



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



In the matter of: )  
)  
) ISCR Case No. 21-02499  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esquire, Department Counsel  
For Applicant: Justin R. Clark, Esquire

01/20/2023

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**Decision**

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GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations and personal conduct. Eligibility for a security clearance is denied.

**Statement of the Case**

On April 29, 2020, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories and asked him to verify a summary of two interviews he had with an investigator from the U.S. Office of Personnel Management (OPM) in May 2020. On December 15, 2021, Applicant responded to those interrogatories. On February 1, 2022, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued him a set of interrogatories. On December 9, 2020, he responded to those interrogatories. On May 13, 2021, the DCSA CAF issued him a Statement of Reasons (SOR) under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD

4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), effective June 8, 2017.

The SOR alleged security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) and detailed reasons why the DCSA adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a statement issued by his attorney, signed as power of attorney, dated February 22, 2022, and signed by Applicant on February 24, 2022, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on April 19, 2022. Because of health concerns associated with the COVID-19 pandemic and pandemic protocols, the case was not assigned to me until August 17, 2022. A Notice of Microsoft TEAMS Video Teleconference Hearing was issued on November 18, 2022. I convened the hearing as scheduled on December 12, 2022.

During the hearing, Government exhibits (GE) 1 and GE 2 and Applicant exhibits (AE) A through AE H were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on December 22, 2022. I kept the record open to enable Applicant to supplement it with documentation that was identified during the hearing. He took advantage of that opportunity and timely submitted two documents that were marked and admitted as AE I and AE J without objection. The record closed on December 16, 2022.

### **Findings of Fact**

Applicant's Answer to the SOR consists of separate responses from his attorney and himself. In his personal Answer to the SOR, Applicant denied all of the allegations. However, in the attorney portion of the Answer, he admitted with comments that his personal portion was incorrect (SOR ¶¶ 1.a., 1.b., and 2.a.). He also added attachments (subsequently admitted as AE A through AE H) regarding the allegations. Applicant's admissions, comments, and the information in the attachments are incorporated herein. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is a 58-year-old employee of a defense contractor. He has been serving as a senior engineering and operations support technician with his current employer since October 2015. He previously worked for the same employer as a senior tester (April 2015 – October 2015). He also experienced several periods of unemployment, essentially because of layoffs (July 2011 – September 2011; June 2012 – June 2013; and October 2014 – April 2015). He is a 1982 high school graduate, and he has received substantial credits towards a bachelor's degree. He enlisted (with delayed entry in 1982) in the U.S. Navy in January 1983, and served on active duty until January 1989, when he was honorably discharged as a petty officer 1<sup>st</sup> class (E-6). He transitioned into the inactive

reserve upon his discharge and remained in that status until January 1995. He has held a secret clearance since 1983. He was married in 1986 and divorced in 2013. He has been cohabiting since 2018. He has four children, born in 1984, 1993, 1997, and 1998.

## **Financial Considerations and Personal Conduct**

On April 29, 2020, in his SF 86, Applicant denied that he had failed to timely file or pay his federal, state, or other taxes when required by law or ordinance. (GE 1 at 35) He later contended that the incorrect answer was inadvertent. (Tr. at 23-24) On May 18, 2020, during a second interview with an investigator with OPM he acknowledged that he had failed to file federal income tax returns for a multiyear period (the tax years 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020). (GE 2 at 46) On December 15, 2021, after his OPM interview, he self-prepared and filed his federal income tax returns for a multiyear period (2014, 2015, 2016, 2017, 2018, 2019, and 2020). (GE 2 at 2, 24-37) As of February 1, 2022 – the date of the SOR – only those long-overdue income tax returns had been filed. The remaining delinquent federal income tax returns (2009, 2010, 2011, 2012, and 2013) still had not been filed.

The legal requirement to file a federal income tax return is based upon an individual's gross income and other enumerated conditions. Once it is determined that there is an obligation to so file, the following applies:

Any person required under this title to pay any estimated tax or tax, or 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 pay such estimated tax or tax, 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 and, upon conviction thereof, shall be fined not more than \$25,000 (\$100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution. In the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure. In the case of a willful violation of any provision of section 6050I, the first sentence of this section shall be applied by substituting "felony" for "misdemeanor" and "5 years" for "1 year."

