax delinquency continues to cast doubt on her judgment, reliability, and trustworthiness.

AG ¶ 20(b) is not fully established. While Applicant could reasonably rely on her spouse to handle the preparation of their joint income tax returns, this did not relieve her of the responsibility to review the returns before she signed them. It was her choice not to review them. There is no showing that she questioned her spouse about items on their returns prior to their filing, so she accepted the risk of any errors on the returns. After she learned of the Federal income tax delinquency, it was irresponsible of her to continue to rely on her spouse to address their tax debt, given his demonstrated unreliability in that regard.

AG ¶ 20(c) and to a lesser extent AG ¶ 20(d) have some applicability to the state income tax delinquency. While payments in response to a state levy or garnishment are not payments initiated by Applicant and do not trigger AG ¶ 20(d), she is credited with contacting the state tax division as soon as she learned about the state's intent to garnish her wages for the state tax debt. Approximately \$2,250 has been paid from her wages for the delinquent state income tax debt since April 2020. The state taxes are being repaid under terms acceptable to the state tax division, and a favorable finding is warranted on that basis as to the state income tax debt (SOR ¶ 1.b). However, neither AG ¶ 20(c) nor AG ¶ 20(d) applies to the larger Federal income tax delinquency.

On learning about the Federal tax delinquency, Applicant asked the IRS to hold her spouse solely liable. She was advised that she was jointly liable for the tax debts, but she was also told that she could file a form for spousal relief, which she has not done.

IRS publication 971 regarding relief for innocent spouses makes it clear that married couples filing jointly are jointly and severally liable for the entire tax liability under Federal law. Joint and several liability applies not only to the tax liability shown on the tax return, but also to any additional tax liability the IRS determines to be due, even if the additional tax is because of income, deductions, or credits of the spouse. The IRS can collect the tax debt even in the case of divorce. In some cases, a spouse will be relieved of the tax, interest, and penalties on a joint tax return. Three types of relief are available to married persons who filed joint returns: innocent spouse relief; separation of liability relief; and equitable relief. To seek relief on the basis of innocent spouse, the required Form 8857 must be filed no later than two years after the date on which the IRS first attempted to collect the tax. A collection activity, such as an IRS issuance of a notice of intent to levy, can start the two-year period within which the 8857 must be filed. By law, the IRS has to contact the spouse of a person claiming innocent spouse relief. Innocent spouse relief relieves one from paying the tax, interest, and penalties if his or her spouse improperly reported items or omitted items from the tax return.

To qualify as an innocent spouse, an individual must have filed a joint return; there is

an understated tax on the return due to erroneous items of one's spouse; the individual claiming relief can show that when he or she signed the joint return, he or she did not know and had no reason to know that the understated tax existed or the extent to which the understated tax existed; and it would be unfair to hold the individual liable for the understated tax. An understated tax exists if the IRS determined that the total tax should be more than the amount shown on the joint return. In determining whether an individual had reason to know of the understated tax (*i.e.*, unreported spousal income or incorrect deduction, credit, or property basis), the IRS will consider all of the facts and circumstances, including the nature of the erroneous item claimed; the financial situations of the respective spouses; the educational background and business experience of the spouse claiming innocent spouse relief; the extent to which the spouse claiming relief participated in the activity that resulted in the erroneous item; whether the spouse claiming relief failed to ask, at or before the return was signed, about items on the return or omitted from the return that a reasonable person would question; and whether the erroneous item represented a significant departure from a recurring pattern reflected on prior years' returns. See www.irs.gov. Applicant did not follow up and file for such relief because she did not want to cause trouble, although she was not specific about the consequences she feared if she filed.

Applicant has taken no steps that would alleviate security concerns raised by the burden of the \$70,875 Federal income tax delinquency. She indicated in May 2019 that she would look into tax relief programs. There is no evidence that she did so, apparently because she was afraid to start it. At her hearing, she testified that she would contact the IRS about the Federal income tax delinquency. I held the record open for three weeks after the hearing, and she presented no evidence of any recent contacts with the IRS, either to file as an innocent spouse or to inquire about an installment plan to make payments. It is not enough in mitigation for Applicant to simply assert that the tax debt was not her fault. The financial considerations security concerns are not fully mitigated.

Guideline E: Personal Conduct

The security concern about personal conduct is articulated in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The SOR alleges that Applicant intentionally falsified her August 2017 SCA when she responded negatively to an inquiry concerning whether she owed any Federal or state taxes in the last seven years. The evidence shows that the IRS reviewed her and her spouse's joint tax returns for tax years 2013 and 2014 on April 11, 2016, and assessed additional taxes, penalties, and interest totaling \$37,344 for 2013 and \$33,282 for 2014. A notice of intent to levy was issued and signed for in November 2016. The objective

evidence of delinquency shows that the debt should have been listed on her August 2017 SCA. However, Applicant has consistently denied any intentional falsification, claiming that she did not know about the tax debts because her spouse handled their returns, and he kept the information from her.

The DOHA Appeal Board has explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission. ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

Applicant was unaware of the Federal tax delinquency before she contacted the IRS to respond to DOD CAF interrogatories in May 2019. She did not learn of the state income tax delinquency until the state notified her of its intention to garnish her wages in early 2020. Whereas Applicant was unaware of the tax debts when she completed her SCA in August 2017, the personal conduct security concern was not established.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of Applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). The analyses under Guidelines F and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

The security clearance adjudication involves an evaluation of an applicant's judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). Applicant's dedication to her work with a defense contractor is unassailable, and there is no indication that she has exercised poor judgment on the job. She failed to review her and her spouse's joint income tax filings, although even if she had done so, it is not clear that she would have recognized an error on her returns or received the truth from her spouse if she expressed any concerns. It is not surprising that she was "shocked" to learn in 2019 about the Federal income tax delinquency and in 2020 about the state income tax delinquency. She demonstrated some understanding that she made a serious error in judgment by continuing to rely on her spouse to take care of their Federal tax debt. She filed her tax returns for 2019 on her own and paid the taxes owed.

However, Applicant has also exhibited an unacceptable tendency to ignore significant issues once they became known to her, such as the Federal tax delinquency for 2013 and 2014. While she may not have known what to do or she feared the consequences of taking action, the Government must be assured that persons granted security clearance eligibility can be relied on to comply with such an important obligation as filing income tax returns and paying taxes owed. Applicant's ongoing inattention to such a large Federal income tax delinquency is without adequate justification. The Appeal Board has repeatedly held that the government need not wait until an applicant mishandles or fails to safeguard classified information before denying or revoking security clearance eligibility. See, e.g., ISCR Case No. 08-09918 (App. Bd. Oct. 29, 2009) (citing *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969)). It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Based on the evidence, it is not clearly consistent with the national interest to continue Applicant's security clearance eligibility at this time.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge