DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:)
)
) ISCR Case No. 25-01260
)
Applicant for Security Clearance)

Appearances

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

08/20/2026

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Decision

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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 August 19, 2024, Applicant completed a security clearance application (SCA). (Government Exhibit (GE) 1) On October 29, 2025, 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 December 4, 2025, Applicant responded to the SOR. (HE 2) On December 22, 2025, Department Counsel was ready to proceed. On January 5, 2026, the case was assigned to me. On March 3, 2026, DOHA issued a notice scheduling the hearing for April 28, 2026. (HE 3) The hearing was held as scheduled, using the Microsoft Teams video teleconference system.

During the hearing, Department Counsel offered four exhibits; Applicant offered five exhibits; and all proffered exhibits were admitted into evidence without objection. (Tr. 42-45, GE 1-GE 4; Applicant Exhibits (AE) A-AE E) On May 10, 2026, DOHA received a copy of the transcript. On June 12, 2026, I issued a decision. In that decision, I noted no post-hearing documents were received from Applicant after his hearing, which was incorrect. On July 30, 2026, the DOHA Chief Judge set aside the June 12, 2026 decision and returned the case to me. Eighteen post-hearing exhibits were received and admitted without objection. (AE F-AE W; HE 4) Applicant provided duplicate copies of his IRS tax transcript for TY 2024 after his hearing. (AE H; AE I) On August 17, 2026, Applicant responded to my questions; he provided two additional emails and one document, and the record closed that same day. (AE T; AE U)

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 through 1.h and 1.j, and he denied the allegation in SOR ¶ 1.i. He denied the amounts of the federal income taxes (FIT) owed listed in SOR ¶¶ 1.b through 1.i. He also provided extenuating and mitigating information. His admissions are accepted as findings of fact.

Applicant is a 49-year-old radio access network engineer, and he has worked for his current employer since August of 2022. (Tr. 26, 32, 46) In 1995, he graduated from high school. (Tr. 26) He has about one year of college. (Tr. 26) He was married in 2000 and divorced in 2005. (Tr. 27) He was married the second time in 2011 and divorced in 2013. (Tr. 27) He served in the Army from 1995 to 1999, and he received an honorable discharge. (Tr. 28) He was a specialist (E-4) when he left the Army. (Tr. 28) His military occupational specialty (MOS) was mobile subscriber equipment systems (31R). (Tr. 29)

Financial Considerations

Applicant disclosed his FIT issues on his August 19, 2024 (SCA). (GE 1) He said he owed about $80,000 because his "[t]ax preparer didn't turn in tax reports since 2017," and he was "[w]orking to settle." (GE 1 at 35) On August 29, 2025, he responded to DOHA interrogatories and provided clarifying information about the status of his FIT and SIT issues. (GE 2)

SOR ¶ 1.a alleges Applicant failed to timely file and pay his FIT for tax years (TYs) 2017 through 2023.

SOR ¶¶ 1.b through 1.i allege Applicant is indebted to the Federal Government for delinquent taxes for TYs in the following amounts (rounded to nearest $100): 2016 ($13,700); 2017 ($19,100); 2018 ($16,200); 2019 ($22,800); 2020 ($31,700); 2021 ($20,700); 2022 ($24,000); and 2023 ($0), respectively.

SOR ¶ 1.j alleges that Applicant failed to timely file and pay his state income taxes (SIT) for TYs 2022, 2023, and 2024.

