



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



In the matter of:)	
)	
)	ISCR Case No. 24-01719
)	
Applicant for Security Clearance)	

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

03/06/2026

Decision

DRISKILL, A. M., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F (Financial Considerations) arising from his unfiled and untimely filed Federal and state income tax returns. Eligibility for access to classified information is denied.

Statement of the Case

On December 26, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. Applicant responded to the SOR on June 4, 2025 (Answer) and requested a decision on the written record in lieu of a hearing. The Government's written case was submitted on August 19, 2025. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on September 23, 2025. He timely submitted documentation which I labeled as Applicant's Exhibit (AE) A. The case was assigned to me on February 19, 2026. The Government exhibits included in the FORM and AE A are admitted in evidence without objection.

Findings of Fact

The SOR alleges that Applicant failed to file his tax year (TY) 2013-2023 Federal (SOR ¶ 1.a) and State A (SOR ¶ 1.b) income tax returns. In his Answer, Applicant admitted both allegations and provided additional explanation and documentation, discussed below.

Applicant is 49 years old. He married in 2002 and is currently going through a divorce. He has two minor children. He earned a bachelor's degree in 2002 and did not serve in the military. He has been employed with a defense contractor since August 2023. He has never had a security clearance. (Item 3)

In his 2023 security clearance application (SCA), Applicant reported failing to file and pay his TY 2016 through 2023 Federal and State A income tax returns. He attributed his failure to file to having insufficient income and "compounding anxiety and uncertainty" as the unfiled tax years accumulated. He noted that, for at least TY 2018 through 2020, he was having taxes withheld from his regular paycheck. He also reported an estimated \$50,000 debt to the Internal Revenue Service (IRS) beginning in 2016. He stated that this debt was due to not self-withholding taxes when he worked as a consultant and that, in the past, he had made some payments toward the debt, but the payments were discontinued "at some point." (Item 3)

Applicant participated in a subject interview (SI) with a government investigator in September 2023. He explained that his financial issues stemmed from a business he and his wife owned and operated from 2009 to 2015. They "were in over their heads" and stopped managing their expenses and keeping records. His wife became overwhelmed and quit the business, which caused the business to be at a "stalemate," with years of unmanaged expenses. Applicant did not file taxes for the business or individually because the records were not maintained, and he felt overwhelmed. He did not seek help sorting out any of the records. He walked away from the business in 2015 and has not filed his tax returns in the years since, even though he is no longer self-employed. His wife had recently asked him for a divorce due to the financial strain on their marriage. (Item 5)

Applicant explained to the investigator that his wife set up a payment plan with the IRS in about 2018 and they made automatic payments for about two years until the payments stopped being withdrawn. He did not reach out to the IRS to find out why they had stopped. In 2023, he and his wife each received a letter from the IRS stating they owe \$50,000, but he was unsure whether that was \$50,000 each or together. He told the investigator that he would be in contact with the IRS by November 2023 to have a payment plan set up. (Item 5)

Applicant responded to government interrogatories in January 2024.¹ The interrogatories requested tax account transcripts for TY 2014-2022, but, according to

¹ The response is dated January 2023, but that predates the SCA and is clearly a typo.

Applicant, the requested transcripts were unavailable. He stated that he was striving to get back on track with his taxes, and he reported that he hired a professional agency to assist him in filing and paying his taxes. He included an email from the IRS confirming a January 17, 2024 transaction with payments made toward his TY 2013, 2014, 2015, 2016, and 2017 income taxes. The email did not list the balances for those tax years. (Item 4)

Applicant responded to government interrogatories in November 2024. He reported that he had not filed Federal or State A tax returns for TY 2013-2023 and he did not know how much he owes in delinquent taxes. He included tax account transcripts for TY 2015-2018 and 2021-2023, all of which report no tax return filed. They also reflect payments he has made toward each tax year's balance. He stated that he had continued making payments to the IRS, but that his divorce has complicated his ability to establish a set payment plan. He explained that, from 2009 to 2013, he hired a professional to handle his business taxes. As the business started failing, he and his wife did not know what to do and did not have sufficient income, so they did not file their tax returns. A "snowball effect" happened as the years went on, and the financial strain ultimately led to his current divorce. (Item 5)

