



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



In the matter of: )  
)  
) ISCR Case No. 20-03533  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Patricia Lynch-Epps, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

January 3, 2023

**Decision**

TUIDER, Robert, Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (financial considerations). National security eligibility is denied.

**Statement of the Case**

On March 5, 2020, Applicant submitted a Questionnaire for National Security Positions (SF-86). On February 5, 2021, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The SOR detailed reasons why the DCSA CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On March 15, 2021, Applicant submitted his Answer to the SOR through Counsel. On April 16, 2021, Department Counsel was ready to proceed.

On April 5, 2022, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On May 4, 2022, DOHA issued a notice of Microsoft Teams video teleconference hearing scheduling the hearing for May 26, 2022. The hearing

commenced as scheduled. I admitted Government Exhibits (GE) 1 through 4 without objection. Applicant testified and did not call any witnesses to testify on his behalf. I admitted Applicant Exhibits (AE) A through EE without objection. I held the record open until June 30, 2022, to afford Applicant an opportunity to submit additional evidence. (Tr. 87-90) Applicant timely submitted AE FF through HH without objection. On June 14, 2022, DOHA received the hearing transcript. (Tr.).

## **Findings of Fact**

### **Background Information**

Applicant is a 50-year-old forensics analyst, systems engineer, and network engineer, who has been employed by a defense contractor since August 2013. He seeks to retain his Top Secret security clearance, which is a requirement of his continued employment. Additionally, in April 2022 he became the facility security officer for his company. (Tr. 12-14, 40-41)

Applicant graduated from high school in June 1990. He attended an online university and is “two classes short” from earning a Bachelor of Science degree in information technology. (Tr. 14-15) He served in the U.S. Air Force from November 1990 to October 1994. He then served in the Army National Guard from October 1994 to December 1995, and transferred to the Air National Guard where he served from December 1995 to December 2005. He was honorably discharged as a technical sergeant (pay grade E-6). He has almost 15 years of cumulative military service, but has not served enough time in the armed forces to qualify for retirement benefits from either active duty or reserve service. [Note – I relied on Applicant’s statement of service as the primary source document for his service dates.] (Tr. 15-17, 38-39; GE 1; AE CC, AE DD, AE EE) Applicant stated that he has continuously held a clearance since 1990 until present, except for the time he was in the Army National Guard. (Tr. 86)

Applicant has been married three times, the first marriage was from May 1995 to March 1999, and the second marriage was from July 1999 to October 2015. Both of those marriages ended by divorce. Applicant married a third time in August 2020, separated in January 2022, and as of the time the record closed, was pending a final divorce. He has two adult children from his second marriage, who are both financially independent. (Tr. 17-19, 87; AE O)

### **Financial Considerations**

The SOR lists 15 allegations under this concern. The first two allege that he failed to file his Federal income tax returns for tax years 2013, 2016, 2017, and 2018; the third alleges he owes the Federal Government \$9,503 for delinquent taxes for tax year 2012; and the remaining 12 deal with delinquent accounts, all of which are discussed in further detail below. (SOR ¶¶ 1.a – 1.o)

The SOR allegations are established by his March 5, 2020 SF-86; his Response to DOHA Interrogatories, undated, with his adopted May 12, 2020 Office of Personnel

Management (OPM) Personal Subject Interview (PSI); his April 23, 2020 and December 27, 2020 credit reports; and his March 15, 2021 SOR Answer. (GE 1 – 4; SOR Answer)

Applicant was alerted to the Government's concerns regarding his failure to file his Federal income tax returns, his delinquent taxes owed to the Federal Government, and his other debts during his May 12, 2020 OPM PSI, and also when he received his February 2021 SOR and his DOHA Interrogatories. (SOR; GE 2) [Note – Throughout his testimony, Applicant was frequently unsure or confused which of his exhibits mitigated a particular debt. To add some clarity to the confusion that occurred during the hearing, I generally gave greater weight to Applicant's post-hearing matrix (AE FF) when attempting to match a mitigating document with a particular SOR debt.]

**SOR ¶ 1.a: Failed to file Federal income tax returns for tax year 2013.**

**SOR Answer** – I admit with clarification. I did initially fail to file tax returns for this year. However, I am working with the IRS to determine the status of this year's taxes, as I was still married to my ex-wife during that year.