*(26 U.S.C. § 7203, Willful failure to file return, supply information, or pay tax.)*

On February 23, 2022 – three weeks after the SOR was issued – Applicant's tax preparer/attorney completed those remaining federal income tax returns and submitted them to the Internal Revenue Service (IRS). (Attorney's portion of Answer to SOR at 1-2; AE A – AE E) Applicant initially claimed that he failed to file several of his federal income tax returns because he was going through marital difficulties (starting in about 2009) a divorce in 2013 and he got his priorities mixed up, but later said it was his understanding that there was no filing requirement since he pays his taxes through tax withholding. (Tr.

at 22, 29; GE 2 at 46; Attorney's portion of Answer to SOR at 2) Applicant's attorney characterized the failure to timely file the federal income tax returns as being a "little bit behind." (Tr. at 13) Applicant's initial claim is not a legal justification for inaction, and his subsequently claimed understanding was in error.

During the hearing, Applicant admitted that filing federal income tax returns is "required by the law." (Tr. at 41) In addition to his failure to timely file his federal income tax returns for the multiyear period, characterized as being due to neglect, Applicant claimed to be under the impression that there were no financial obligations because his employer was withholding some of his income for income tax purposes. (GE 2 at 46; Attorney's portion of Answer to SOR at 2) His impression was inaccurate, for he also was delinquent in paying a substantial amount of income taxes for the multiyear period. According to an Installment Agreement he proposed to the IRS in February 2022, the amount of unpaid income taxes was estimated to be \$44,675. According to the proposed provisions of the Installment Agreement, he agreed to pay \$5,000 to the IRS on April 1, 2022, and \$500 on the 15<sup>th</sup> day of each month thereafter. (AE F) He acknowledged that he made several payments early in the agreement, but that he had subsequently missed several payments for a variety of reasons, including increased rent, home repairs, an automobile wreck, and his daughter's wedding. (Tr. at 35-37) He submitted proof of one monthly payment, made on February 23, 2022. (AE G)

Applicant's adjusted gross income during the years in question was as follows: \$69,924 (2009), \$76,482 (2010), \$87,953 (2011), \$61,657 (2012), \$69,720 (2013), \$72,372 (2014), \$39,210 (2015), \$64,811 (2016), \$66,351 (2017), \$70,190 (2018), \$84,088 (2019), and \$84,034 (2020). (AE A; AE B; AE C; AE D; AE E; GE 2) In December 2021, Applicant estimated that he still owed \$14,046 in delinquent income taxes. He owed \$9,251 for 2014, \$2,174 for 2015, and \$2,621 for 2019. (GE 2 at 2) In February 2022, his attorney/tax preparer stated that the outstanding income tax balance for the tax years 2009 – 2013 was approximately \$30,629. (Attorney's portion of Answer to SOR at 2)

On December 16, 2022, Applicant submitted a Personal Financial Statement (PFS) and reported a net monthly income was \$4,375; monthly expenses of \$1,950; and \$2,350 in debt payments (for a home mortgage, automobile loan, a personal loan, and a credit card), leaving a net monthly remainder of \$75 for saving or spending. Nowhere in the PFS did he report the claimed monthly \$500 payment to the IRS under the Installment Agreement. (AE J) There is no evidence of financial counseling.

## **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. The President has authorized the Secretary of Defense or his designee to grant an applicant 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 and modified.)

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.” “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)) “Substantial evidence” is “more than a scintilla but less than a preponderance.” (See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994))

The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. 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))

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.” (*Egan*, 484 U.S. at 531)

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 I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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.

