



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 21-00759
)	
Applicant for Security Clearance)	

Appearances

For Government: Ross Hyams, Esq., Department Counsel
 For Applicant: *Pro se*
03/07/2022

Decision

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 16, 2017. On July 13, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The CAF acted under Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on August 2, 2021, and requested a decision on the written record in lieu of a hearing. On October 15, 2021, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including pleadings and evidentiary documents identified as Items 1 through 7. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government’s evidence. He received the FORM on

October 25, 2021, and did not respond to the FORM or object to the Government's evidence. Items 1 through 3 contain the pleadings in the case. Items 4 through 7 are admitted into evidence. Applicant's SOR answer included documents that are admitted into evidence collectively as Applicant Exhibit (AE) A. The case was assigned to me on January 7, 2022.

Procedural Matters

This matter was inadvertently mischaracterized as an automated data processing (ADP) case. I administratively amended the caption of the SOR to reflect this matter as an ISCR case, and disregarded any other ADP-related references in the SOR and elsewhere in the record.

On February 28, 2022, the Government submitted copies of documents that were inadvertently missing from Item 5 of the FORM, with notice to Applicant. I appended those documents to the record, marking the pages as Item 5 at 17 a through c (given that they are the referenced attachments to page 17 of Item 5). I also advised the parties that, although the record remained closed, I would consider a motion to reopen it filed by either party on or before March 3, 2022. Neither party filed such a motion. On March 1, 2022, Applicant advised that he did not wish to reopen to the record, but queried whether DOHA's jurisdiction continued following a change in his job position and clearance need. On March 4, 2022, after the Government confirmed that DOHA retained its jurisdiction, and in the absence of evidence to the contrary from Applicant, I notified the parties that the case would proceed. I appended to the record copies of the related email communications collectively as Administrative Exhibit (AX) I.

SOR Amendment

In the FORM, the Government amended the SOR by modifying five existing allegations and by adding three new allegations under paragraph 1, Guideline F. Applicant was provided with reasonable notice of, and an opportunity to respond to, the amended SOR allegations. He failed to respond to either the FORM or the amended SOR allegations, and did not otherwise object to the amended SOR allegations.

The SOR was amended to modify the existing Guideline F allegations under paragraph 1, as follows:

- a. You are indebted to [State A] for a tax lien entered against you in 2012, in the approximate amount of \$14,839.00.
- b. You are indebted to [State A] for a tax lien entered against you in 2011, in the approximate amount of \$2,551.00.
- f. You failed to timely file, as required, your Federal income tax returns, for tax years 2008 through 2019.

g. You failed to timely file, as required, your [State A] income tax returns, for tax years 2008 through 2015.

h. You failed to timely file, as required, your [State B] income tax returns for tax years 2015 through 2019.

The SOR was further amended to add additional Guideline F allegations under paragraph 1, as follows:

i. You are indebted to [State A] for tax year 2009, in the approximate amount of \$809.00. As of the date of this statement of Reasons, it remains unpaid.

j. You are indebted to the IRS for tax year 2018, in the approximate amount of \$2,369.00. As of the date of this statement of Reasons, it remains unpaid.

k. You are indebted to the IRS for tax year 2019, in the approximate amount of \$4,380.00. As of the date of this statement of Reasons, it remains unpaid.

Findings of Fact

Applicant, age 52, is married with two minor children. His educational history was not indicated in the record. He has been employed since October 2017 by the defense contractor sponsoring his SCA. This is his first application for a security clearance. He was initially hired as a security officer and is now working as an Emergency Communications Center (ECC) dispatcher. (Items 3, 4; Item 5 at 34)

The SOR, as amended, alleged a mortgage foreclosure (SOR ¶ 1.e) and seven delinquent debts totaling \$57,088, including two state tax liens totaling \$17,390 (SOR ¶¶ 1.a, 1.b); two repossession-related consumer debts totaling \$32,140 (SOR ¶¶ 1.c., 1.d); a \$809 state tax debt (SOR ¶ 1.i); and two federal tax debts totaling \$6,749 (SOR ¶¶ 1.j, 1.k). It also alleged that Applicant failed to timely file his federal and state income tax returns for tax years 2008 through 2019 (SOR ¶¶ 1.f –1.h), which he deliberately failed to disclose on his SCA (SOR ¶ 2.a).

