



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



In the matter of: )  
)  
) ISCR Case No. 24-00114  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John G. Hannink, Esq., Department Counsel  
For Applicant: Richard M. McGill, Esq.

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**Decision**

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HALE, Charles C., Administrative Judge:

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

**Statement of the Case**

Applicant submitted a security clearance application on November 21, 2022. On February 6, 2024, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DoD acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines, which became effective on June 8, 2017.

Applicant answered the SOR on March 1, 2024, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 16, 2024, and a request to expedite the case was received by Defense Office of Hearings and Appeals (DOHA) on October 24, 2024. The case was assigned to me on October 24, 2024. On October 30, 2024, DOHA notified Applicant that the hearing was scheduled for November 6, 2024. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified, presented witness testimony, and offered Applicant Exhibits (AE) A through D, which were admitted without objection. DOHA received the transcript (Tr.) on November 20, 2024. The record

remained open after the hearing until November 20, 2024. Applicant offered AE E through AE I under a hearing exhibit (HE), which were admitted without objection. (HE IV; Tr. at 22.) Attachments 1-4 in Applicant's Answer were already part of the record and were assigned AE J through AE M based Applicant's post-hearing submissions. (Tr. at 7.)

### **Findings of Fact**

In Applicant's Answer he admitted he failed to timely file Federal income tax returns and pay the taxes due for the tax years (TY) 2017, 2018, 2019, 2020, and 2021; failed to file his Federal income tax return for TY 2016; failed to timely file state income tax returns and pay the taxes due for TYs 2017, 2018, 2019, 2020, and 2021 for state Y; and failed to timely file, as required, a state Z income tax return and pay the taxes due for TY 2017. His admissions are incorporated into the findings of fact.

Applicant is a 64-year-old systems engineer. He has held a security clearance since 2004. He has been employed in his field for about 14 years. He earned his bachelor's degree in 2004. He has been married for over 30 years and has two adult children. One of whom lives at his home with his grandchild. (GE 1; GE 4; Tr. at 18-19.)

Applicant served honorably on active duty in the Marine Corps. After his discharge from the Marine Corps, he served in the Air Force Reserve. He briefly served in the Army Reserve, pursuing an officer's commission before electing to resign. (GE 1; Tr at 81-83.)

Applicant failed to timely file, as required, Federal and state income tax returns for at least TY 2016 through 2021 (SOR 1.a through 1.d). In response to Government interrogatories on August 13, 2023, he stated he "accepted full responsibility for not filing [his] taxes in a timely manner." He cited moving five times in the past seven years "while raising a family and dealing with life's problems." He stated he had a lot to work at and figure out during this period. (GE 2 at 5.) He testified after his move back to state Y from state Z in 2017 he never got around to filing his tax returns. In the year of the move, 2017, he had to file state returns for both Z and Y.

Applicant completed an SCA in July 2017, he did not list he had not filed his 2016 Federal and state income taxes. He volunteered this information to the investigator conducting his security clearance interview and that he had filed an extension. He filed the 2016 Federal tax return on February 28, 2021. He has not entered into a payment plan with the IRS. (GE 4 at 55; GE 5 at 4; AE A; Tr. at 36-40, 45.)

Applicant's Federal tax debt for TY 2018 was \$5,247; for TY 2019 \$15,235; for TY 2020 \$4,895; and for TY 2021 \$3,437 (AE B.) His 2023 tax refund was recaptured by the IRS and applied to the TY 2018 balance and reduced the TY 2019 balance to \$13,691. He testified he was making payments to the IRS but had not entered into a payment plan with the IRS. (Tr. at 43-45.) He has been waiting for guidance from the IRS but could not say for what tax years that guidance applied to when asked at the hearing. (Tr. at 45.) He wrote on April 22, 2024, to the IRS that he and his spouse had both increased their Federal tax withholdings by \$100 a month, which would create a tax refund that would be

surrendered as a means to address this matter. (AE F.) Applicant is paying between \$5,000 and \$6,000 a year to pay off his \$23,000 Federal tax debt. (Tr. at 65-66.)