Applicant gave several reasons for not timely filing his FIT returns. He was divorced; he had to move out of his house; he was "working crazy work" shifts, he lost dependency deductions; and he owed a significant tax debt. (Tr. 49-50) These factors caused him to lose it all and "it knocked me off my square." (Tr. 50) He suffered from "anxiety compounded by shift work disorder [or] shift workers' disorder." (Tr. 50) He said:

> I was just my head wasn't there. And, I knew that I was going to have to eventually face the music, but I just for those few years, I just, I just put it off and I just, it was stupid. Like I say, my head just wasn't in the game after, after the divorce. . . . The divorce was final [in] December of 2013. And the following years and following that, '14, '15, is when I just started losing everything. And, it took a toll on me. (Tr. 50-51)

Applicant's August 21, 2025 and April 20, 2026 IRS tax transcripts contain the FIT information in the following table. (GE 2; AE B) Adjusted gross income (AGI) is rounded to the nearest $1,000, and taxes are rounded to the nearest $100. Taxes owed are from the "account balance plus accruals" line in his IRS tax transcripts.

Tax Year	Date Tax Return Filed	Adjusted Gross Income	Taxes Owed	Exhibit
2016	Apr. 15, 2017	$80,000	$13,700	GE 2 at 9
2017	Oct. 11, 2024	$94,000	$19,100	GE 2 at 11
2018	Oct. 11, 2024	$87,000	$16,200	GE 2 at 13
2019	Oct. 11, 2024	$100,000	$22,800	GE 2 at 15
2020	Oct. 11, 2024	$126,000	$31,700	GE 2 at 16
2021	Oct. 11, 2024	$98,000	$20,700	GE 2 at 17
2022	Oct. 11, 2024	$147,000	$24,100	GE 2 at 18
2023	Mar. 12, 2025	$108,000	$0	GE 2 at 19; AE B
2024	Apr. 15, 2025	$99,000	$0	GE 2 at 21; AE B
2025	Apr. 1, 2025	$117,000	$0	AE H
Total		$1,056,000	$148,300	

Applicant is aware that FIT returns are required to be filed by April 15 following the end of the tax year unless an extension is requested. (Tr. 47) He filed for extensions for TYs 2018, 2020, and 2021, and possibly 2019. (Tr. 47-49) Some of the delay in filing his FIT returns was due to problems his tax preparer had in 2021 through 2023 getting electronic documents filed and lack of communication between his tax preparer and Applicant. (Tr. 60; AE E) It is unclear why he was unaware that his FIT preparer did not file FIT returns on his behalf. (Tr. 61-62) He provided a screen shot showing on April 19, 2022, he was unable to file an installment payment to the IRS. (AE M) A note indicates Applicant intended to file an extension for TY 2021. (AE M) He was unable to electronically file his TY 2023 FIT return in December of 2024 because the IRS stopped accepting electronic filings at that time. (AE M) Information from the IRS website indicates Applicant filed for extensions to file his tax returns for TYs 2018, 2019, 2020, 2022, and 2023. (AE M) The information he provided from the IRS website does not indicate whether the extensions were approved or the new due dates for filing his tax returns. (AE M)

Applicant substantially under withheld payments to the IRS. For example, for TY 2021 he withheld about $4,000 on AGI of $98,000, and for TY 2022, he withheld about $14,000 on AGI of $147,000. (GE 2 at 17-18) As indicated previously, part of his rationale for not filing FIT returns was his awareness of owing additional taxes.

Applicant had an IRS payment plan in 2017 in which he paid $500 monthly; however, in 2018, he terminated the payment plan because of insufficient income to continue it. (Tr. 53) He did not subsequently have an IRS-approved payment plan until 2025. (Tr. 53)

IRS records show he made the following payments in 2025: March ($390, $205, $297), April ($390, $2,981); June ($390, $25, $1,000, $1,085); and July ($170, $1,000). (AE A) On April 29, 2026, Applicant paid $9 and resolved an IRS tax debt for TY 2023. (AE L) His April 28, 2026 IRS tax transcript for TY 2024 shows that he owes $500 to the IRS. (AE I at 5)