In his answer to the original SOR, Applicant admitted SOR ¶¶ 1.a through 1.c and 1.f through 1.h. He did not address SOR ¶¶ 1.d and 1.e, which I construed as denials. Although he answered “I admit” to SOR ¶ 2.a, I construed it as a denial because his accompanying explanation equivocated on the issue of intent. He explained: “This item on my [SCA] was a mistake on my part.” It is unclear whether he meant that he mistakenly omitted the information or that it was a mistake for him to deliberately omit the information. (Item 3)

Since Applicant did not respond to the amended SOR, I construed his nonresponses to the new allegations, SOR ¶¶ 1.i through 1.k, as denials. Despite his earlier admissions, I also construed his nonresponses to the five modified allegations, SOR ¶¶ 1.a, 1.b, and 1.f through 1.h, as denials because the changes were substantive.

SCA

Applicant answered “no” to all of the financial questions on his November 2017 SCA, including whether, in the last seven years, he: 1) failed to file or pay federal or state taxes when required by law; 2) had a lien placed against his property for failing to pay taxes; 3) had any possessions or property voluntarily or involuntarily repossessed or foreclosed; 4) defaulted on any type of loan; or 5) had been 120 days or more delinquent on any debt. The SCA also asked whether he was then 120 days or more delinquent on any debt, to which he also answered “no.” Applicant did not otherwise disclose his delinquent returns or other derogatory financial history on the SCA. He affirmed his “no” responses to the financial questions on the signature form of the SCA by certifying that:

My statements on this form . . . are true, complete, and correct to the best of my knowledge and belief and are made in good faith I understand that intentionally withholding, misrepresenting, falsifying . . . may have a negative effect on my security clearance, employment prospects, or job status, up to and including denial or revocation of my security clearance (Item 4)

Applicant was interviewed five times during the security clearance background investigation initiated by his November 2017 SCA. During Interview 1 (November 28, 2018), he was confronted with delinquent debts that were developed from a review of his December 2017 credit report (Item 6), including two utility debts (\$174 and \$325) and the debts alleged in SOR ¶¶ 1.a through 1.d. While he provided information about the two utility accounts, he denied that either of them were delinquent. He denied knowledge of the SOR debts, but promised to investigate them and the two utility accounts, and pay those deemed valid. He then volunteered information about the foreclosure alleged in SOR ¶ 1.e. (Item 5 at 6-9)

During Interview 1, Applicant claimed that he answered “no” to questions about his financial record because he either misunderstood the question or did not know about a particular debt. He also asserted that any known bills had been paid. It is unclear whether he meant that he knew he had delinquent debts, but did not list them because they had been paid; or whether he denied having any delinquent debts because he paid all of his bills on time. I inferred the latter because he subsequently declared that he thought his finances were excellent prior to being confronted with the developed debts, and that he would not have deliberately failed to pay a debt. He planned to resolve any delinquent debts for his own personal responsibility and promised to stay on top of his financial obligations in the future. (Item 5 at 6-9)

During Interview 2 (June 19, 2019), Applicant described his financial situation as good. He asserted that he paid cash for everything and had no credit cards or credit-card debts to his knowledge. He reviewed an April 2019 credit report (which was not included in the record), and was asked about the status of the debts with which he had been confronted during Interview 1. He paid the \$174 utility debt via phone during Interview 2. He maintained that he could not provide specific details about the \$325 utility debt and

the four debts alleged in SOR ¶¶ 1.a through 1.d, but promised to speak with his wife and attempt to gather documentation about them. (Item 5 at 11-12, 17c)

During Interviews 3 (June 30, 2019) and 4 (July 1, 2019), Applicant provided the details he learned about the \$325 utility account and the debts alleged in SOR ¶¶ 1.a through 1.d, and proffered plans to resolve them. He provided evidence that he paid the \$325 utility account on June 20, 2019, which was apparently deemed sufficient enough that it was not alleged in the SOR. (Item 5 at 13-17)

