



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 21-00721
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett E. Petcher, Esq., Department Counsel
For Applicant: *Pro se*

05/10/2022

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant is a subject-matter expert in a defense technology who filed his delinquent federal and state income tax returns for tax years 2015 and 2016 in 2018 or 2019, and for 2017 through 2020 in March 2022. While he and his spouse had significant responsibilities for an elderly aunt, they do not fully mitigate the security concerns raised by his belated compliance with his tax-filing obligations for several years. Clearance eligibility is denied.

Statement of the Case

On June 22, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations. The SOR explained why the DCSA CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DCSA CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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 received the SOR on July 13, 2021. He submitted an undated response to the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On August 30, 2021, the Government indicated it was ready to proceed to a hearing. On September 27, 2021, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case assignment and file on October 6, 2021.

On February 22, 2022, I informed Applicant that I was scheduling video conference hearings by Microsoft Teams. After some coordination of schedules with the parties, on March 3, 2022, I scheduled his hearing for April 12, 2022, via Microsoft Teams.

At the hearing, three Government exhibits (GE 1-3) and one Applicant exhibit (AE A) were admitted in evidence. Applicant, his spouse, and his supervisor also testified, as reflected in a hearing transcript (Tr.) received on April 20, 2022. At the Government's request and without any objection by Applicant, the SOR was amended as set forth below in the findings of fact.

At Applicant's request, I held the record open for two weeks after the hearing for him to submit additional documentary evidence. On April 18, 2022, Applicant submitted a statement (AE B) and his federal and state income tax returns for tax years 2017 (AE C), 2018 (AE D), 2019 (AE E), and 2020 (AE F). The documents were entered into evidence without objection. The record closed on April 26, 2022.

Findings of Fact

The amended SOR alleges that Applicant failed to timely file state (state X) (SOR ¶ 1.a) income tax returns for tax years 2015 through 2019; federal income tax returns for tax years 2015 through 2020 (SOR ¶ 1.b); and state (state Y) income tax returns for tax years 2019 and 2020 (SOR ¶ 1.c). Applicant has admitted the failure to file the tax returns by the tax deadlines. His admission to failing to timely file his income tax returns when they were due for tax years 2015 through 2020 is incorporated as a finding of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact:

Applicant is a 70-year-old subject matter expert in a defense technology. (GE 1; AE A.) He has a bachelor's degree earned in May 1973, a master's degree earned in June 1976, and a doctorate degree earned in August 1978. Applicant and his spouse wed in September 1985. They have three grown children ages 30, 32, and 35, who are not dependent on them. (GE 1; Tr. 28.)

Applicant has spent his career in the defense industry and has worked for his current defense-contractor employer since July 2019. He was first granted a security clearance in 1989 or 1990. (GE 1; AE A; Tr. 65.)

Applicant and his spouse began caring for his elderly aunt in 2012. His aunt resided in another state, but Applicant was responsible for finding caregivers for his aunt. (Tr. 32-33, 60.) He was in charge of his aunt's finances and was her healthcare proxy. (Tr. 29.)

In September 2014, Applicant resigned from employment of almost nine years with a laboratory in state Y that contracts with the DOD. He disagreed with management on how to best serve a customer, and his performance was deemed unsatisfactory. Applicant was unemployed from September 2014 to July 2015. (GE 1; Tr. 59.) He collected unemployment benefits from state Y, and his spouse was employed outside the home as a teacher until she retired in 2016. (Tr. 30.) They reside in a state that does not tax the income of its residents. State Y taxed his income at the laboratory as a non-resident wage-earner. (Tr. 79-80.)

In July 2015, Applicant relocated across the country to state X for work with a previous employer as a contractor on a DOD program. (Tr. 60.) He rented a room in a house while his spouse and children stayed behind in their home. (GE 1.)