In the November 2024 response to government interrogatories, Applicant cited several responsible financial steps he has taken since the breakup of his marriage, such as addressing past-due accounts, moving closer to his job, and purchasing a reliable car. He expressed hope that he will be able to address their tax debts in the divorce proceedings and he expressed a commitment to continue making payments to the IRS while going through his divorce. He provided a personal financial statement which reflects a net monthly remainder of \$321. (Item 5)

In his SOR Answer, Applicant explained that his ongoing divorce proceedings were complicating and slowing his ability to resolve his tax issues, but he was becoming more financially responsible. He provided proof that he made an appointment to consult with an accountant; that he has made two more payments to the IRS since the January 2024 payments; that he is making timely payments on his new vehicle and that he was able to refinance it when his credit improved; that he has been a W-2 employee since 2018, with Federal and State A taxes withheld from his paycheck; that he has opened and is contributing to a savings account and a health savings account; and that he donated his old vehicle.

In AE A, Applicant explained that his ongoing divorce was making it difficult to prepare and file joint tax returns, so he is pursuing filing his returns with a "married filing separately" status. He provided proof that his TY 2022, 2023, and 2024 Federal and State A tax returns were accepted by the IRS and State A, though the documentation does not provide a date of filing, nor account balances, but it seems to indicate Federal and State A taxes are owed for TY 2022 and 2024, and Federal and State A refunds are expected for TY 2023. Applicant did not provide documentation that he paid any taxes for the filed years. A letter from an accountant indicates Applicant has hired an accounting firm to file

personal and business tax returns for TY 2013-2015, though Applicant's letter states that he hired them to file all remaining years.

Policies

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

"[N]o 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 applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." EO 10865 § 2.

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, an administrative judge applies these guidelines 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 and 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." EO 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense 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* 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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan* at 531.

Analysis

Guideline F, Financial Considerations

The concern under this guideline 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.

The evidence establishes the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The following mitigating conditions are potentially applicable:

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;

AG ¶ 20(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; and

AG ¶ 20(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.

Applicant initially did not file his tax returns due to becoming overwhelmed by the paperwork associated with running his business. The problem became more and more formidable as the years went on, so he continued avoiding his tax obligations. Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns when due, 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. 17-01382 at 4 (App. Bd. May 16, 2018).

Although AG ¶¶ 20(b) and 20(g) have some application here since Applicant's business difficulties may have been largely beyond his control and he has now filed TY 2022-2024 returns, it is not sufficiently mitigating due to the length of time it took for the returns to be filed, the filing of the returns after completing an SCA and SI, the number of remaining unfiled returns, and Applicant's lengthy history of failing to timely file his returns. 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.

Although he has recently hired an accountant to assist him in filing for the nine outstanding tax years, they remain unfiled at the present time. Furthermore, while he argues that his divorce is slowing his current ability to file his returns, the divorce was only initiated toward the end of 2023, so it cannot explain away or excuse the prior ten years of failing to act responsibly toward his taxes. While the divorce is a circumstance largely beyond his control, it was not the cause of his years-long failure to file his tax returns and does not sufficiently mitigate his overall pattern of financial irresponsibility.

Applicant has no track record of timely filings, nor does he have a payment plan in place to resolve his tax debt. The lack of filed returns precludes an accurate calculation of his tax debt, so I am unable to assess, based on the information in evidence, whether he will be able to afford his ultimate tax bill once all his returns are filed. Because of this lack of reliable information, I cannot confidently conclude that, even once all his returns are filed, his financial issues will be fully resolved. His history of failing to timely file his returns is current and ongoing behavior, it did not occur under circumstances making it unlikely to recur, and it casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Whole-Person Concept

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

“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.” ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 4999 U.S. 905 (1991). Applicant has not overcome this presumption. After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the financial considerations security concerns.

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 (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a-1.b:

Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Clearance is denied.

A. M. Driskill
Administrative Judge