Applicant did not discuss his failure to file 2008 through 2019 federal and state income tax returns until Interview 5 (July 3, 2019). During Interview 5, he was asked why the state tax liens alleged in SOR ¶¶ 1.a and 1.b had not been offset by his federal refunds. In response, he disclosed that he had not filed any federal or state returns since approximately 2008. He then proffered plans to file his delinquent returns, with the help of a tax accountant, and pay any outstanding tax obligations resulting therefrom. He did not specify a date for compliance with his filing and payment obligations, but anticipated that his returns would be filed as soon as the tax accountant received information requested from the IRS. (Item 5 at 18)

During Interview 5, Applicant could not give a reason for why he omitted his tax compliance failures from his SCA, but asserted his belief that he had been compliant with paying his taxes because they were deducted from his paychecks. In his SOR answer, he explained: "We simply found ourselves overwhelmed and did not file." (Item 4 at 18; Item 3)

Tax Returns

Applicant failed to timely file his federal income tax returns for tax years 2008 through 2019; his State A income tax returns for tax years 2008 through 2015; and his State B income tax returns for tax years 2015 through 2019 (SOR ¶¶ 1.f through 1.h). On a date not indicated in the record, he hired a tax accountant to assist him with preparing and filing his delinquent returns and resolving any outstanding tax obligations. (AE A; Item 5 at 18)

Applicant provided copies of 11 cover letters, dated August 2019, which indicated that the tax accountant finalized his 2008 through 2018 federal and state returns. He also provided a copy of an October 2020 cover letter, which indicated that the tax accountant finalized his 2019 federal and state returns. The letters instructed Applicant to sign the 2008 through 2016 returns and mail them to the respective federal and state agencies at the addresses provided. The letters indicated that the tax accountant would file the 2017 through 2019 returns electronically upon receipt of signed authorization forms from Applicant. (AE A)

There was no evidence in the record that Applicant obtained extensions for filing his 2008 through 2019 federal and state returns. He did not provide copies of his tax returns, signed authorization forms, tax account transcripts, or any documentary evidence that his 2008 through 2019 federal and state returns were actually filed and received by

the respective federal and state tax agencies. However, in his SOR answer, Applicant asserted that all of his delinquent tax returns had been filed. (Item 3)

Taxes

State A filed tax liens against Applicant for \$2,551 in January 2011 (SOR ¶ 1.b); and \$14,839 in December 2012 (SOR ¶ 1.a). When he contacted State A's tax agency in June 2019 about the liens, Applicant was informed that they were for personal income taxes associated with a former business, Company A, that he owned from 2004 through 2009. Applicant claimed that the tax accountant referenced above discovered that Company A's business accountant made a mistake on the K-1 filed for Company A in tax years 2008 and 2009. Applicant also claimed that both liens were removed when his delinquent returns were filed, and that no liens or delinquencies were on file with State A's tax agency as of 2020. However, Applicant did not provide any documents corroborating his claims. (Item 3 at 2; Item 4; Item 5 at 11, 15, 16, 38; Item 6 at 5)

According to the 12 cover letters referenced above, Applicant expected to receive refunds for each of the federal and state returns filed for tax years 2008 through 2019, except for the following years when he expected to owe taxes: \$809 to State A for tax year 2009 (SOR ¶ 1.i); and a combined \$6,749 to the IRS for tax years 2018 and 2019 (SOR ¶¶ 1.j and 1.k). Neither party proffered any documents to establish Applicant's actual federal and state income tax liability for tax years 2008 through 2019, including any refunds received or payments made. (AE A)

In his SOR Answer, Applicant claimed that he paid all state and federal income taxes during the years in which he had not filed a tax return; presumably based on the same rationale he expressed during Interview 5 – i.e., not from direct payments to the tax agencies, but from his payroll deductions. He also asserted: “when our most recent tax accountant got us caught up on our filings, we found that we were actually due over \$60,000 in [refunds] dating back to 2009.” He explained that he only received “about \$8,000” because he was only entitled to refunds from the prior three years. The record did not indicate what happened to any refunds he may have received. (Item 3)

