



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



In the matter of:)
)
) ISCR Case No. 20-03654
)
Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

06/28/2023

Decision

HARVEY, Mark, Administrative Judge:

Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On April 24, 2020, Applicant completed an Electronic Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On June 18, 2021, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) (Hearing Exhibit (HE) 2) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive 4, establishing in Appendix A, the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F. (HE 2) On July 12, 2021, she provided her response to the SOR, and she requested a hearing. (HE 3)

On August 31, 2021, Department Counsel was ready to proceed. On June 28, 2022, the case was assigned to me. On July 12, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a Notice setting the hearing for August 22, 2022. (HE 1) Her hearing was cancelled at her request because she had scheduled brain surgery to remove a tumor. On January 9, 2023, DOHA issued a Notice rescheduling the hearing for April 14, 2023. The hearing was held as scheduled in the vicinity of Arlington, Virginia using the DOD Microsoft Teams video teleconference system. (*Id.*)

During the hearing, Department Counsel offered seven exhibits into evidence. (Tr. 19-20; GE 1-GE 7) Applicant objected to GE 6 because her bankruptcy in 2003 was not relevant to her finances. (Tr. 20) A bankruptcy 20 years ago has low relevancy to her current financial situation; however, I overruled her objection because her objection goes to the weight of the evidence not admissibility. (Tr. 20-21) Her 2003 bankruptcy was not alleged in the SOR as a security concern. As to GE 7, she explained that she froze her credit report because she was concerned about identity theft. (Tr. 22-23) All proffered exhibits were admitted into evidence. (Tr. 19-23; GE 1-GE 7) Applicant did not offer any documents for admission into evidence at her hearing. On May 1, 2023, DOHA received a copy of the transcript. Applicant provided three post-hearing exhibits, which were admitted without objection. (Applicant Exhibit (AE) A-AE C) On May 16, 2023, the record closed. (Tr. 12, 77) Emails from and to Applicant are attached to the record. (AE D)

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

Findings of Fact

In Applicant's SOR response, she admitted all of the SOR allegations. (HE 3) She also provided mitigating information. (*Id.*) Her admissions are accepted as findings of fact.

Applicant is a 61-year-old regulatory documentation specialist who has been employed by a DOD contractor since May 2020. (Tr. 6-8, 25) She is not a high school graduate, and she does not have a general education diploma (GED). (Tr. 7) She attended career college from 1988 to 1989 to become a paralegal. (Tr. 7) She has not served in the military. (Tr. 8) She has been married four times. (Tr. 9) Her most recent marriage ended in divorce in 2019. (Tr. 9) Her three daughters are 34, 37, and 44. (Tr. 9)

Financial Considerations

From 2010 to 2014, Applicant's former husband was repeatedly unemployed. (Tr. 23) Her husband stole the rent, and "basically put us homeless." (Tr. 24) In August 2022, she had brain surgery, and her memory was adversely affected. (Tr. 32, 37-41) She has massive headaches, and it is difficult for her to work on her finances and records. (Tr. 62) She has lived with her daughter since September 2022 because her rent increased, and she felt it was unreasonable. (Tr. 27) She paid her daughter \$700 monthly for rent. (Tr. 28) She lives in a state without state income taxes. (Tr. 34) From September 2017 to May 2018, she was underemployed or unemployed. (Tr. 53-54) She has about \$10,000 in an IRA account. (Tr. 63) She has a student loan on her credit report for about \$15,500. (Tr.

62) Her March 9, 2021 credit report shows the student loan account status is pays as agreed. (GE 4 at 5) Her student loan is not alleged as a security concern in her SOR.