In September 2016, Applicant and his spouse purchased a condominium in state X, to save on rent while he was working there. (Tr. 40.) Applicant's spouse stayed behind to care for his elderly aunt, who had some major medical issues. (Tr. 25-26.) In November 2016, Applicant and his spouse moved his aunt from her state of residence because she was not receiving the care she needed in her state. (Tr. 33-34, 61.) Applicant's spouse cared for his aunt in their home for about one week before moving his aunt into an assisted living facility near her. In early 2017, Applicant's spouse moved his aunt into another facility where she was provided more appropriate care. The burden of maintaining, clearing out, and then selling his aunt's house in another state fell on Applicant and his spouse. (Tr. 34.) In January 2018, Applicant's spouse had a medical issue for which she was hospitalized for a few days. (Tr. 26, 38.) Applicant traveled back home from state X to help her. (Tr. 26.) In April 2018, his aunt's house sold. (Tr. 34.) In June 2018, his aunt was hospitalized for over a week, and Applicant's spouse had to deal with palliative care and hospice care providers for his aunt. Applicant's spouse spent on average two to three hours per day with his aunt from 2017 until July 2019, when she died. (Tr. 35-36.)

Applicant handled their taxes in that he gathered the information needed to file their tax returns for their certified public accountant (CPA), who had been preparing their tax returns since around 2012. Some documents needed to file their tax returns went to Applicant in state X and other documents went to their marital residence. (Tr. 30-31.) It became an issue getting the documentation to their CPA in a timely fashion. (Tr. 31.) Applicant came home approximately one weekend per month. On some of the trips, when he had time available, he would look through some of his paperwork, but it was "a real challenge." (Tr. 37, 69.) He filed their tax returns for tax years 2015 and 2016 late. He recalls it was in either 2018 or 2019. (Tr. 70.) He indicated on a June 19, 2020 Questionnaire for National Security Positions (SF 86) that he filed his income tax returns and paid his taxes late for tax years 2015 and 2016, but the issues were resolved in November 2018. However, he also indicated that he made a tax payment of \$4,339 to the

Internal Revenue Service (IRS) around November 19, 2019. (GE 1.) The tax deadline for filing his and his spouse's joint income tax returns for 2017 passed without them filing their federal or state X income tax returns. (Tr. 39.)

Initially, Applicant worked full time in state X, but after several budget cuts, his hours were reduced to four days a week. After a significant reduction in program funding in 2019, he was laid off in April 2019. He received a severance package and collected unemployment compensation. The tax deadline for filing his and his spouse's joint tax returns for 2018 passed without their federal and state X income tax returns being filed. (Tr. 39.) In June 2019, Applicant moved back home. He began working for his current employer on a U.S. military installation in state Y in July 2019. (GE 1.) His first priority was his job (Tr. 71), and he did not file a tax return with the IRS or with states X and Y for tax year 2019 by the tax deadlines for those returns. (Tr. 32.) A trip planned for March 2020 to sell their condominium in state X was postponed because of the COVID-19 pandemic. (Tr. 40.) At the start of the pandemic, they apologized to their CPA for not getting tax documents to her that they needed to file their tax returns, although the CPA largely left it to them to contact her. (Tr. 43-44.) Applicant did not think of submitting the documentation he had at the time to the CPA as he wanted to have all the information needed for his returns before contacting the CPA. (Tr. 73.)

On his June 2020 SF 86, Applicant stated that he and his spouse were "late" in submitting their federal and state income tax returns for tax years 2017 and 2018 because of him commuting between his home and state X on a monthly basis to see his spouse and help her care for his ailing aunt in an assisted living facility. Also, he had not kept his paperwork and computer files organized nor allocated the time. He added that he was working with a tax preparer to get his taxes filed for tax years 2017, 2018, and 2019, but that taxes were withheld from his income. He disclosed that he had filed his returns and paid his taxes late for tax years 2015 and 2016, and he received refunds of \$4,176 in federal income taxes and \$3,784 from state X for tax year 2015. For 2016, he paid \$4,339 to the IRS "shortly after 19 Nov. 2019," and he received a \$4,648 refund from state X. He did not know what he owed, if anything, to the IRS or state X for tax years 2017 and 2018. (GE 1.)

Applicant was interviewed by telephone by an authorized investigator for the Office of Personnel Management (OPM) on August 5, 2020. Applicant admitted that he had not yet filed his federal or state X income tax returns for tax years 2017 and 2018. He added that he would contact the IRS within the next few days to resolve the matters and pay any taxes owed. He explained that he had not filed his returns or paid his taxes on time due to a family member's ill health and having caregiver duties for this person. He also stated that he was not able to attend to these financial matters while living in state X away from his wife. (GE 2.)

