DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 26-00151
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

09/04/2026

Decision

HARVEY, Mark, Administrative Judge:

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

Statement of the Case

On September 26, 2024, Applicant completed a security clearance application (SCA). (Government Exhibit (GE) 1) On April 17, 2026, the 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); Department of Defense (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. (Hearing Exhibit (HE) 1)

The SOR detailed reasons why 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 stated his case would be submitted to an Administrative Judge for a determination whether to grant, deny, or revoke his security clearance.

Specifically, the SOR set forth security concerns arising under Guideline F. (HE 1) On May 5, 2026, Applicant responded to the SOR. (HE 2) On June 26, 2026, Department Counsel was ready to proceed. On July 2, 2026, the case was assigned to me. On July 16, 2026, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for July 28, 2026. (HE 3) On July 20, 2026, DOHA issued an amended notice rescheduling the hearing for August 20, 2026. The hearing was held as rescheduled, using the Microsoft Teams video teleconference system.

During the hearing, Department Counsel offered three exhibits; Applicant offered one exhibit; and all proffered exhibits were admitted into evidence without objection. (Tr. 14-18; GE 1-GE 3; Applicant Exhibit (AE) A) On August 30, 2026, DOHA received a copy of the transcript. The record was not held open after the hearing. (Tr. 39)

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

Findings of Fact

In Applicant's SOR response, he admitted the allegations in SOR ¶¶ 1.a and 1.b. He also provided mitigating information. His admissions are accepted as findings of fact.

Applicant is a 31-year-old material specialist, and a government contractor has employed him for about 30 months. (Tr. 6, 8, 19) In 2023, he received a general educational development (GED) diploma. (Tr. 6) He completed two semesters of college. (Tr. 21) His goal is to earn an associate degree because he wants to eventually become an analyst. (Tr. 22) He has not served in the military. (Tr. 7) In 2025, he married, and he has a two-month-old baby. (Tr. 7) His spouse is a phlebotomist who provides emergency care. (Tr. 7) He is able to retain his employment without a security clearance; however, it affects his access to classified areas without an escort, ability to receive overtime pay, and future promotions. (Tr. 20) After he married, he changed and improved. (Tr. 33-34) He is more responsible, mature, and trustworthy. (Tr. 33-34) He has good character. (Tr. 33-34)

Financial Considerations

SOR ¶¶ 1.a and 1.b allege, and Applicant admitted, he failed to file, as required, federal income tax (FIT) and state income tax (SIT) returns for tax years (TYs) 2017, 2019, 2020, and 2021, respectively. As of the date of this SOR, the tax returns remained unfiled.

Applicant disclosed his failure to file his FIT and SIT returns for TYs 2017, 2019, 2020, and 2021 on his September 26, 2024 SCA. (GE 1 at 55-57) His March 21, 2025 Office of Personnel Management (OPM) summary of interview confirms that he did not file the four FIT and SIT tax returns, and states:

> Subject went to [tax preparer] in 03/2025 to talk with them about filing and paying his state and federal taxes. This is currently a work in progress and no action [has] been taken. Subject said the reason he did not pay his taxes was because he was never taught how to properly do it. He is still gathering all the information to provide to [a tax preparer] so that he can figure out how to pay all of his taxes back. Currently, he has no idea how much he will owe or when he will be able to pay it all back. Subject claims no embarrassment or susceptibility to any potential influence, blackmail or coercion regarding the reported issue information. (GE 2 at 6)

At his hearing, Applicant initially said he had not filed his FIT and SIT returns for TYs 2017, 2019, 2020, and 2021. (Tr. 23) He timely filed his FIT returns for TYs 2018, 2022, 2023, and 2024. (GE 3 at 15, 17-18, 21-23; AE A) For several FIT returns, he needed to submit some documentation to the tax preparer, and without this documentation, the tax preparer was unable to complete some of his tax returns. (Tr. 25-26) Applicant has the necessary documentation to file his FIT returns for TYs 2017 and 2019. (Tr. 27-28) He needs a W-2 form from his employer in 2020 to file his FIT for TY 2020. (Tr. 28) He believes he completed his TYs 2021 and 2025 FIT returns; however, he did not provide IRS tax transcripts showing those two FIT returns were filed. (Tr. 29-31) He intends to file all overdue FIT returns. He may have a tax debt when all of his FIT returns are filed because he did not withhold funds from his income for his FIT. (Tr. 31-32) He has not received financial counseling. (Tr. 32)

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 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 an unfavorable decision should be construed to suggest that it is based on any express or implied determination about an applicant's allegiance, loyalty, or patriotism. An unfavorable decision 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. Sept. 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.