On March 13, 2020, as a result of the COVID-19 pandemic, the President placed Federal student loans in deferment, which means the interest rate is zero during the deferment term. See DoEd website, "COVID-19 Loan Payment Pause and 0% Interest," available at <https://studentaid.gov/announcements-events/covid-19/payment-pause-zero-interest#in-school-zero-interest>. (HE 4) In 2022, the President approved one-time debt relief on DoEd loans of \$10,000. See DoEd website, "One-time Federal Student Loan Debt Relief," available at <https://studentaid.gov/manage-loans/forgiveness-cancellation/debt-relief-info>. (HE 5) The Federal courts have issued a stay on this \$10,000 debt relief. The President has repeatedly extended the deferment. The DoEd has announced:

The student loan payment pause is extended until the U.S. Department of Education is permitted to implement the debt relief program or the litigation is resolved. Payments will restart 60 days later. If the debt relief program has not been implemented and the litigation has not been resolved by June 30, 2023 — payments will resume 60 days after that. We will notify borrowers before payments restart. DoEd Website, "COVID-19 Emergency Relief and Federal Student Aid," available at <https://studentaid.gov/announcements-events/covid-19>. (HE 6)

She has about \$1,200 in her checking account. (Tr. 63) She uses a budget to ensure her bills are paid. (Tr. 66-67) Her current annual pay is \$78,000. (Tr. 26) She is making "much more" now than at any time in the previous 10 years. (Tr. 68)

The SOR alleges the following financial security concerns:

SOR ¶ 1.a alleges Applicant failed to file her Federal income tax return for tax year (TY) 2013. Applicant said she was unable to obtain information about her income. (Tr. 29) Her February 18, 2021 Internal Revenue Service (IRS) account transcript for TY 2013 states no tax return was filed. (GE 2 at 6) On December 22, 2014, the IRS sent a notice to Applicant. (*Id.*) After she received the SOR, she telephoned her employer about her W-2 or 1099 income statement twice and requested income information for her TY 2013 tax return. (Tr. 30) She did not receive any information from her former employer. (Tr. 32) Her former spouse took the box containing her documents. (Tr. 30) In her SOR response, she said her tax counselor advised her that she did not need to file her TY 2013 Federal income tax return because more than six years had elapsed. She did not provide correspondence sent to or received from the IRS indicating she did not need to file a tax return for TY 2013.

SOR ¶ 1.b alleges Applicant failed to timely file her Federal income tax returns for TYs 2014 through TY 2018. Her February 18, 2021 IRS tax transcripts indicated her TY 2014, 2015, 2016, 2017, and 2018 Federal income tax returns were not filed. (GE 2 at 8-18) On May 28, 2020, Applicant told an Office of Personnel Management (OPM) investigator that she had not filed her Federal income tax returns in the previous seven

years because she was unsure whether she would owe additional taxes. (GE 2 at 20) She said her Federal income tax returns for TYs 2014 through 2018 were filed around October 22, 2020, and she provided copies of those five tax returns. (Tr. 33; GE 3) If she had not been applying for a security clearance, she might not have filed those tax returns. (Tr. 34)

Tax Year	Taxes Owed	Adjusted Gross Income Rounded to Nearest \$1,000	Exhibit
2014	\$1,502	\$36,000	GE 3 at 2-4
2015	\$1,509	\$46,000	GE 3 at 6-8
2016	\$678	\$25,000	GE 3 at 11-13
2017	\$1,187	\$36,000	GE 3 at 15-17
2018	Refund-\$90	\$51,000	GE 3 at 21
2019	\$1,258	\$66,000	GE 2 at 18
2020	Refund-\$653	\$50,000	AE B

SOR ¶ 1.c alleges Applicant owes delinquent Federal income taxes totaling \$6,136 for TYs 2013, 2014, 2015, 2016, 2017, and 2019. In December 2021, Applicant established a payment plan to address an IRS debt for \$5,862. (AE C) She was required to pay \$76 monthly under the IRS agreement beginning on February 15, 2022. (*Id.*) In 2022, she began making \$76 monthly payments to the IRS in accordance with her payment plan. (Tr. 35-36) She believes the balance owed is about \$4,000 because the IRS has transferred her tax refund for the last two years to address this tax debt. (Tr. 37)