Applicant failed to timely file his federal income tax returns for the tax years 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020, and he failed to pay an estimated \$44,675 in federal income taxes for some of those years. In some cases, the federal income tax returns were not filed until several years later, well after the required filing dates. On December 15, 2021, well after he submitted his SF 86 and after

his OPM interview, he self-prepared and filed his federal income tax returns for a multiyear period (2014, 2015, 2016, 2017, 2018, 2019, and 2020. As of February 1, 2022 – the date of the SOR – only those long-overdue income tax returns had been filed. The remaining delinquent federal income tax returns (2009, 2010, 2011, 2012, and 2013) still had not been filed until February 23, 2022 – three weeks after the SOR was issued. AG ¶¶ 19(a), 19(c), and 19(f) have been established. AG ¶ 19(b) has not been established as there is no evidence that Applicant had been unwilling to satisfy his debts regardless of an ability to do so.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20:

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

(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; 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(b), 20(d) and 20(g) minimally apply. A debt that became delinquent several years ago is still considered recent because “an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions.” ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)). The nature, frequency, and recency of Applicant's delayed failure to voluntarily and timely resolve his delinquent federal income tax issues for several years, despite knowing that timely filing of federal income tax returns was required by law, make it rather easy to conclude that they were not infrequent. This case involves two separate financial issues: the failure to timely file federal income tax returns, and the failure to pay federal income taxes. Furthermore, considering his continued failures and delayed actions in addressing both issues despite earning a reasonable wage, one of his federal income tax issues – the one related to payments – is likely to remain unchanged in the future, especially

considering his failure to remain in full compliance with the arrangements set forth in the Installment Agreement that was proposed in February 2022.

Applicant attributed his financial issues essentially to a combination of factors. He initially claimed that he failed to file several of his federal income tax returns because, starting in about 2009, he was going through marital difficulties resulting in a divorce in 2013, and he got his priorities mixed up. He later said it was his understanding that there was no filing requirement since he pays his taxes through tax withholding. His attorney characterized the failure to timely file the federal income tax returns as being a “little bit behind.” Applicant later claimed to be under the impression that there were no financial obligations because his employer was withholding some of his income for income tax purposes. Applicant’s failure to more timely address his federal income tax issues leads to a conclusion that his delayed actions or longstanding inaction were irresponsible.

An applicant who begins to resolve his or her financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. (See, e.g., ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018).

Applicant completed his SF 86 in March 2018; underwent his OPM interviews in May 2020; and completed his responses to interrogatories on December 15, 2021 – the same day he finally filed some of his delinquent federal income tax returns. The SOR was issued on February 1, 2022. He did not file the remaining delinquent federal income tax returns until three weeks later. Each step of the security clearance eligibility review process placed him on notice of the significance of the financial issues confronting him. By failing to rectify the status of his federal income tax return filings and non-payments over such a lengthy multi-year period, Applicant failed to demonstrate the high degree of good judgment and reliability required of those granted access to classified information.

The DOHA Appeal Board has observed:

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). See 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 applicant has purportedly corrected his or her federal tax problem, and the fact that the applicant is now motivated to prevent such problems in the future, does not preclude careful consideration of an applicant'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 and note 3 (App. Bd. June 15, 2016) (characterizing "no harm, no foul" approach to an Applicant's course of conduct and employed 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).

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time. Mere promises to pay debts in the future, without further confirmed action, are insufficient. In this instance, there are some promises, but no actual resolution efforts.

There is no evidence of financial counseling or a budget. It remains difficult to determine if Applicant is currently in a better position financially than he had been because of continuing difficulties in making his monthly payments under the Installment Agreement, especially since his PFS does not reflect any such payments. Applicant's actions, or inaction, under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment. (See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).)

### **Guideline E, Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

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

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

The guideline also includes an example of a condition that could raise security concerns under AG ¶ 16:

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

My discussions related to Applicant's financial considerations are adopted herein. With respect to the alleged omission, concealment, or falsification on April 29, 2020, when Applicant completed his SF 86, he responded to a particular question pertaining to his financial record ("In the last seven (7) years have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?"). He answered "no" to that question. He certified that the response was "true, complete, and correct" to the best of his knowledge and belief, but the response to that question was, in fact, incorrect for at that time Applicant had several delinquent and unfiled federal income tax returns that fell within the stated parameters. As noted above, on May 18, 2020, during a second interview with an investigator with OPM he acknowledged that he had failed to file federal income tax returns for a multiyear period (the tax years 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020). On December 15, 2021, he self-prepared and filed his federal income tax returns for a multiyear period (2014, 2015, 2016, 2017, 2018, 2019, and 2020). The remaining delinquent federal income tax returns (2009, 2010, 2011, 2012, and 2013) still had not been filed until February 23, 2022 – three weeks after the SOR was issued.