At his hearing, Applicant stated that his ex-wife did not cooperate with him by failing to provide documents needed to file their joint Federal income tax returns. (Tr. 21) Applicant stated that he has since filed his 2013 Federal income tax return and "it should be with the IRS." He further stated that it has been difficult for him to get tax transcripts from the IRS. (Tr. 22-25) However, Applicant was uncertain when he mailed his 2013 tax return to the IRS stating that, "it was within the last year (2022)." (Tr. 41-47) Post-hearing, Applicant again represented that he filed his 2013 Federal income return. However, his post-hearing documents did not contain documentation of such filing. (AE FF) **ALLEGATION NOT RESOLVED.**

**SOR ¶ 1.b: Failed to file Federal income tax returns for tax years 2016, 2017, and 2018.**

**SOR Answer** – I admit with clarification. I did initially fail to file these tax returns. For a period after my divorce, I was unable to get information from my ex-wife regarding our filing status and back debt. As a result of our divorce, I was made responsible for the back taxes, and was waiting to file until I could determine the status of those filings and back taxes. The returns for all these years have since been submitted along with my 2019 filing. I expect my back tax debt to be resolved.

At his hearing, Applicant stated that he filed his 2016, 2017, and 2018 Federal income tax returns. (Tr. 25) His SOR Answer contained copies of those returns. However, those returns are not signed or dated, and there is no evidence from the IRS that they were submitted to or received by the IRS. (Tr. 25; AE C, AE D, AE E) Applicant also stated that he did not "really have a reason" for not timely filing his income tax returns and was unsure of the date he mailed those returns to the IRS. (Tr. 48-54) Post-hearing, Applicant submitted three letters from the IRS all dated June 29, 2022 indicating that they received a June 29, 2022 request from Applicant for verification for non-filing of tax returns for tax years 2018, 2020, and 2021. The IRS

letters stated, "As of the date this letter, we have no record of a processed tax return for the tax period listed above." (AE HH) **ALLEGATION NOT RESOLVED.**

In response to Department Counsel's questions, Applicant stated that he timely filed his 2020 and his 2021 Federal income tax returns. He did not recall what his adjusted gross income was for either year. He received bonuses since 2019, but could not recall how much he received. (Tr. 79-80) He did not know much he had in his checking or savings account or in his 401k account. (Tr. 80-81)

**SOR 1.c – Indebted to the Federal Government for delinquent taxes in the amount of \$9,503 for tax year 2012. This tax obligation remained unpaid until 2020.**

**SOR Answer** – I admit with clarification. See response to 1.b.

At his hearing, Applicant stated this debt would be completely settled with all the taxes he filed with the IRS, and that he will be owed a refund. Applicant submitted a "tax spreadsheet" that breaks down the tax years from 2013 to 2021 with a corresponding column that indicates the amount of taxes he owes or the refund he will receive. According to his calculations, his total refunds will total \$7,153. He plans to pay as many debts as he can with that refund. (Tr. 25-26; AE Z) Applicant also testified that he entered into an installment agreement with the IRS in April 2013 and stopped making payments in February 2014 because of his obligation to provide spousal and child support to his estranged wife and maintain a separate household for himself. He also stated that this debt would be settled with refunds due him from the Federal income tax returns that he filed, discussed above. (Tr. 54-56) I take administrative notice of the fact that IRS tax refunds are usually transferred to address delinquent federal income tax debts. However, when a tax return is not filed within three years of its due date, the IRS does not pay a refund. IRS website, "Don't Lose Your Refund by Not Filing," available at <https://www.irs.gov/individuals/dont-lose-your-refund-by-not-filing>. Applicant did not submit any documentation from the IRS during his hearing or post-hearing to document that this IRS debt was paid or being paid. (AE FF) **ALLEGATION NOT RESOLVED.**

Additionally, Applicant's SOR alleged 12 delinquent commercial accounts, discussed below.

**SOR ¶ 1.d – Collection gas company account in the amount of \$13.**

**SOR Answer** – I admit with clarification. During my divorce it was determined that I would be responsible for the debt from the marriage. I also at this time accrued around \$15,000 in attorney's fees and lost the medical insurance I had through my ex-wife's policy. I have more recently become the majority provider for my household as my current spouse lost her employment and we gained full-time custody of my youngest child. Most of the debts listed here are the result of my divorce, and I am in the process of resolving by making payments and arranging settlements/payment plans.

