DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 26-00262
	)	
Applicant for Security Clearance	)	

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

09/04/2026

Decision

GOLDSTEIN, J., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Clearance is denied.

Statement of the Case

On June 26, 2025, Applicant submitted a security clearance application (SCA). On April 1, 2026, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information, effective within the DOD after June 8, 2017.

Applicant answered the SOR on May 19, 2026, and requested a hearing before an administrative judge. The case was assigned to me on June 17, 2026. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 14, 2026, and the hearing convened as scheduled on August 13, 2026. Government Exhibits (GE) 1 through 4 were admitted into evidence. Applicant testified. The record was left open until August 24, 2026, for either party to submit additional evidence but nothing further was submitted. DOHA received the hearing transcript (Tr.) on August 24, 2026.

Findings of Fact

SOR ¶¶ 1.a and 1.b alleged Applicant failed to file his federal and state income tax returns as required for tax years 2018 and 2019. In Applicant's answer to the SOR, he admitted both allegations. His admissions are incorporated in my findings of fact.

Applicant is a 35-year-old employee of a defense contractor. He has worked for his employer since late 2024. Prior to being hired by the defense contractor, he was unemployed for most of that year. He is a tradesman and completed an apprenticeship in 2013. He has not served in the military. He is married and has two children, ages 13 and 3. (Tr. 34)

Applicant explained that he never filed a federal or state income tax return for tax year 2018 or 2019. In 2019, he was "not in a good place mentally." (Tr. 32) He was also hospitalized in April 2020 with pneumonia. (Tr. 32-33) His IRS tax transcripts for tax years 2018 and 2019 reflect that the requested data was not found. (GE 4)

After he and his wife married in 2021, they hired an accountant to prepare their 2021 joint income tax return. They learned that he owed money for previous tax years, and he claims it was paid at that time. In 2021, he and his accountant contemplated filing late returns for 2018 and 2019, but he was missing W-2s for a company that had since gone out of business. His accountant used his hourly wage rate to calculate the amount he owed, and he claims he paid that amount. He has continued to use the same accountant and returns for tax years 2021 through 2024 were filed on time. (Tr. 18-29) IRS transcripts for 2021 through 2024 support his claims. Similarly, he presented state-certified copies of his state tax returns from 2020 to 2024. He claimed that his federal and state tax returns for 2025 were also filed in a timely manner. (GE 4)

In 2022, he was laid off by his employer and used his 401(k) savings totaling $14,000 for living expenses. He had taxes taken out of the distribution. (Tr. 29-30)

Policies

"[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." Exec. Or. 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." Exec. Or. 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 "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." *See* ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019). It is "less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n,* 383 U.S. 607, 620 (1966). "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. 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 security concern for financial considerations is set out in AG ¶ 18:

> Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The guideline sets forth several conditions that could raise security concerns under AG ¶ 19. The following is applicable in this case:

> (f) failure to file or fraudulently filing annual [f]ederal, state, or local income tax returns or failure to pay annual [f]ederal, state, or local income tax as required.

Applicant failed to file his state and federal income tax returns for 2018 and 2019. "Security requirements include consideration of a person's judgment, reliability, and willingness to comply with legal obligations. Failure to comply with federal tax laws suggests that an applicant has a problem with abiding by well-established government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information (citations omitted)." ISCR Case No. 17-01213 at 3 (App. Bd. Jun. 29, 2018). The above disqualifying condition applies.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

> (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;
>
> (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.

Factors in favor of mitigation under the above mitigating conditions include that for the past five tax years, Applicant submitted his tax returns in a timely manner. His failure to file federal and state income tax returns from 2018-2019 was due to his mental health in 2019 and his illness in 2020. Since then, he has married, hired an accountant, and filed his subsequent tax returns.

However, Applicant's federal and state income tax returns from 2018-2019 remain unfiled. The DOHA Appeal Board has noted "that unresolved debts are ongoing and therefore recent, for purposes of security clearance determinations. Similar reasoning applies in cases of late tax filings." ISCR Case No. 19-01643 at 2 (App. Bd. Mar. 17, 2021). In this close case, the outstanding income tax returns continue to raise doubts about his judgment. "In a DOHA proceeding, the applicant is charged with presenting evidence in mitigation of the concerns raised in his or her SOR and bears the ultimate burden of persuasion (citations omitted)." *Id*. He did not present enough mitigating evidence to meet that burden to establish full application of any of the above conditions.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. An administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the 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.

Applicant's unfiled delinquent income tax returns are an ongoing security concern that have not been fully mitigated, despite his timely filing of subsequent returns. The Financial Considerations concerns are not mitigated.

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 resolve his unfiled federal and state tax returns and maintain his financial responsibility, he may well be able to demonstrate persuasive evidence of his security clearance worthiness in the future.

Formal Findings

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

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a – 1.b: Against Applicant

Conclusion

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

Jennifer Goldstein
Administrative Judge