SOR ¶¶ 1.d, 1.e, 1.g, and 1.h, allege medical debts placed for collection for \$1,469, \$856, \$1,469, and \$882. At times, Applicant did not have medical insurance before her current employment. (Tr. 43) She currently has medical insurance, and she is paying about \$100 monthly to address a \$3,000 medical debt. (Tr. 41-43, 58-59) She recently paid a \$500 medical debt. (Tr. 45) She was unsure about the origin or provenance of these four medical debts, and she did not provide proof that she was making payments on them. (Tr. 41-51) She said the two debts for \$1,469 could be a duplication. (Tr. 49-50) After she pays the \$3,000 medical debt, she plans to address her other medical debts. (Tr. 68)

SOR ¶ 1.f alleges an insurance account placed for collection for \$236. SOR ¶ 1.i alleges a delinquent debt for \$169. SOR ¶ 1.j alleges a telecommunications debt placed for collection for \$227. Applicant said these three debts were paid in the last two years. (Tr. 51-52, 70) She provided evidence that the three debts are paid. (AE A)

On May 14, 2023, Applicant provided an email, which said:

I am writing this letter to say that I am 61 years old, going to be 62 in July. I would like to retire with peace and finish my last years happy with my current position I love my job and working with a great team. I do not work with Classified documents, my job is working with unclassified documents.

. . . . I am appalled at a lot of people who hold high levels in the government and have not answered to their behaviors, or who have betrayed our Nation. This whole hearing is about my finances, which I am trying to work things out and get better. I have satisfied 3 nonmedical collection bills. I have satisfied in taking care of my IRS taxes and am making payments to pay off monthly. I filed my taxes in 2020 and after since. My refund goes to paying off my debt to IRS. I have showed that I am making an effort to take care of the things in question. I would never in my lifetime put my country in jeopardy for finances ever. That's not who I am. My ancestors were here before anyone came here to America. I love my country! My past work shows how dedicated I am and hold confidentiality at its highest!

I am a hard working woman, who has had to learn everything on my own to get to where I am on my own. I didn't have the benefits that others have had. Yes, I made bad decisions, especially in my marriages. This last one ruined my credit, which was so much better before him. It's no one's fault but mine for trusting him. That is why I am not married today, because of what I experienced.

During my time with my daughter since September of last year, I have been supporting her and my grandson from December till I moved at the end of April 2023.

I hope you can see that I am a law abiding citizen and am trying to get my finances in order. I have done everything I needed to do for my taxes and paying monthly to satisfy the debt. Almost paid off. No one is perfect, everyone makes mistakes. The important thing is that we learn from them and get back up, try again and do better.

That is what I am trying to do and hope that you will find favor in me to be the best at my job for the last remaining years that I have before retiring.
(AE A)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes 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) requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

The financial considerations mitigating conditions under AG ¶ 20 are as follows:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn,

unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

Applicant provided some important mitigating information. Her fourth husband was occasionally unemployed and irresponsible, which caused financial problems. Applicant had serious medical problems, including brain surgery. Applicant had periods of underemployment and unemployment. She is currently providing financial assistance for her daughter and grandchild. These circumstances were beyond her control, and they adversely affected her finances. However, "[e]ven if applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the judge could still consider whether applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan.

12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)).

Another component under AG ¶ 20(b) is whether Applicant maintained contact with creditors and attempted to negotiate partial payments to keep debts current. She did not prove that she maintained contact with the IRS over the last 10 years. She is credited with filing her tax returns for TYs 2014 through 2018 around October 22, 2020, and establishing a payment plan with the IRS.

A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant is credited with mitigating SOR ¶¶ 1.c through 1.j. She paid the debts in SOR ¶¶ 1.h through 1.j, and she is making payments on her medical debts. Applicant has an established payment plan for her Federal income tax debt. She has a plan to address her debts, a budget, and she is making progress addressing her debts.