At his hearing, Applicant acknowledged that this account has been delinquent since 2016. He stated that this debt “was paid yesterday” and that he would send proof of payment post-hearing. He further stated, “I’ve got a receipt right in front of me that I can provide.” [Note – this was a TEAMS hearing.] Post-hearing, Applicant did not submit any documentation of payment. (Tr. 26-28, 56-57, 77-79; GE 4; AE FF) **DEBT NOT RESOLVED; however, a \$13 debt does not raise a major security concern aside from the carelessness for legitimate obligations it demonstrates.**

**SOR ¶ 1.e – Collection credit card account in the amount of \$2,143.**

**SOR Answer** – I admit with clarification. See response to 1.d.

At his hearing, Applicant acknowledged that he opened this account in 2017, and that it became delinquent that same year. Post-hearing, Applicant claimed that this account was in a payment plan, but did not submit any documentation corroborating that claim. (Tr. 27-28, 57-58; GE 2; AE FF) **DEBT NOT RESOLVED.**

**SOR ¶ 1.f – Collection credit card account in the amount of \$7,291.**

**SOR Answer** – I admit with clarification. See response to 1.d.

At his hearing, Applicant acknowledged that he opened this account in 2016, and it became delinquent that same year. He has not paid this account nor is it in a payment plan. Post-hearing, Applicant stated that he was unable to afford a payment plan and did not submit any documentation pertaining to this debt. (Tr. 28-29, 58-59; GE 2; AE FF) **DEBT NOT RESOLVED.**

**SOR ¶ 1.g – Collection credit card account in the amount of \$734.**

**SOR Answer** – See response to 1.d. This account is currently in a payment plan.

At his hearing, Applicant restated that this account is currently in a payment plan. He submitted documentation that he established a payment plan with this creditor at \$25 a month beginning in December 2020. (Tr. 29, 59-62; AE F, AE FF) **DEBT BEING RESOLVED.**

**SOR ¶ 1.h – Indebted to a jewelry store for \$679 on a total balance of \$3,000.**

**SOR Answer** – I admit with clarification. See response to 1.d.

At his hearing, Applicant acknowledged that he opened this account in January 2020 to buy a ring for his third wife. He has not paid this debt nor is it in a payment plan. Post-hearing, Applicant stated that he was unable to afford a payment plan and did not submit any documentation pertaining to this debt. (Tr. 29-30, 62-63; AE FF) **DEBT NOT RESOLVED.**

**SOR ¶ 1.i – Collection credit card account in the amount of \$592.**

**SOR Answer** – I admit with clarification. See response to 1.d.

At his hearing, Applicant acknowledged that as of the date the SOR was issued, this account was unpaid and remains unpaid. Post-hearing, Applicant claimed that he had a payment plan in place, but did not provide any documentation corroborating that claim. (Tr. 30-31, 63-64; AE FF) **DEBT NOT RESOLVED.**

**SOR ¶ 1.j – Charged-off motorcycle repossession loan account in the amount of \$5,714.**

**SOR Answer** – I admit with clarification. See response to 1.d.

At his hearing, Applicant stated that he has not paid this debt nor is it in a payment plan. Post-hearing, he stated that he was unable to afford a payment plan, and did not submit any documentation pertaining to this debt. (Tr. 31; 64-65; GE 1; AE FF) **DEBT NOT RESOLVED.**

**SOR ¶ 1.k – Charged-off credit card account in the amount of \$5,859.**

**SOR Answer** – I admit with clarification. See response to 1.d.

At his hearing, Applicant acknowledged that this account was charged off in 2016. He has not paid this debt nor is it in a payment plan. Post-hearing, Applicant stated that he was unable to afford a payment plan, and did not submit any documentation pertaining to this debt. (Tr. 31, 65-67; GE 3; AE FF) **DEBT NOT RESOLVED.**

**SOR ¶ 1.l – Collection credit card account in the amount of \$1,956.**

**SOR Answer** – I admit with clarification. See response to 1.d. This account is currently in a payment plan.

At his hearing, Applicant stated that he established a payment plan for this debt in December 2020. He submitted a payment plan with the creditor that reflected payments of \$38 per month. (Tr. 31-32, 67-69; AE H, AE FF) **DEBT BEING RESOLVED.**