AG ¶ 19 includes two 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 condition in AG ¶¶ 19(c) and 19(f), requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying condition is contained in the mitigation section, *infra*. The financial considerations mitigating conditions under AG ¶ 20, which may be applicable in this case, are as follows:

> (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
>
> (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
>
> (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
>
> (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
>
> (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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.

The Appeal Board in ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013) 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, Encl. 2 ¶ 2(b).

Taxpayers have a financial obligation under federal and state law to timely file tax returns. Applicant admitted he failed to file, as required, FIT and SIT returns for TYs 2017, 2019, 2020, and 2021. As of the date of this SOR, the tax returns were unfiled. At his hearing, he said he filed his TY 2021 FIT return, and he is working on getting the other three tax returns filed.

AG ¶ 20(a) does not apply. Applicant's history of not timely filing tax returns demonstrates a continuing course of conduct and is recent for purposes of the Guideline F mitigating conditions. *See* ISCR Case No. 22-02226 at 2 (App. Bd. Oct. 27, 2023) (citing ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017)).

AG ¶ 20(b) does not fully apply. Applicant did not assert good enough reasons or other circumstances partially or fully beyond his control, which caused him not to timely file multiple FIT and SIT returns.

AG ¶¶ 20(c), 20(d), and 20(e) do not apply. Applicant did not receive financial counseling, and there are not "clear indications that the problem is being resolved or is under control." He did not demonstrate a "good-faith effort" to get his tax returns filed, or provide a reasonable explanation for his failure to timely file his overdue FIT and SIT returns.

Failure to Timely File FIT Returns

A willful failure to timely make (means complete and file with the IRS) a FIT 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 offense 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 considering Applicant's failure to timely file his FIT returns against him as a crime. Regarding the failure to timely file FIT returns, the Appeal Board has commented:

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

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). *See* ISCR Case No. 15-01031 at 4 (App. Bd. June 15, 2016) (citations omitted); ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

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

In ISCR Case No. 24-02193 at 5 (App. Bd. Feb. 19, 2026), the Appeal Board said:

> The mere filing of delinquent tax returns or the existence of a payment arrangement with an appropriate tax authority does not compel a Judge to issue a favorable decision. As with the application of any mitigating

> condition, the Judge must examine the record evidence and decide whether the favorable evidence outweighs the unfavorable evidence, or vice versa. The timing of corrective action is an appropriate factor for the Judge to consider in the application of mitigating condition 20(g) as well as in considering aspects of other overlapping mitigating conditions, such as, in determining whether an applicant acted responsibly under the circumstances, whether an applicant's past financial deficiencies are unlikely to recur, or whether an applicant initiated good-faith efforts to resolve financial problems.

The Appeal Board clarified that even in instances where an "[a]pplicant has purportedly corrected [his or her] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant's security worthiness in light of [his or her] longstanding prior behavior evidencing irresponsibility" including a failure to timely file FIT returns. *See* ISCR Case No. 15-01031 at 3 & n.3 (App. Bd. June 15, 2016) (characterizing "no harm, no foul" approach to an applicant's course of conduct and employing an "all's well that ends well" analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR).

AG ¶ 20(g) is not applicable. Applicant has not provided proof that he filed all required FIT and SIT returns. He does not have an established IRS or SIT payment plan. The amount of taxes owed, if any, is unknown.

Applicant failed to prove that he took timely, prudent, responsible, and good-faith actions regarding filing his FIT and SIT returns. His handling of his taxes raises unmitigated questions about his reliability, trustworthiness, and ability to protect classified information. *See* ISCR Case No. 23-02412 at 3 (App. Bd. Sept. 9, 2025). Under all the circumstances, and considering the evidence "as a whole," Applicant's failures to timely file FIT and SIT returns are not mitigated at this time.

Whole-Person Concept

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

> (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct;

(8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 31-year-old material specialist, and a government contractor has employed him for about 30 months. In 2023, he received a GED diploma. He completed two semesters of college. His goal is to earn an associate degree because he wants to eventually become an analyst. In 2025, he married, and he has a two-month-old baby. After he married, he changed and improved. He is more mature, responsible, and trustworthy. He has good character.

The evidence supporting denial of Applicant's security clearance is detailed in the financial considerations section, *supra,* and this evidence is more persuasive than the evidence of mitigation at this time.

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

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

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With continued effort to establish and maintain his financial responsibility, including timely handling of his tax returns, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant

Conclusion

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

Mark Harvey
Administrative Judge