Applicant's response provides sufficient evidence to examine if his submission was a deliberate falsification, as alleged in the SOR, or merely the result of misunderstanding of the facts. I have considered the available information pertaining to Applicant's background and professional career in analyzing his actions. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the falsification or omission occurred. As an administrative judge, I must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning Applicant's intent or state of mind at the time the falsification or omission occurred. The Appeal Board has explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred.

ISCR Case No. 03-10390 at 8 (App. Bd. Apr. 12, 2005) (citing ISCR Case No. 02-23133 (App. Bd. Jun. 9, 2004)).

While Applicant might not be able to remember every single detail of his financial life, especially pertaining to his federal income return filings and non-filings over a multiyear period, it is clear that he should have been aware of his failure to timely file federal income tax returns for such a lengthy multiyear period. His attorney's eventual acknowledgment on his behalf that Applicant's response was caused by his failure to properly identify the material facts of the question because of his misunderstanding that there was no filing requirement because his taxes were withheld by his employer is too simplistic and inconsistent with Applicant's other excuses and explanations. His federal income tax return non-filing record is unambiguous. AG ¶ 16(a) has been established.

The guideline also includes an example of a condition that could mitigate security concerns arising from personal conduct under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.

While Applicant's federal income tax return non-filing record response was made on April 29, 2020, the issues related to those returns commenced in 2009 and continued until February 23, 2022. There was no mention of that record during his first OPM interview, but it was eventually addressed during his second interview on May 18, 2020. Applicant's delayed action in reporting the accurate facts, under the circumstances continues to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 17(a) has not been established.

### **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 SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the 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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. (See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006))

There is some evidence in favor of mitigating Applicant's financial concerns. Applicant is a 58-year-old employee of a defense contractor. He has been serving as a senior engineering and operations support technician with his current employer since October 2015. He previously worked for the same employer as a senior tester (April 2015 – October 2015). He is a 1982 high school graduate, and he has received substantial credits towards a bachelor's degree. He enlisted (with delayed entry in 1982) in the U.S. Navy in January 1983, and served on active duty until January 1989, when he was honorably discharged as a petty officer 1<sup>st</sup> class (E-6). He transitioned into the inactive reserve upon his discharge and remained in that status until January 1995. He has held a secret clearance since 1983. He was married in 1986 and divorced in 2013. He has four children, born in 1984, 1993, 1997, and 1998. He eventually filed all of his delinquent federal income tax returns and has made some payments for his delinquent taxes under a proposed Installment Agreement with the IRS.

The disqualifying evidence under the whole-person concept is simply more substantial. Applicant failed to timely file his federal income tax returns and make income tax payments for multiple tax years (the tax years 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020). On December 15, 2021, well after he submitted his SF 86 and after his OPM interview, he self-prepared and filed his federal income tax returns for a multiyear period (2014, 2015, 2016, 2017, 2018, 2019, and 2020. As of February 1, 2022 – the date of the SOR – only those long-overdue income tax returns had been filed. The remaining delinquent federal income tax returns (2009, 2010, 2011, 2012, and 2013) still had not been filed until February 23, 2022 – three weeks after the SOR was issued. He also failed to pay an estimated \$44,675 in federal income taxes for some of those years. Although he has claimed to have a proposed Installment Agreement, he has failed to be in full compliance with the arrangements in that agreement. Also disturbing is the fact that when Applicant completed his SF 86, he responded to a particular question pertaining to his financial record (“In the last seven (7) years have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?”). He answered “no”, a response that was clearly false.

Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I

conclude Applicant has failed to mitigate the security concerns arising from his financial considerations. See SEAD 4, App. A, ¶¶ 2(d) (1) through AG 2(d) (9).

**Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as amended, 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
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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ROBERT ROBINSON GALES  
Administrative Judge