At the request of the DCSA CAF, Applicant on February 8, 2021, provided IRS account transcripts for 2017 and 2018 and state X wage and withholding information for tax years 2015 through 2019. The IRS account transcript for 2017 showed that, as of January 5, 2021, no return had been filed. The IRS had inquired about his missing return on

November 15, 2018, and issued a notice on December 3, 2018. Wage and income information received by the IRS for tax year 2017 reflected wage income of \$144,495 and retirement benefits paid to him of \$3,528. The account transcript for 2018 likewise showed no return had been filed by January 5, 2021. He had a filing extension to October 15, 2019. When the deadline passed with no return being filed, the IRS made an inquiry on March 10, 2020, and issued a notice on March 30, 2020. Reported wage income was \$125,542, and retirement income was \$10,788. He also received a gross distribution of \$9,000 from retirement accounts. State X wages and withholding details showed he had income taxes withheld each year from his income, but not whether his and his spouse's joint returns had been filed. (GE 2.) Recently prepared and filed state X tax return for 2017 shows that they were refunded \$4,648 in state X taxes for 2016. (AE C.)

In a detailed response of February 8, 2021, to DCSA CAF interrogatories, Applicant expressed deep regret for not filing his tax returns on time and for failing to request extensions of the tax-filing deadlines. He cited primarily three circumstances since 2012 or 2013, which "depleted the time [he and his spouse] could have spent keeping [their] lives, [their] files of paperwork and [their] house much less cluttered and better organized." Chiefly, he blamed "all the time, worry, and effort" involved in caring for his ailing aunt, his acceptance of a position in state X, and the consequent "degradation" in their ability to keep their paperwork and home organized. He and his spouse had to interview potential caretakers for 24-hour care for his aunt in her home, arrange for her financial affairs, and meet with her attorneys. When her health deteriorated to where she could no longer be cared for safely in her home, they moved his aunt into an assisted living facility in state Y in 2016. However, after only a short time there, they had to move her to another facility that could better care for her. He added that much of the responsibility for his aunt's medical (finding doctors, arranging for transportation to medical visits and procuring prescriptions) and legal needs (updating his aunt's will, revising her trust, handling her finances) fell to his spouse, until his spouse was hospitalized. After his aunt died in early July 2019, Applicant served as executor of her will and trust. (GE 3.)

Concerning his job search's impact, Applicant explained that he had no success from mid-2014 to mid-2015 because of a tight job market. He accepted a position in state X around July 2015 because the work was challenging and he respected his co-workers from prior interactions with them, knowing that it would strain his and his spouse's ability to remain organized. He cited his commute back home every three or four weeks, and the time-consuming purchase of a condominium after one year of paying rent. He was able to get caught up on his returns and tax payments for 2015 and 2016 but then had to look for another position when funding decreased for the program he was working on. Only a few months after his layoff in April 2019, he was able to secure his present employment, but he had to ship his belongings back home. He stated that with the assistance of a professional tax preparer, he would file his 2017 and 2018 tax returns and then complete the filing of his 2019 and 2020 tax returns by the end of 2021. (GE 3.)

In August 2021, Applicant and his spouse traveled to state X to clean out their condominium and list it for sale. (Tr. 40.) The condominium sold in October 2021. (Tr. 63.) At the time, Applicant took possession of some documents that were in the condominium

(W-2 forms and “charitable stuff”) that he needed to file their delinquent income tax returns (Tr. 41-42), although neither he nor his spouse elaborated as to the which tax years the documents pertained. They rented a storage shed near their home to store boxes of documents after they had sorted through them. It gave them space to get their taxes and other important paperwork organized. (Tr. 63.)

Starting in January 2022, Applicant began a concerted effort, in piecemeal fashion, to compile and give their CPA the documents needed to file his and his spouse’s delinquent federal, state X, and state Y tax returns. (Tr. 43.) On March 2, 2022, the CPA finished preparing, and Applicant submitted his and his spouse’s joint federal income tax returns for tax years 2017 through 2020 and their state X income tax returns for tax years 2017 through 2019. (AEs C-F.) On March 24, 2022, the CPA finished preparing Applicant’s and his spouse’s joint state Y income tax return for tax year 2019. On March 25, 2022, the CPA finished their state Y income tax return for tax year 2020, and Applicant mailed the tax returns for 2019 and 2020 to state Y. (AEs E-F.) Applicant paid the taxes owed when they submitted their tax returns. He filed for an extension of the tax-filing deadline for tax year 2021. (AE B.)