Applicant's failure to file her TY 2013 Federal income tax return was based on advice from her tax counselor. However, Applicant failed to obtain agreement from the IRS that filing this tax return was unnecessary. She failed to timely file her Federal income tax returns for TYs 2014 through 2018. She said she might not have filed those tax returns if she had not been alerted that it was a problem for her security clearance.

A willful failure to timely make (means complete and file with the IRS) a Federal income tax return is a misdemeanor-level 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 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 (9th Cir. 1973); *United States v. McCabe*, 416 F.2d 957 (7th Cir. 1969); *O'Brien v. United States*, 51 F.2d 193 (7th Cir. 1931). For purposes of this decision, I am not weighing Applicant's failure to timely file her Federal income tax returns against her as a crime. In regard to the failure to timely file Federal income tax returns, the DOHA Appeal Board has commented:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. *See, e.g.*, ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. Id.* A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. *See, e.g.*, ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). *See Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis in original). *See* ISCR Case No. 15-01031 at 4 (App. Bd. June 15, 2016) (citations omitted); ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015). The Appeal Board clarified that even in instances where an “[a]pplicant has purportedly corrected [his or her] Federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant’s security worthiness in light of [his or her] longstanding prior behavior evidencing irresponsibility” including a failure to timely file Federal income tax returns. *See* ISCR Case No. 15-01031 at 3 & n.3 (App. Bd. June 15, 2016) (characterizing “no harm, no foul” approach to an applicant’s course of conduct and employing an “all’s well that ends well” analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR).

In ISCR Case No. 15-01031 (App. Bd. June 15, 2016), the Appeal Board explained that in some situations, even if no taxes are owed when tax returns are not timely filed, grant of access to classified information is inappropriate. In ISCR Case No. 15-1031 (App. Bd. June 15, 2016), the applicant filed his 2011 Federal income tax return in December 2013, his 2012 Federal tax return in September 2014, and his 2013 Federal tax return in October 2015. He received Federal income tax refunds of at least \$1,000 for each year. Nevertheless, the Appeal Board reversed the administrative judge’s decision to grant him access to classified information.

In ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017), the Appeal Board reversed the grant of a security clearance, discussed how AG ¶ 20(g) applied, and noted:

The timing of the resolution of financial problems is an important factor in evaluating an applicant’s case for mitigation because an applicant who begins to resolve financial problems only after being placed on notice that his clearance was in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his own interests. In this case, applicant’s filing of his Federal income tax

returns for 2009-2014 after submitting his SCA, undergoing his background interview, or receiving the SOR undercuts the weight such remedial action might otherwise merit.

Applying the Appeal Board's jurisprudence, SOR ¶¶ 1.a and 1.b are not mitigated. Applicant did not prove that she was unable to make greater progress sooner getting her Federal income tax returns filed for TYs 2013 through 2018. Under all the circumstances, she failed to establish full mitigation of financial considerations security concerns.

Whole-Person Concept

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

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

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are 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 is a 61-year-old regulatory documentation specialist who has been employed by a DOD contractor since May 2020. She attended career college from 1988 to 1989 to become a paralegal. Her most recent marriage ended in divorce in 2019.

Applicant provided important financial considerations mitigating information. She provided multiple reasons for her financial difficulties. Aside from her failure to timely file her Federal income tax returns for TYs 2013 through 2018, she has done a good job paying her creditors and maintaining her financial responsibility. I found her statement at her hearing and in her post-hearing emails to be credible. She is a patriotic American, and this decision has absolutely no bearing on her loyalty. There is no evidence to suggest that she would betray her country.

The evidence against grant of a security clearance is more substantial at this time. Applicant did not establish that she was unable to make greater progress sooner filing her Federal income tax returns for TYs 2013 through 2018. Her failure to take prudent

responsible actions raise unmitigated questions about her reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to fully mitigate financial considerations security concerns.

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 timely filing her Federal income tax returns and a better record of behavior consistent with her obligations, she may well be able to demonstrate persuasive evidence of her security clearance worthiness.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraphs 1.c through 1.j:	For Applicant

Conclusion

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

Mark Harvey
Administrative Judge