**SOR ¶ 1.m – Collection credit card account in the amount of \$1,014.**

**SOR Answer** – I admit with clarification. See response to 1.d.

At his hearing, Applicant stated that he has not paid this debt nor is it in a payment plan. Post-hearing, Applicant stated that he was unable to afford a payment plan, and did not submit any documentation pertaining to this debt. (Tr. 32; 69-70; AE N, AE FF) **DEBT NOT RESOLVED.**

**SOR ¶ 1.n – Collection credit card account in the amount of \$669.**

**SOR Answer** – I deny. The account has been paid in full.

At his hearing, Applicant stated that he had paid this account in full and referred to his undated receipt from the creditor indicating that this account was “settled in full.” (Tr. 32, 70-71; AE N, AE FF) **DEBT RESOLVED.**

**SOR ¶ 1.o – In arrears to state child support agency in the amount of \$937.**

**SOR Answer** – I deny. I have recently gotten full custody of my youngest child. Over the course of the hearings regarding custody, a stop order was put in place for the child support. As a result of the hearings, I was actually owed approximately \$1,100 in child support and currently receive \$100 a month.

At his hearing, Applicant reiterated what he claimed in his SOR Answer, adding that he gained custody of his daughter in May 2021 and that his pay was garnished at a rate of \$1,000 per month from May 2019 to September 2019 for child support, which resulted in him overpaying his child support. He stated that he was awarded \$1,000 in back child support by his former spouse. Based on his SOR Answer and explanation provided during his hearing, this debt is resolved. (Tr. 33; 71-7; GE 1, p. 44; AE FF) **DEBT RESOLVED.**

Applicant identified his past divorces and ongoing divorce as circumstances beyond his control. He incurred attorney fees for all of his divorces. He stated that his second wife had two periods of unemployment, but was unsure of the dates. He added that his third wife was unemployed for “almost nine months.” This loss of income adversely affected his ability to remain current on his bills. Additionally, his third wife had two back surgeries and he was responsible for paying the deductibles, which were \$2,500 and \$1,200, respectively. His third wife also had an automobile accident that totaled her car. Applicant had to come up with a down payment for a new car and “work with the insurance company to get . . . the vehicle paid off.” (Tr. 33-36; AE O)

Applicant participated in financial counseling and stated that he learned how to manage his money better, the importance of paying his bills, and getting his financial affairs in order. Applicant submitted a copy of an agreement with his credit counseling service dated May 18, 2022. (Tr. 36-37, 81; AE T) His take-home salary is approximately \$5,800 a month. Out of that, he is required to provide spousal support to his third wife pending their divorce, to also include her expenses, which are approximately \$2,200 a month. (Tr. 37-38) Applicant owns a 2001 Chevrolet Silverado and a 1995 Ford, and he and his wife co-own a 2016 Chevrolet Silverado. (Tr. 81-83)

Applicant stated that he is able to pay his “current debts.” (Tr. 83) According to an analysis conducted by his credit counseling service, he would need to allocate \$1,020 to their program. As far as where those funds would come from, he stated, “I have not gotten that figured out yet. I told them I would contact them at a later date.” (Tr. 83-84) Applicant is living in a manufactured home that he rents for \$1,100 a month. (Tr.

87) Post-hearing, Applicant submitted a budget, which reflects a net monthly income of \$5,889, and a net monthly remainder of \$488. (Tr. 37-38; AE GG)

### **Character Evidence**

Applicant stated that he is not a security risk. As an example, in January 2017, he reported observing an individual removing classified information from a secure area. He knew that by reporting this individual to the authorities that he would have to take on the individual's workload. (Tr. 39-40)

Applicant submitted three favorable work performance reviews for years 2016, 2018, and 2020. (AE P, AE U) [Note – AE U is a duplicate of the performance reviews previously submitted in AE P] He also submitted three supportive and favorable reference letters from his company vice president, assistant facility security officer, and professional services consultant. Additionally, Applicant submitted a letter on his own behalf. (AE Q, AE V) [Note – AE V contained a duplicate letter from his company vice president previously submitted in AE P] Applicant's resume describes his current job responsibilities and work history in more detail, and his biography provides background information regarding his situation. (AE W, AE X) Lastly, he submitted three pages of family photographs. (AE Y)

### **Policies**

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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 to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching 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."



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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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**

### **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." The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(f). Further inquiry is necessary about the potential application of any mitigation conditions.

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's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. His debt remains a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)).