Applicant is currently in much better financial condition because his annual pay is $115,000, and in November of 2025, he received a 90% disability rating from the Department of Veterans Affairs (VA). (Tr. 56; AE D) This disability rating included 30% for anxiety. (AE D) In November of 2025, he received about $12,000 in a lump sum from the VA, and he is currently receiving $2,300 monthly from the VA. (Tr. 56) He did not apply the $12,000 to pay his FIT debt. (Tr. 56) He is receiving treatment from the VA for anxiety. (Tr. 63)

IRS Offers in Compromise

Applicant said, in 2025, his total IRS debt was about $100,000. (Tr. 67) He made an initial offer in compromise (OIC) and payment plan to the IRS in March of 2025. (Tr. 66; AE R) His initial OIC was $9,360 to be paid $390 monthly over 23 months. (AE R at 13) He provided information about his income and expenses to the IRS along with his OIC. (Tr. 67-70)

On August 21, 2025, Applicant submitted an OIC to the IRS. (AE A) He offered to pay $26,398 with an initial payment of $3,365 followed by monthly payments of $960 for 24 months. (AE A at 3) On September 11, 2025, the IRS accepted his offer in compromise. (AE B at 2) From August 2025 to April 2026, he made nine $960 monthly payments. (AE A) On April 15, 2025, his refund for TY 2024 of $2,480 was transferred to address a tax debt for TY 2013. (AE B)

Applicant submitted a second OIC, which was dated August 21, 2025. This OIC applies to TYs 2013 to 2023. (AE A at 1) As part of the OIC process, the IRS asked for his entire household income including non-taxable income. Applicant said his monthly gross wages were $5,440, and his VA disability payment was $1,102 for a total of $6,542. (AE R at 26) His expenses totaled $6,152 and his net remainder was $390. (AE R at 26) For assets, he listed $700 in his checking account and $7,108 in his IRA. (AE R at 28) I emailed Applicant with questions about his OIC income because his TY 2025 tax return showed more income than he disclosed on his OIC. His response follows:

> Regarding the Offer in Compromise, the OIC covered tax years 2013 through 2023. My 2023 tax return was originally filed and the amount I understood to be due was paid. The IRS subsequently made an adjustment to my 2023 return related to the First-Time Homebuyer Credit from my 2008 tax return. During the hearing, I learned that a remaining balance of $9.42 was still showing for tax year 2023. I went to my local IRS office the following day and paid the remaining $9.42 balance. Tax years 2024 and 2025 were not part of the OIC, and my 2024 tax liability was also paid when I filed that return.
>
> Regarding the income information on the OIC, the amounts listed reflected my financial circumstances at the time I completed the paperwork. The $5,440 listed as monthly gross wages represented what I was grossing monthly from my employment at that time. The additional $1,102 listed as other income represented my monthly VA disability compensation at the time. I was rated at 50% by the VA at that point, and $1,102 was the amount I was receiving. My VA disability rating was subsequently increased to 90% in November 2025, and my current monthly VA disability compensation is approximately $2,300.
>
> My employment income changed during 2025, which accounts for the difference between the monthly wage amount reflected on the OIC and the employment income ultimately reported on my 2025 federal tax return. Additionally, the adjusted gross income reported on my 2025 return included two amounts that were not recurring employment wages. The $10,400 reported as a pension/retirement distribution was money I withdrew from my 401(k) during 2025 and was not VA disability compensation. My tax records identify the $10,400 as a taxable retirement distribution reported by [his employer]. (AE T)

In August of 2025, the IRS accepted his second OIC, which was based on Applicant's ability to pay. (Tr. 64) The ability to pay did not include payments for his 90% VA disability rating because that rating was not approved until November of 2025. Applicant checked the block on his IRS form for "Doubt as to Collectability -- I do not have enough in assets and income to pay my full tax liability. I have offered the minimum offer amount calculated on Form 433-A(OIC) and/or Form 433-B(OIC)." (AE A)