Applicant's timeline provided with his Answer shows his efforts from February 24, 2023, onward. He mailed his Federal returns on January 9, 2024, for TY 2018 through TY 2021, which were ultimately accepted by the IRS. He offered his state returns for TY 2017 through TY 2022, which were received by state Y in February 2024, and each were stamped received. His TY 2017 mailing receipt for state Z is dated February 7, 2024. (AE C; AE D; AE L; AE M.)

Applicant offered canceled checks paid to the U.S. Treasury and state comptroller as evidence he had been adhering to a good-faith effort to resolve his tax debts. The checks were dated from May 2024 through July 2024 and for October 2024 and November 2024. The U.S. Treasury payments covered TY 2020 and TY 2021 and the state payments covered TY 2020. The payments ranged from \$25 to \$75. He provided his state Y tax return for TY 2023 and proof of payment in the amount of \$173. Applicant owes approximately \$3,500 to state Y. In February 2024 he filed his state Z return for TY 2017 and was due a refund. (GE 1 at 60-61; AE B; AE C; AE D; AE H; AE I; Tr. at 29, 32-33, 45, 68.) He wrote a cover memorandum dated June 15, 2024, to one of the taxing authorities stating:

I originally planned and have been making multiple payments monthly through my employment, my spouse's employment and making additional payments biweekly while I have been employed. As of the last of the month of May I have been forced out of my employment due to circumstances beyond my control, and don't know when I will be able to re-establish my employment. My personal income has been reduced by almost 70%, I am back to living off unemployment again and have had to reduce my payments to keep things within perspective and on budget.

Please accept this reduced amount until I can get back on my feet financially and able to pick up where I previously was, this is to show that I am making a concerted effort to live up to my obligations to the best of my abilities. (AE G.)

Applicant drives a \$60,000 luxury brand car and has a \$1,700 monthly car payment. His wife drives a luxury brand car. Both cars were bought in 2017 and his wife's car was paid off in 2019. Between he and his wife they have a combined annual salary of \$240,000. She makes approximately \$10,000 more than him. He testified they have approximately \$40,000 in retirement accounts, investments, and bank accounts combined. They file their tax returns jointly. She also holds a security clearance. (Tr. at 68-69, 71-73, 79, 87-88.)

## **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: “(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(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;

(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.

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).

AG ¶ 20(a) is not established. Applicant documented that he had recently filed his remaining outstanding Federal and state income tax returns in January 2024 and February 2024 respectively, which included the years alleged of 2018 through 2021. His behavior was recent, not infrequent, and he filed his Federal and state income tax returns only after his security clearance was in jeopardy, which casts doubt on his current reliability, trustworthiness, and judgment.

AG ¶ 20(d) is not established. The diversion of his federal income tax refund to pay his Federal tax debt does not constitute good-faith efforts to resolve the debts. See ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011).

AG ¶ 20(g) is not fully established. Applicant has not made arrangements with the appropriate tax authority to file or pay the amounts owed. Applicant has made recent voluntary payments towards his tax debts and also relied upon diversion of his tax refund to pay the amounts owed.

Failure to timely file Federal and state income 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. See ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). The Appeal Board has 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).

Applicant acknowledged that during prior SCA process he had failed to file his taxes in an earlier tax year as required and that he told the investigator he had filed an extension. He did not file those tax returns until four years later. See ISCR Case No. 17-03049 (App. Bd. May 15, 2018) citing ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016); 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). 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, a grant of access to classified information is inappropriate.

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...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.

In this instance, Applicant filed his overdue Federal and state income tax returns when he realized his clearance was in jeopardy. Under all the circumstances, Applicant's failures to timely file his Federal and state income tax returns and pay the taxes due 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

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 establishment of a track record of timely filing of his tax returns, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the security concerns under Guideline F.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	Against 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.

Charles C. Hale  
Administrative Judge