The tax returns for tax years 2017 through 2020 reflect the following with respect to their adjusted gross incomes and tax refunds or underpayments:

Tax Year	Adjusted Gross Income	Tax Refund (+) or Tax Underpayment and penalties and interest (-)
2017 (AE C)	\$181,994 \$152,590 State X	Federal – \$829, paid (AE B); State X + \$5,418 to be applied to Tax Year 2018
2018 (AE D)	\$176,253 \$128,790 State X	Federal – \$11,333, paid (AE B); State X + \$9,402 to be applied to Tax Year 2019
2019 (AE E)	\$162,806 \$133,711 State X	Federal – paid \$5,068 (AE B); State X + \$11,647 (includes \$9,402 for 2019); State Y + 306 (AE B)
2020 (AE F)	\$204,405	Federal – \$16,001; State Y + \$ 189 (AE B)

Applicant understands, in hindsight, that he could have taken steps to better coordinate their finances, such as purchasing a laptop that would allow for the use of Excel software. (Tr. 12.) He also learned over the last year that the IRS had a lot of their tax information that he could have accessed to get their delinquent tax returns filed. (Tr. 62, 68.) He was aware from completing security clearance applications in the past that not filing tax returns could be of concern to the DOD. (Tr. 66.) As to why he did not make filing the delinquent tax returns a priority, Applicant stated:

Again, my, first of all, our marriage., our health, finding and having employment and contributing were the primary things in my life. I didn't want to be collecting unemployment insurance and a tax burden. That, those focus my efforts on getting, getting a position. With going out to [state X], it was just very stressful. I was on my mind but yes, there were many other things also on my mind. And it wasn't at the bottom of the list, but it fell below what it, what I felt I was able to do without overstressing myself or my wife. (Tr. 67.)

Applicant and his spouse always intended to pay the taxes owed. He made sure that their bills were paid, including on the condominium in state X, but the burden of gathering the information needed to file their tax returns was "another level of difficulty up from that." (Tr. 67-68.)

As of July 2020, Applicant's gross salary was \$137,508 annually. (GE 2.) He works on a contract that provides engineering support to the United States Air Force. He highly values the technical work that he does for the U.S. government and does not want to lose the opportunity to "do more good for the U.S. government." (AE A.) He is remorseful and embarrassed about his failure to file his tax returns on time. (Tr. 73-74.)

The chief engineer to whom Applicant reported from about July 2019 until February 2021 indicated that Applicant's performance in 2019 "demonstrably led" to the project team receiving a prestigious small team of the year award. The chief engineer assessed Applicant as an exceptional performer. He considered Applicant "an outstanding engineering professional with exceptional experience from an abundance of technical perspectives and [as someone who] is an essential engineer to keep [their] project cost, schedule, and performance on track." (AE A.)

The section lead on the project, who has been working with Applicant for a little over a year, testified that he brought Applicant to the project because of Applicant's "inordinate amount of experience in the application of engineering into government-related projects. They work remotely, and maintain almost daily contact through video conferencing, texting, or emails. (Tr. 52.) The section lead considers Applicant to be "trustworthy without any questions whatsoever." (Tr. 54.) He is aware that the issue about Applicant's security worthiness involves "unpaid back taxes compiled," but that Applicant is completing them. He has not seen any actions by Applicant that causes him any concerns. The section lead had a similar issue involving unpaid taxes "due to an accountant's error" about 15 years ago. (Tr. 55-56.)

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 admits that he and his spouse did not file their federal and state income tax returns when they were due for tax years 2015 through 2020. Section 6012 of Title 26 of the United States Code requires the filing of an income tax return by spouses filing jointly if their gross incomes together exceed twice the sum of the exemption amount plus the basis standard deduction applicable to a joint return. If their income met the threshold for filing, Applicant and his spouse were required to file tax returns by the deadlines, whether or not they expected tax refunds. Applicant's income exceeded the filing threshold for each of the tax years alleged. There was no intent to evade paying taxes, although the recently filed tax returns show that they underpaid their federal income taxes for tax years 2017 through 2020. Guideline F security concerns are established when an individual does not comply with his or her tax-filing obligations, whether or not any taxes are owed. 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," applies.

Applicant has the burdens of production and persuasion in establishing sufficient mitigation to overcome the financial concerns raised by his noncompliance with such an important obligation as filing his tax returns on time. 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 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; 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, given Applicant's failure to comply with his income tax filing obligations for several consecutive years. While he rectified his tax issues for 2015 and 2016 by November 2019, well before the SOR was issued, his failure to file his federal and state income tax returns on time for tax years 2017 through 2020 undermines his case in reform.