Repossessions

Applicant financed the purchase of a recreational vehicle (RV) in April 2007 with a \$70,742 loan. A balance of \$25,884 was reported on Applicant's 2017 credit report (SOR ¶ 1.c). The last activity on the account was reportedly May 2012. When Applicant contacted the creditor in June 2019, he was informed that the balance was the amount due after the RV was sold at auction following a repossession. The creditor told him that he could repay the full amount via a payment plan, or settle it via a one-time lump sum \$14,000 payment. Applicant acknowledged that he never made any payments following the June 2019 conversation due to the possibility of unemployment in connection with his security clearance adjudication. In his SOR answer, he indicated that he considered the debt resolved because it no longer appeared on a credit report he reviewed, but did not provide for the record. (Item 3 at 2; Item 5 at 11, 13, 14, 38; Item 6 at 6)

Applicant financed the purchase of an all-terrain vehicle (ATV) with a loan, the details of which were not specified in the record. A balance of \$6,296 was reported by a collection company on Applicant's 2017 credit report (SOR ¶ 1.d). He indicated that the balance related to the repossession of the ATV. Applicant negotiated a settlement with the original creditor for a lump-sum payment of \$2,500 on July 1, 2019, which he paid on July 5, 2019. (Item 5 at 17, 17a, 17b, 38; Item 6 at 6)

Applicant attributed the RV and ATV repossessions to being unable to make payments on the loans due to not having income in 2013. He did not otherwise convey any problems with his finances and has never sought financial counseling. He did not proffer any documents concerning his relevant income and expense history or his ability to repay his debts. His SCA revealed one period of unemployment from May 2017 through August 2017. During Interview 2, Applicant reported that his income decreased by \$48,000 between 2009 and 2015. During that period, he juggled three part-time jobs: 1) self-employment with Company A, from May 2004 through July 2009; 2) self-employment with another company he owned (Company B), from February 2009 through February 2016; and 3) employment with an individual employer, from March 2011 through June 2015. (Item 4; Item 5 at 4, 5, 8, 11, 38)

For some unspecified period, Applicant co-owned Company A with two friends who eventually bought him out. He stated that the buyout occurred over the course of one to three years, and that he received approximately \$3,000 per month from the buyout. However, he did not specify the total amount of the buyout, or what happened to any funds he received. He maintained that Company B had no profit. Applicant travelled to Mexico for tourism for six to ten days in June 2016. The record did not indicate how that trip was funded. The record also did not indicate the reason for, or the costs associated with, Applicant's relocation from State A to State B in 2015. (Item 4; Item 5 at 4, 5, 6, 8, 11, 38)

Foreclosure

Applicant financed the \$405,000 purchase of his primary residence in 2003 with a mortgage loan of an unspecified amount. The loan's monthly payment was \$2,400. After Applicant defaulted on the loan, the lender foreclosed on the loan in 2013 (SOR ¶ 1.e). (Item 5 at 8-9)

Applicant did not address the foreclosure in his SOR answer. However, he discussed the following facts and circumstances of the foreclosure during Interview 1. In about 2012, Applicant contacted his lender to request a loan modification. Although he did not specify a reason for the request, he mentioned that an appraisal of his home (in connection with a business-related loan) revealed that his mortgage loan was underwater. An agent for the lender told Applicant that they could not proceed with the loan modification until he was 90 days behind on his loan payments. After he stopped making payments and was 90 days behind, Applicant called his lender again, but was told by another agent that he could be no more than 30 days behind. So, he made payments on his account to bring it back to 30 days behind only to be told by another agent that he had to be 90 days behind. Because he grew tired of dealing with his lender, he stopped making

payments and allowed the lender to foreclose on the loan. (Item 4 at 10; Item 5 at 8-9; Item 7)

Applicant claimed that his home sold in 2013 for more than the value of the loan, leaving him with no deficiency balance. He maintained that he was unable to obtain any corroborating documentation. The Government proffered a document that did not resolve the issue of whether there was a deficiency balance. The loan did not appear on his 2017 credit report. (Item 5 at 38; Items 6, 7)

Policies

“[N]o 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.” (*Egan* at 527). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and 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 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” (EO 10865 § 7). Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense 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. (*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. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016). 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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005))

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)). "[S]ecurity clearance determinations should err, if they must, on the side of denials." (*Egan*, 484 U.S. at 531; AG ¶ 2(b))

Analysis

Guideline F (Financial Considerations)

The concern under this guideline is set out 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. (ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012))

The record evidence established the following disqualifying conditions (DC) under this guideline: AG ¶ 19(b) (unwillingness to satisfy debts regardless of the ability to do so); AG ¶ 19(c) (a history of not meeting financial obligations); and AG ¶ 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). Because they are established by substantial evidence, the DC apply to SOR allegations ¶¶ 1.a through 1.h.

