



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



In the matter of: )  
)  
) ISCR Case No. 21-01217  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Raashid S. Williams, Esq., Department Counsel  
For Applicant: *Pro se*

01/31/2022

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant failed to timely file his federal and state income tax returns for tax years (TY) 2017, 2018, and 2019. Guideline F (financial considerations) security concerns are not mitigated. Guideline E (personal conduct) security concerns are refuted. Eligibility for access to classified information is denied.

**Statement of the Case**

On October 29, 2019, Applicant completed and signed his Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On July 20, 2021, the Department of Defense (DOD) 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); 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 Guidelines F and E. (HE 2) Applicant provided an undated response to the SOR. (HE 3)

On September 23, 2021, Department Counsel was ready to proceed. On October 4, 2021, the case was assigned to me. On November 2, 2021, Applicant agreed to a security clearance hearing on December 2, 2021. (AE 1A) On November 24, 2021, DOHA issued a notice of hearing, setting the hearing for December 2, 2021. (HE 1) His hearing was held as scheduled in the vicinity of Arlington, Virginia using the Microsoft Teams video teleconference system. (*Id.*) Applicant was located overseas.

During the hearing, Department Counsel offered six exhibits, and Applicant's only objection or comment about the exhibits pertained to his enrollment in a credit repair service. (Tr. 17-18) Government Exhibits (GE) 1-6 were admitted into evidence. (Tr. 19)

On December 15, 2021, DOHA received a transcript of the hearing. Applicant provided two documents after his hearing, and they were admitted into evidence without objection. (Applicant Exhibit (AE) A-AE B) The record closed on January 10, 2022. (Tr. 26, 49; AE B)

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

### **Findings of Fact**

In Applicant's SOR response, he admitted the SOR allegations in part. (HE 3) He also provided explanations with supporting documentation. His admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 50-year-old supervisor of structures technicians. (Tr. 6, 43) In 1989, he graduated from high school, and he has about 100 college credits. (Tr. 7) He served in the Air Force from 1989 to 2015. (Tr. 7) His first nine years were on active duty, and the remainder was in the National Guard and Reserve. (Tr. 7) He was a staff sergeant (E-5) when he honorably retired from the Air Force. (Tr. 39; AE A at 16, 21) He is not receiving a pension from the Department of Veterans Affairs. (Tr. 8) He was married from 1999 to 2019, and his two children are ages 10 and 19. (Tr. 9) He is currently working overseas. (Tr. 20)

### **Financial Considerations**

Applicant indicated confusion during his divorce caused financial issues. (Tr. 19-20) He learned he had delinquent debts when he had his Office of Personnel Management (OPM) personal subject interview. (Tr. 25) He promised to endeavor to get his finances back on track. (Tr. 20) He enrolled in a credit repair service to dispute negative entries on his credit report. (AE A) The credit repair service was successful in obtaining removal of several negative entries from his credit report. (AE A at 3-4, 25-32; AE B at 3-4) He received some financial counseling from the credit repair service. (Tr. 37)

SOR ¶ 1.a alleges Applicant had a child-support debt of \$6,312 placed for collection. His child support payments were supposed to be paid automatically from his pay. (Tr. 22-23) He pays \$1,162 monthly for child support. (Tr. 23) In February 2021, he learned his child-support account was delinquent. (Tr. 22) On February 4, 2021, he paid \$2,641, and on February 5, 2021, he paid \$2,641, for a total of \$5,282. (AE A at 33-34) His December 9, 2021 bi-weekly income statement shows his child support allotment of \$581. (AE A at 19) Applicant said he believed his child support account is now current. (Tr. 22-23) The collection entry for child support was removed from his Equifax credit report in October 2021. (AE A at 29)

SOR ¶ 1.b alleges Applicant had a debt resulting from an apartment lease for \$1,151 placed for collection. He learned the debt was delinquent in February 2021. (Tr. 24) On August 2, 2021, the creditor acknowledged receipt for \$1,062 and indicated the account was “paid in full.” (Tr. 24; SOR response at 2; AE A at 17-18)