Regarding AG ¶ 20(b), Applicant and his spouse had significant obligations caring for his elderly aunt between 2012 and July 2019, which provide some mitigation in this case. Applicant and his spouse had to interview caregivers for his aunt when she lived in her own home in another state. Applicant arranged for his aunt's financial affairs. When his aunt's health deteriorated to where she could no longer be safely cared for in her house, Applicant and his spouse moved her into an assisted living facility near them in November 2016. With Applicant working in state X, the burden of clearing out his aunt's home largely fell to his spouse. The primary responsibility for his aunt's medical needs (finding doctors, arranging for transportation to medical visits and procuring prescriptions) was also borne by his spouse, who had medical issues of her own in January 2018. Applicant had always been responsible for compiling their tax information for his CPA, so other than the possible impact of having some tax papers at home and some in state X, it is difficult to see where his duties for his aunt precluded him from compiling his tax paperwork for his and his spouse's CPA. After his aunt died in July 2019, Applicant served as executor of her will and trust, but he did not explain how that caused years of inattention to his tax issues. The COVID pandemic led Applicant and his spouse to cancel a March 2020 trip to their condominium in state X, where Applicant had left some of his tax paperwork, but he did not provide any details as to which tax years.

The considerable delay in Applicant addressing his delinquent tax filings was not entirely due to circumstances outside of his control. Applicant was disorganized in his paperwork and did not make filing his delinquent returns a priority. After his aunt died, and he began working for his current employer, he focused on his work. A year into his new job, he completed his SF 86. He candidly disclosed that he had not filed his income tax returns for tax years 2017 and 2018. During his August 2020 interview with an OPM investigator, Applicant stated that he would contact the IRS within the next few days to resolve his tax filings and pay any taxes owed. Despite receiving inquiries from the IRS in December 2018 about his unfiled tax return for tax year 2017 and in March 2020 for tax year 2018; interrogatories about his unfiled returns from the DCSA CAF in early 2021; and the SOR in

June 2021, he had not filed his delinquent income tax returns for tax years 2017 through 2020 by the end of 2021. AG ¶ 20(b) does not fully apply.

Applicant's very belated filing of his delinquent federal and state income tax returns for tax years 2017 through 2020, and his payment of federal income taxes owed, implicates AG ¶ 20(c) and AG ¶ 20(g). Yet, the Appeal Board has reaffirmed that the timing of corrective action is an appropriate factor to consider in applying AG ¶ 20(g). See *e.g.*, ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018) (citing ISCR Case No. 17-01807 at 3-4 (App. Bd. Mar. 7, 2018)). In reversing favorable clearance grants to applicants with tax issues by DOHA judges in ISCR Case No. 17-01382 (App. Bd. May 16, 2018) and ISCR Case No. 16-01211 (App. Bd. May 30, 2018), the Appeal Board noted that applicants who only begin to address their delinquent tax returns after having been placed on notice that their clearance may be in jeopardy may not comply with laws, rules, and regulations when their immediate interests are not imperiled.

Applicant is remorseful and embarrassed by his failure to comply with his known legal obligation to file his income tax returns by the filing deadlines. He has taken some steps, such as obtaining a storage shed, which he asserts will help him become more organized with his paperwork so that he can file his tax returns on time in the future. A promise of future compliance is not a substitute for a track record of filing returns on time. His lack of urgency in addressing his tax issues is incompatible with the judgment, reliability, and trustworthiness expected of him, based on his education and experience with the clearance process. The financial considerations security concerns raised by Applicant's repeated and recent failure to comply with his tax-filing obligations are not fully mitigated at this time.

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). Those factors are:

- (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.

The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant's contributions to the Air Force are unassailable and merit considerable respect. Nonetheless, the Appeal Board has made clear that voluntary compliance with such rules and systems as those pertaining to filing returns and paying taxes is essential for protecting classified information. See, e.g., ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016). 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 of record, it is not clearly consistent with the interests of national security to grant or continue security clearance eligibility for Applicant 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
Subparagraphs 1.a-1.c:	Against Applicant

Conclusion

In light of all of the circumstances, 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.

Elizabeth M. Matchinski
Administrative Judge