



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



In the matter of:)
)
) ISCR Case No. 23-02512
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

03/16/2026

Decision

HOGAN, Erin C., Administrative Judge:

Applicant did not mitigate the security concerns raised under Guideline F, Financial Considerations. Eligibility for access to classified information is denied.

Statement of the Case

On May 12, 2020, Applicant completed and signed an Electronic Questionnaires for Investigations Processing (e-QIP). (Government Exhibit (GE) 1) On January 22, 2024, the Department of Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) 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 DCSA 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, Financial Considerations. On April 19, 2024, Applicant responded to the SOR and requested a hearing before an administrative judge. The case was assigned to me on August 5, 2025. On September 2, 2025, DOHA issued a notice of hearing, setting the hearing for October 8, 2025. This case was delayed when all administrative judges were furloughed from October 1 through November 12, 2025, during a federal government shutdown due to a lapse in federal funding. The case was rescheduled for January 13, 2026, and the hearing was held as rescheduled via video-teleconference.

During the hearing, Department Counsel offered eight exhibits, Government Exhibits (GE) 1 - 8, which were admitted without objection. The Government Exhibit List is marked as Hearing Exhibit (HE) I. Applicant offered 13 exhibits which were admitted as Applicant Exhibits (AE) A – AE M, without objection. The Applicant Exhibit List was three pages and was marked at HE II. The record was held open until January 23, 2026, to give Applicant the opportunity to submit additional documents. Aside from Applicant's Answer to the amended SOR, no additional documents were submitted. The Government's Amendments to the SOR and Applicant's Answer to the amended SOR were marked as HE III. On January 22, 2026, DOHA received a transcript (Tr.) of the hearing. The record closed on January 23, 2026.

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

Procedural Matters

During the hearing, the Government moved to amend the SOR in order to conform with the evidence, in accordance with the Directive, paragraph E3.1.17 as follows:

SOR ¶ 1.a: You failed to file as required, Federal income tax returns for at least tax years 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, and 2024. As of the date of the amendment, the tax returns remain unfiled.

SOR ¶ 1.b: You failed to file as required, state income tax returns for at least tax years 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, and 2024. As of the date of the amendment, the tax returns remain unfiled.

The record was held open until January 23, 2026, to allow the Government to provide Applicant and his counsel a copy of the proposed SOR amendments and give them time to review and answer the amendments to the SOR. On January 20, 2026, Applicant answered the SOR, through his counsel. He admitted both amended SOR allegations. (HE III)

After the hearing, the Government provided two documents from the Internal Revenue Service (IRS) website and requested administrative notice of both documents. They were marked as Administrative Notice (AN) documents 1 and 2, and they are discussed in more detail in the Findings of Fact section.

Findings of Fact

In Applicant's SOR response and Answer to the amended SOR, he admits the allegations in SOR ¶¶ 1.a – 1.i and denied the allegations in the SOR ¶¶ 1.j and 1.k. His admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 50-year-old employee of a contractor seeking to maintain a security clearance. He has worked for his current employer for 21 years. He has held a security clearance since 2005 without incident. He has a bachelor's degree. He is married and has two children, ages 13 and 16. (Tr. 12, 30-39; GE 1; AE G; AE I)

Financial Considerations

The SOR and amended SOR alleges Applicant failed to file his federal income tax returns for at least tax years 2015 through 2024 (SOR ¶ 1.a: GE 1 at 34-35; GE 2 at 6-7, 15); he failed to file his state income tax returns for tax years 2015 through 2024 (SOR ¶ 1.b: GE 1 at 34-35; GE 2 at 6-7, 17); the IRS issued a tax lien against him in March 2016 in the approximate amount of \$104,267 (SOR ¶ 1.c: GE 2 at 16; GE 6 at 3-4); and his state entered a tax lien against him in December 2016 in the approximate amount of \$55,574. (SOR ¶ 1.y: GE 2 at 18; GE 6 at 1-2).

The SOR also alleged seven delinquent consumer accounts, totaling approximately \$105,283. The accounts include: a \$39,151 bank judgment entered against him in 2017 for a defaulted personal bank loan (SOR ¶ 1.e: GE 2 at 8-9; GE 3 at 2; GE 6 at 5-6); an unpaid \$2,023 judgment filed against him in 2017 on behalf of his Homeowner's Association (HOA) (SOR ¶ 1.f: GE 6 at 8-9); an unpaid \$1,712 judgment filed against him in 2022 on behalf of his HOA (SOR ¶ 1.g: GE 6 at 13-14); a \$105 judgment filed against him in 2023 by the city where he resides (SOR ¶ 1.h: GE 6 at 15-16); a delinquent mortgage account that was past due in the amount of \$56,327 with a total balance of \$523,179 (SOR ¶ 1.i: GE 2 at 12-14; GE 5 at 3; GE 7 at 1); a delinquent car loan that was charged off in the amount of \$5,672 (SOR ¶ 1.j: GE 5 at 4; GE 7 at 1); and a \$291 delinquent cell phone account that was place for collection. (SOR ¶ 1.k: GE 2 at 9; GE 3 at 2; GE 4 at 2; GE 5 at 5; GE 7 at 1)