SOR ¶¶ 1.c and 1.d allege Applicant failed to timely file his federal and state income tax returns for TYs 2017, 2018, and 2019. All tax information is rounded to the nearest \$100. From August 2014 to April 2017, Applicant was deployed to the Middle East. (Tr. 26; AE B) He believed his former spouse was preparing and filing his tax returns. (Tr. 26) His spouse told Applicant that she filed their tax returns. (Tr. 27) He subsequently learned his tax returns were not filed, and he said he filed his federal and state tax returns in March or April of 2021. (Tr. 27-28) On June 29, 2021, the IRS wrote Applicant and informed him his TYs 2017 and 2018 federal income tax returns could not be located. (GE 3 at 21, 25; AE B)

On March 8, 2021, Applicant filed his federal income tax return for TY 2019. (GE 3 at 15) His AGI was \$69,200; his federal income tax was \$8,400; and on April 12, 2021, the IRS notified him that he owed about \$800 for TY 2019. A note written on the IRS notice indicates the debt was paid on June 9, 2021. (*Id.*; AE A at 23/) Applicant’s monthly gross income is about \$11,500. (Tr. 31; AE A at 19) His monthly net remainder is about \$5,000. (Tr. 33-34) He has about \$19,000 in his savings account. (Tr. 34) He is investing in real estate. (Tr. 38)

I requested that Applicant provide the IRS tax transcripts for the previous five years. (Tr. 41) I also requested that he provide information from the state tax authority about his taxes. (Tr. 42) He said he was going to show “due diligence” and provide the tax transcripts and tax documents. (Tr. 44) He did not provide the additional tax documentation after his hearing. (AE B) He did not establish that he filed his federal or state income tax returns or paid his federal and state taxes for TYs 2017 and 2018. (AE B)

## **Personal Conduct**

Applicant was focused on his mother’s health because she suffered from cancer for about 30 months, and he was not thinking about taxes. (Tr. 29-30) Applicant returned from overseas in 2017, and his mother died in February 2018. (Tr. 29-30) On October 29, 2019, Applicant indicated in his SCA that he timely filed his federal and state income tax

returns for the previous seven years. (SOR ¶ 2.a; GE 1 at 32) He did not disclose that he failed to file his federal and state income tax returns for TYs 2017 and 2018. (SOR ¶ 2.a; GE 1)

On December 16, 2019, Applicant volunteered in his Office of Personnel Management (OPM) interview that his federal and state income tax returns for TYs 2018 and 2019 had not been filed due to divorce proceedings. (GE 3 at 9) In his May 24, 2021 response to DOHA interrogatories, he disclosed that he had not filed his TY 2017 and 2018 federal and state income tax returns; however, he said his TY 2019 federal and state income tax returns were filed in February 2021. (GE 3 at 11, 14)

Applicant said his failure to disclose that he had not filed his TYs 2017 and 2018 federal and state tax returns on his SCA was due to being unaware that his tax returns were not filed. (Tr. 28) He believed his spouse had filed his tax returns, and he trusted her. (Tr. 28-29) He was not divorced until October 2019. (Tr. 29)

### **Character Evidence**

Applicant's Air Force (AF) primary specialty was aircraft structural maintenance journeyman. (AE A at 16) His AF records indicate he has the following awards and citations: AF Achievement Medal; AF Outstanding Unit Award with 1 Bronze Oak Leaf Cluster; AF Good Conduct Medal with 1 Bronze Oak Leaf Cluster; National Defense Service Medal; AF Overseas Long Tour Ribbon with 1 Bronze Oak Leaf Cluster; AF Longevity Service Award Ribbon with 1 Bronze Oak Leaf Cluster; NCO Professional Military Education Graduate Ribbon; and AF Training Ribbon. (AE A at 16) While in the Air Force, he completed four years and nine months of foreign service and numerous training courses. (AE A at 16)

### **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 three 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 fraudulently filing annual Federal, state, or local income tax returns 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. Additional 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 paid or brought the two debts in SOR ¶¶ 1.a and 1.b to current status. SOR ¶¶ 1.a and 1.b are mitigated.

Applicant failed to timely file his federal income tax returns for TYs 2017, 2018, and 2019. A willful failure to timely make (means complete and file with the IRS) a federal income tax return is a misdemeanor-level federal criminal offense. Title 26 U.S.C. § 7203, willful failure to file return, supply information, or pay tax, reads:

Any person . . . required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who

willfully fails to . . . make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor . . . .

A willful failure to make return, keep records, or supply information when required, is a misdemeanor without regard to the existence of any tax liability. *Spies v. United States*, 317 U.S. 492 (1943); *United States v. Walker*, 479 F.2d 407 (9<sup>th</sup> Cir. 1973); *United States v. McCabe*, 416 F.2d 957 (7<sup>th</sup> Cir. 1969); *O'Brien v. United States*, 51 F.2d 193 (7<sup>th</sup> Cir. 1931). For purposes of this decision, I am not weighing Applicant's failure to timely file 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 is inappropriate. 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.

Applicant provided some important evidence of mitigation under AG ¶ 20(g) because he filed his FY 2019 federal tax return, and he paid his overdue federal taxes for that tax year in 2021. The death of his mother in 2018, his deployment overseas, and his divorce in 2019 contributed to his failure to timely file his tax returns for TYs 2017 and 2018. Applicant did not provide IRS tax transcripts or copies of his federal income tax returns for TYs 2017 and 2018, and I conclude he has not proven that he filed his federal and state tax returns for those two years. He did not provide copies of any correspondence sent to the IRS or his employers seeking copies of IRS income transcripts or W-2s. He did not prove that he was unable to make greater progress sooner filing his federal and state income tax returns for TYs 2017 and 2018. Applicant failed to establish mitigation of financial considerations security concerns.

## **Personal Conduct**

AG ¶ 15 explains why personal conduct is a trustworthiness concern stating:

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

AG ¶ 16 lists one condition that could raise a trustworthiness concern and may be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

The Appeal Board has cogently 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.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). The Appeal Board indicated:

When evaluating the deliberate nature of an alleged falsification, a Judge should consider the applicant's *mens rea* in light of the entirety of the record evidence. See, e.g., ADP Case No. 15-07979 at 5 (App. Bd. May 30, 2017). As a practical matter, a finding regarding an applicant's intent or state of mind may not always be based on an applicant's statements, but rather may rely on circumstantial evidence. *Id.* Additionally, the Appeal Board gives deference to a Judge's credibility determinations. Directive ¶ E3.1.32.1.

ADP Case No. 17-03932 at 3 (App. Bd. Feb. 14, 2019).

Applicant admitted that he erred when he failed to disclose his failure to file his state and federal income tax returns for TYs 2017 and 2018. His explanation for not disclosing this information was his reliance on his spouse to file those tax returns. He mistakenly believed her when she said their tax returns were filed. I find Applicant's denial of intent to deceive the Government about filing his federal and state tax returns for TYs 2017, 2018, and 2019 to be credible. Personal conduct security concerns are refuted.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guidelines 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.

Applicant is a 50-year-old supervisor of structures technicians. He has about 100 college credits. He served in the Air Force from 1989 to 2015. His first nine years were on active duty, and the remainder was in the National Guard and Reserve. He was a staff sergeant when he honorably retired from the Air Force. He received multiple awards and citations while he was in the Air Force. He was married from 1999 to 2019, and his two children are ages 10 and 19. Applicant is currently working overseas.

Applicant has sufficient financial resources to pay his debts, including his taxes. The only area of financial irresponsibility is his history of failing to timely file his federal and state income tax returns for TYs 2017, 2018, and 2019. I have credited him with filing his federal and state tax returns for TY 2019, and with paying his taxes for that tax year. I am confident that he will diligently work to timely file his future tax returns. However, this is insufficient to establish full mitigation at this time.

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”). See *also* ISCR Case No. 14-03358 at 3, 5 (App. Bd. Oct. 9, 2015) (reversing grant of a security clearance, 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.”).

In ISCR Case No. 15-03481 at 3 (App. Bd. Sept. 27, 2016), 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. The applicant in that case 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 federal and state income tax returns in the context of his eligibility for access to classified information until his OPM interview. Like the applicant in ISCR Case No. 15-03481, 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).

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. He refuted personal conduct security concerns; however, unmitigated financial considerations security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time.

### **Formal Findings**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Subparagraphs 1.c and 1.d:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For 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