AG ¶¶ 20(b) and 20(d) are partially applicable. His 2015 divorce and current divorce no doubt played a role in his inability to remain current on his established obligations at that time. However, Applicant does not receive full credit under either of these two mitigating conditions because of his failure to act responsibly under the circumstances and the time elapsed before addressing his debts and tax obligations. AG 20(c) does not apply. Applicant receives some credit for retaining the services of a financial counseling service in May 2022. However, such an arrangement was made on the eve of his hearing; and by his own admission he does not have the necessary funds to implement the recommended plan of financial recovery.

AG ¶ 20(g) does not apply. Although Applicant made payment arrangements with the IRS in April 2013 to repay his 2012 tax debt, he stopped making those payments in February 2014 because he chose to allocate available funds to other priorities. Applicant's prediction that his 2012 tax debt will be satisfied out of anticipated refunds from income tax returns that he filed late may well be the case, but at this point it is too speculative to view his IRS debt as resolved. Such a payment resolution for a 2012 tax debt is not timely. AG ¶¶ 20(e) and 20(f) are not relevant.

Of great concern is the fact that Applicant did not timely file his Federal income tax returns for 2012, 2016, 2017, and 2018. He claimed to have filed those returns on the eve of his hearing date; however, what he provided were unsigned and undated income tax returns for those years, which do not establish that they were filed. As noted, Applicant was alerted to the fact that his failure to file these returns was a concern to the Government during his May 2020 OPM PSI, and when he received his February 2021 SOR and DOHA Interrogatories. These events apparently did not prompt Applicant to recognize the seriousness of his situation and take immediate corrective action.

Furthermore, he did not provide a plausible explanation for failing to file his Federal income tax returns. With regard to his 2013 Federal income tax return, he referred to a non-cooperative spouse; however, that explanation hardly justifies a nine-year delay in filing. Moreover, he claims to have filed his income returns on the eve of his hearing. Even if they were filed shortly before his hearing, this would not be enough to mitigate security concerns regarding his dilatory filing of his tax returns.

Such a lapse in judgment cannot be overlooked, especially from an individual whose income is derived from tax dollars. The evidence demonstrates that Applicant did not act responsibly with regard to timely filing his Federal income tax returns and paying or making payment arrangements for taxes owed.

Applicant failed to file timely his Federal income tax returns for tax years 2013, 2016, 2017, and 2018. A willful failure to timely make (means complete and file with the IRS) a federal income tax return is a misdemeanor-level federal criminal offense. Title 26 U.S.C. § 7203, willful failure to file return or supply information, 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 a 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 a crime.

Concerning the failure to timely file Federal income tax returns when due, 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). Applying the Appeal Board's jurisprudence, SOR ¶¶ 1.a through 1.c concerns are not mitigated.

### **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.

The ultimate determination of whether to grant or continue national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

To review, Applicant is a 50-year-old forensics analyst, systems engineer, and network engineer, who has been employed by a defense contractor since August 2013. He has spent the majority of his adult working life initially on active duty and later as a civilian employee in support of the defense industry. He has successfully held a clearance since 1990, apart for a brief period when he was in the Army National Guard. He seeks to retain his Top Secret security clearance, which is a requirement of his continued employment. He is well regarded by his employer. Applicant is currently separated, and going through his third divorce. He has two adult children from his second marriage. He has all the indicators of an upwardly mobile individual with a bright future ahead of him.

However, for at least nine years, he has failed to grasp the importance of one of the fundamental hallmarks of U.S. citizenship, which is the timely filing of his Federal income tax returns and paying taxes when due. This is especially crucial for an individual seeking to retain a security clearance and who works for a defense contractor

advancing the national security of the United States. From the evidence presented, despite being made aware that the timely filing of his Federal income tax returns was a security concern, Applicant failed to comply with this basic and fundamental civic obligation. He also neglected his obligation to numerous other creditors.

He is a bright and talented individual, who is more than capable of addressing his income tax problems in a responsible way. Hopefully in the near future, Applicant will view the outcome of this decision as motivation to address these concerns and achieve the level of financial stability required to regain national security eligibility. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards establishing a track record of financial responsibility, and a better track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

### **Formal Findings**

The formal findings on the allegations set forth in the SOR are as follows:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h – 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Subparagraphs 1.n – 1.o:	For Applicant

### **Conclusion**

In light of the record as a whole, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. National security eligibility is denied.

ROBERT TUIDER  
Administrative Judge