During the hearing, Applicant admitted that he had not filed federal and state income tax returns for tax years 2015 through 2022. Under cross-examination, he also admitted he had not filed federal and state income tax returns for tax years 2023 and 2024. He stopped filing his income tax returns in 2015 because he had some trading investments that were incorrectly filed. His tax liabilities became greater than his income and he would not be able to pay the taxes owed. His plan is to hire a very experienced and specialized tax attorney to work on filing his income tax returns. It takes time and

money to get this accomplished. He does not believe that he will owe as much as the \$104,267 tax lien that the U.S. Government entered against him. He also does not believe the \$55,574 state tax lien is correct. He contends that once his tax returns are properly revised and filed, he should be able to pay all taxes owed. (Tr. 15-18)

On November 24, 2025, Applicant received a letter from the IRS informing the Department of State that they reversed Applicant's certification of seriously delinquent tax debt. The letter mentions that on December 4, 2015, as part of the Fixing America's Surface Transportation (FAST) Act, Congress enacted section 7345 of the Internal Revenue Code which requires the IRS to notify the U.S. Department of State of taxpayers certified as owing seriously delinquent tax debt. The Department of State is prohibited from issuing or renewing the passport of a taxpayer that has been certified as having seriously delinquent tax debt. The FAST Act also requires the IRS to notify the U.S. Department of State of the reversal of a certification of a seriously delinquent tax debt. The letter did not state the amount of the tax debt Applicant owes or the reason for the reversal of the certification. (AE K)

The Government requested administrative notice of several documents that are posted on the IRS website. The first document is titled "Topic No. 429, Traders in Securities (information for Form 1040 or 1040-SR filers)." (AN 1) The second document is titled "Revocation of Denial of Passport in Cases of Certain Unpaid Taxes." (AN 2) On page five of AN 2, a chart lists the Serious Delinquent Tax Thresholds for various tax years. For tax year 2025, the threshold is \$64,000.

The status of the consumer debts alleged in the SOR are:

SOR ¶ 1.e: \$39,151 personal bank loan judgment. The debt remains outstanding. (Tr. 20, 58-59)

SOR ¶¶ 1.f and 1.g: 2020 HOA judgment in the amount of \$2,023 and 2022 HOA judgment in the amount of \$1,714. Applicant testified that these debts were for unpaid fees. He claims they relate to the same account. However, they are separate judgments. These debts remain unresolved. (Tr. 21, 64)

SOR ¶ 1.h: \$105 judgment entered by city where Applicant resides. He provided proof this debt is paid. (Tr. 21, 64; AE J)

SOR ¶ 1.i: \$56,327 delinquent mortgage account. The debt is resolved. Applicant got behind on his mortgage because his expenses were greater than his income. He was able to pay the debt off from his savings account which had a balance of \$70,000. The mortgage is now current. (Tr. 22, 66-71; AE A, AE B; AE C)

SOR ¶ 1.j: \$5,672 charged-off automobile loan. Applicant initially denied this debt. He did not pay this debt because he thought he did not have to since it was charged off. He intends to resolve the debt but had not taken steps to resolve the debt as of the date of the hearing. The debt remains unresolved. (Tr. 22, 71-72)

SOR ¶ 1.k: \$291 cell phone account that was placed for collection. Applicant believed he resolved this account. I find for Applicant on this debt. The most recent credit report dated August 6, 2025, lists this as a paid collection account. The account number matches the account number listed in earlier credit reports, which listed the account as delinquent. The debt is resolved. (Tr. 22, 72; Item 7 at 1, see also GE 3 at 2; GE 4 at 2; GE 5 at 5)

In addition to his full-time job, Applicant has participated in algorithmic trading since about 1998. He invests in stock options, futures or other derivatives based on trading algorithms that he put together. In order for him to deduct from ordinary income, he needs to file under a different accounting method. Under the method that he filed his previous income tax returns, he could only deduct \$3,000 in trades. He believes that his certified public accountant (CPA) gave him the wrong advice about this issue. He researched the issue and thinks that he should be able to deduct more of his trades in accordance with IRS Section 475 – Market-to-Market Election. (AE M) He contends that he intends to amend and file his tax returns using what is known as IRS Section 9100 relief – either Automatic Relief (Treas. Reg. § 301.9100-2) or Nonautomatic, Discretionary Relief (Treas. Reg. § 301.9100-3). (AE L) If the IRS approves this approach, he would be able to deduct all of his capital losses against ordinary income. He intends to hire a CPA who is well-versed on this issue to help resolve this tax accounting issue. As of the date of the hearing, he has not attempted to look for this specialized accountant but intends to do so in the future. (Tr. 14-16, 29, 41-49, 57-58)

Applicant testified that he is not sure how much money he has applied towards algorithmic investing. He was given the opportunity to provide additional information, records, or documents about the extent or magnitude of his algorithmic investing both in the past and in the present. He did not submit anything after the hearing. (Tr. 6, 74)