By contrast, because they were not established by substantial evidence, the DC do not apply to SOR allegations ¶¶ 1.i through 1.k. The evidence proffered by the Government in support of the facts alleged in SOR ¶¶ 1.i through 1.k were cover letters

indicating amounts that Applicant expected that he would owe to State A and the IRS based on his tax accountant's preparation of his 2009, 2018, and 2019 returns. There was neither an admission by Applicant nor other evidence in the record sufficient to establish the actual amount of taxes due to State A or the IRS or that those taxes remained unpaid, as alleged. Accordingly, I find SOR ¶¶ 1.i through 1.k in Applicant's favor.

Having considered all of the factors set forth in AG ¶ 20 that could mitigate the concern under this guideline, I find the following relevant:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

Applicant is credited with paying two unalleged utility accounts in June 2019, negotiating a settlement agreement in June 2019 for the debt alleged in SOR ¶ 1.c, and engaging the services of a tax accountant to assist with his tax compliance obligations. While accounting mistakes in 2008 and 2009, and a lack of income in 2013, could be deemed circumstances beyond his control, Applicant did not provide sufficient evidence to establish them as such. He also did not sufficiently develop how his period of underemployment between 2009 and 2015 may have affected his ability to meet his financial obligations. Without documentary proof, I am unable to conclude that the tax liens alleged in SOR ¶¶ 1.a and 1.b have been resolved. Applicant neither paid the debt alleged in SOR ¶ 1.c, nor established that he is no longer legally liable for repayment. The mere disappearance of a debt from a credit report does not establish that the debt was either paid or forgiven. Unpaid debts are routinely removed from credit reports after seven years.

Applicant paid the debt alleged in SOR ¶ 1.d in July 2019, well before the issuance of the SOR and within a reasonable timeframe of when he was placed on notice that it was delinquent and a security concern. Thus, I find SOR ¶ 1.d in his favor.

The record did not establish that a deficiency balance remained on the mortgage loan underlying the foreclosure alleged in SOR ¶ 1.e. Thus, the concern is not with the foreclosure itself, but with the facts and circumstances surrounding it. The record suggests that Applicant strategically defaulted on the loan despite having the means to pay it. His decision not to pay the loan because he was frustrated with the manner in which the lender handled his loan modification request demonstrates a willingness to prioritize his own self-interest above his obligations, which casts doubt as to whether he may also act similarly in the context of his security obligations.

Because the facts alleged in SOR ¶¶ 1.f through 1.h are based upon Applicant's self-report, his self-report that they were filed as of the date he answered the SOR carries more weight. Thus, I find that Applicant's 2008 through 2018 federal and state tax returns were filed sometime between August 2019 and August 2021; and his 2019 return between October 2020 and August 2021. Given that there is no evidence that Applicant was granted any filing extensions, I find that none of the returns were timely filed.

Applicant's only explanation for his extended period of delinquent returns was a bare assertion that he and his wife "simply found [them]selves overwhelmed and did not file." His failure to timely file his returns for 12 tax years without a justifiable excuse does not demonstrate responsible action and calls into question his suitability for access to classified information. A person who fails repeatedly to fulfill his or her legal obligations, such as filing income tax returns when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. (See ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015)). "Failure to file income 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." (ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)).

In light of the record as a whole, Applicant's indebtedness and his repeated failure to timely file tax returns call into question his suitability for access to classified information. I am left with doubts about Applicant's reliability, trustworthiness, and judgment. AG ¶¶ 20(a) and 20(b) do not apply. The partial applications of AG ¶¶ 20(d) and 20(g) do not suffice to mitigate the ongoing Guideline F concerns.