At the hearing, Applicant testified that he earns \$147 per hour and that his annual income is between \$200,000 and \$250,000. His wife earns approximately \$35 per hour in her part-time job. Her annual income is approximately \$20,000. Before 2020, she earned \$100 an hour in her part-time job. The bulk of her job was making home visits to clients. She lost this job around April 2020, when everything was locked down because of the COVID-19 pandemic. His two children attend private school. The total annual tuition for both children is approximately \$50,000. (Tr. 30-39)

In September 2025, Applicant attended a financial counseling course. He prepared a monthly budget as part of the course. His total household monthly income was \$20,000. His total monthly expenses were \$13,357. After expenses, his household has a surplus of \$6,643 each month. (AE F)

On July 17, 2025, Applicant's father passed away. He had a difficult time processing his death and was focused on supporting his mother. This delayed his focus on managing his financial issues. (Tr. 24-25: AE D)

In November 2017, Applicant received an Assistant Secretary's Award for Excellence from his Government Customer. (AE E)

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 applicants 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, a decision to deny a security clearance should not be construed to suggest that it is based, in whole or in part, on any express or implied determination about an 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 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

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern for financial considerations:

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. The following are potentially applicable 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.

Applicant has a history of tax issues and delinquent debts. The SOR alleged over \$105,283 in unresolved delinquent consumer debt. Of that amount, approximately \$56,000 was a past due mortgage and over \$39,000 was a judgment for a defaulted

personal loan. He has not filed his federal and state income tax returns for tax years 2015 through 2024. AG ¶¶ 19(a), 19(c), and 19(f) apply to Applicant's case.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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

(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; 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(a) does not apply. Applicant has a history of financial problems, which are ongoing.

AG ¶ 20(b) partially applies. Applicant's family suffered from a loss of income during the COVID-19 pandemic when his wife lost her job. When she found a new job, her income was reduced from \$100 an hour to \$35 an hour. Applicant lost his father in July 2025. It took some time to process his grief. These were circumstances beyond his control. However, this mitigating condition is given less weight because I cannot conclude Applicant acted responsibly under the circumstances. He failed to file his state and federal income tax returns starting in tax year 2015. His financial issues started before 2020, when the pandemic began. At the close of the record, he had not filed his federal and

state tax returns. In addition, several large debts remain unresolved at the close of the record. I cannot conclude that he acted responsibly under the circumstances.

AG ¶ 20(c) does not apply. While Applicant attended financial counseling in September 2025, his federal and state income tax returns remain unfiled, and he still has several consumer debts that remain unresolved. There is no clear indication that the problem is being resolved or under control.

AG ¶ 20(d) applies with respect to the debts alleged in SOR ¶¶ 1.h, 1.i and 1.k because Applicant has resolved the debts. However, approximately \$48,560 in delinquent consumer debt remains unresolved. When he files his overdue federal and state income tax returns, it is likely he will owe significant tax debt even if he amends his income tax returns for a more favorable position. A promise to pay in the future is not sufficient to indicate a good-faith effort to resolve one's debts. This mitigating factor is given less weight because of his unresolved debts.

AG ¶ 20(e) does not apply. Applicant has no reasonable basis to dispute the legitimacy of the alleged past-due debt.

AG ¶ 20(g) does not apply. At the close of the record, Applicant had not filed his federal and state income tax returns for tax years 2015 to 2024. A willful failure to timely make (means complete and file with the IRS) a federal income tax return is a misdemeanor-level federal criminal offense. Title 26 U.S.C. § 7203, willful failure to file return or supply information, reads:

Any person . . . required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to . . . make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor

A willful failure to make 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 his federal income tax returns against him as a crime. In regard to the failure to timely file his federal income tax returns for tax years 2015 through 2024, 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).

While I considered Applicant's future intent to hire a specialized CPA to help him file his income tax returns with a different approach from his previous accountant, it does not mitigate the concern that he has deliberately failed to file his federal and state income tax returns for the past ten years. At the close of the record, his tax issues remained unresolved.

Overall, Applicant did not meet his burden of proof to mitigate the concerns raised under financial considerations.

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, each of which is to be evaluated in the context of the "whole-person." 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.

I considered Applicant's favorable 21-year history as a government contractor. I considered that his family income was adversely affected in 2020 during the COVID-19 pandemic. I considered that the loss of his father this past summer delayed his ability to manage his affairs. On the other hand, Applicant earns over \$200,000 a year. After expenses, he has a monthly remainder of over \$6,000. While he is given credit for paying

two of the debts alleged in the SOR and bringing his mortgage current, he still has several unresolved consumer debts. He took no action towards resolving these accounts. Security concerns remain due to his unresolved debts and his failure to file federal and state income tax returns from tax years 2015 through 2024. His significant financial issues raise doubts about his ability to be entrusted with access to classified information. In cases where there is doubt, national security concerns must take priority. The security concerns raised under Financial Considerations are not mitigated.

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 - 1.g, 1.j:	Against Applicant
Subparagraphs 1.h, 1.i, 1.k:	For Applicant

Conclusion

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Erin C. Hogan
Administrative Judge