Guideline E: Personal Conduct

The concern under this guideline is set out 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 following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Based on Applicant's alleged deliberate failure to disclose on his November 2017 SCA that he had not filed his federal and state income tax returns during the seven preceding years, the following DC under this guideline could apply:

AG ¶ 16(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.

SOR ¶ 2.a included a sentence that warrants some discussion; specifically: "You answered "No" and thereby deliberately failed to disclose that information as set forth in subparagraphs ¶¶ 1.f through 1.h, above." SOR ¶¶ 1.f through 1.h, as amended, included tax years that did not fall within the seven-year window that was reportable on Applicant's SCA. Arguably, the seven-year reporting window applied to his returns for tax years 2010 through 2016. And, his 2017 through 2019 returns were not yet due to be filed, and thus, not reportable. Therefore, I have construed the reference to any non-reportable years as an inadvertent drafting error. Even if the non-reportable years were referenced intentionally, then I would find the portion of SOR ¶ 2.a referencing those years in Applicant's favor.

Because the falsification allegation is controverted, the Government has the burden of proving it. An omission, standing alone, does not prove a deliberate falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. An applicant's level of education and business experience are relevant to determining whether a failure to disclose information on a security clearance application was deliberate.

Applicant knew that he had not filed any federal or state returns in at least the seven reportable years preceding the date that he certified his November 2017 SCA. Yet, he answered "no" to a plain-language question about it on his SCA. It is doubtful that the omission was a simple mistake in light of the record as a whole, including his business experience. I find substantial evidence of an intent by Applicant to omit security-significant facts from his SCA. Therefore, AG ¶ 16(a) is established.

Having considered all of the factors set forth in AG ¶ 17 that could mitigate the concern under this guideline, I find the following relevant:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

An applicant's completion of a security questionnaire is the initial step in requesting a security clearance and the investigative process is contingent upon the honesty of the applicant. The Appeal Board has explained that beginning with an applicant's responses in the application,

The security clearance investigation is not a forum for an applicant to split hairs or parse the truth narrowly. The Federal Government has a compelling interest in protecting and safeguarding classified information. That compelling interest includes the government's legitimate interest in being able to make sound decisions (based on complete and accurate information) about who will be granted access to classified information. An applicant who deliberately fails to give full, frank, and candid answers to the government in connection with a security clearance investigation or adjudication interferes with the integrity of the industrial security program. (ISCR Case No. 01-03132 at 3 (App. Bd. Aug. 8, 2002))

Not only did Applicant omit information about his delinquent returns from his SCA, but he also failed to avail himself of the opportunity to voluntarily disclose it during the first four of his five security clearance interviews between November 2018 and July 2019. By November 2018, he had not filed a tax return in ten years; and by July 2019, eleven years. It is unlikely that this extended period of noncompliance with his tax filing obligation would have escaped his mind not only while he completed his SCA, but also throughout four separate interviews, during which the topics of state tax liens, his financial record, and other SCA omissions were discussed.

When Applicant finally disclosed the information during Interview 5, he did so only in response to a question asking him why his state tax liens had not been offset by federal refunds. Further undermining mitigation was his omission of the other derogatory financial information that was reportable on his SCA. Although those omissions were not alleged in the SOR, they remain relevant in this context.

It is implausible that Applicant reasonably believed that his finances were in excellent condition prior to being confronted during Interview 1. Regardless of whether he had been aware of his specific debts, he should have recalled that he lost his RV, ATV, and home after defaulting on the associated loans due to nonpayment. These were

reportable events responsive to plain-language questions on his SCA, which should have been understandable to Applicant in light of his business experience, if nothing else. I did not find credible Applicant's explanations for answering "no" to all of the financial record questions on his SCA, especially about his delinquent returns. I have doubts about Applicant's reliability, trustworthiness, and judgment. Thus, I cannot conclude that he has mitigated the Guideline E concerns. AG ¶¶ 17(a) and 17(c) do not apply.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guidelines F and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised by his indebtedness, failure to timely file federal and state income tax returns over an extended period, and deliberate falsification of his SCA. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security to grant him eligibility for access to classified information.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e – 1.h:	Against Applicant
Subparagraphs 1.i – 1.k:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security to grant or continue Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine
Administrative Judge