The IRS payment website shows that Applicant provided the following payments to the IRS in 2025: March 12 ($297 for TY 2023); March 14 ($205 for TY 2014); March 14 ($390 for TY 2014); April 2 ($2,981 for TY 2024); April 29 ($390 for TY 2013); June 7 ($1,085 for 2023); June 13 ($390 for TY 2014); June 30 ($25 and $1,000 for TY 2014); July 23 ($170 and $1,000 for TY 2014); August 27 ($960 for TY 2014); October ($960 for TY 2014); and October 22 ($960 for TY 2014). (AE A) From July of 2025 to May of 2026, he made nine $960 payments and one $1,000 payment. (AE A) He filed his FIT return for TY 2025, and he was supposed to receive a refund; however, his refund was applied to address his FIT debt. (Tr. 73)

After his hearing, Applicant contacted the IRS's OIC Department to get the payoff amount for his case. (AE N) The IRS wanted $13,308. On May 21, 2026, the IRS wrote that the OIC was for TYs 2013 through 2020, and the amount was #13,308. (AE P) In May of 2026, Applicant paid the IRS $13,308. (AE N-AE Q; AE W) On August 12, 2026, the IRS wrote that the FIT debt for TYs 2013 to 2020 was settled under the OIC. (AE T) The OIC said, "REMINDER: Compliance is an important part of your Offer in Compromise (OIC) contract. You must file and pay your federal taxes timely for 5 years. If you don't comply, we may terminate your OIC contract and reinstate the original amount of your tax liability, less any payments made." (AE T) The August 12, 2026 IRS letter does not mention Applicant's FIT debt for TYs 2021 ($20,700) and 2022 ($24,100). (GE 2 at 17-18) The IRS website provided a list of payments from October 22, 2025, to June 5, 2026, which included his two final payments of $12,000 and $1,308. (AE W)

In 2024, Applicant filed his SIT returns for TYs 2022 and 2023. (Tr. 75) On August 27, 2025, he paid $1,602 for his SIT debt for TY 2022. (Tr. 75; AE C) He said his TYs 2023 through 2025 SIT returns were timely filed. (Tr. 76) On October 1, 2025, the SIT authority wrote that his TY 2023 refund of $104 was applied to address a tax debt for TY 2022. (AE C)

Applicant's SIT return indicates he should receive a SIT refund for $219. (AE G) He provided his FIT and SIT income tax returns for TY 2025, and he paid $717 to address his TY 2025 SIT for TY 2025. (AE F; AE H)

In his SCA, Applicant disclosed an $11,000 credit card debt from 2012. (Tr. 82; GE 1) On March 19, 2025, Applicant settled this non-SOR debt. (Tr. 82-83; AE K)

On May 29, 2026, the IRS wrote Applicant and indicated additional documentation was needed to process his TY 2025 FIT. (AE S) The IRS wanted documentation to support the withholding of $14,919. (AE S) On June 16, 2026, he responded to the IRS request for information. (AE S)

On May 15, 2026, Applicant said:

> I take full responsibility for the circumstances that led to the tax liability and deeply regret the decisions and actions that caused it. I understand how this reflected poor judgment and created risk with respect to the trust and

reliability expected of someone holding (or seeking) a Top-Secret clearance.

Since that time, I have taken concrete steps to prevent a recurrence, including:
• Paying the OIC in full and remaining current with all tax filings and payments.
• Establishing and maintaining an emergency fund and monthly budget to ensure timely payment of obligations.
• Consulting with a trusted tax professional/accountant to ensure accurate filings and to address any future tax matters promptly. (AE O)

Character Evidence

Three witnesses spoke on Applicant's behalf at his hearing. (Tr. 8-25, 30-31) They were friends or coworkers or both. The general sense of these statements is that he is diligent, kind, respectful, honest, reliable, and intelligent. He learns from his mistakes, and he is an asset to his employer.

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 War 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 War, 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.

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 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:

(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.

The record establishes the disqualifying conditions in AG ¶¶ 19(a), 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, 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, Enclosure 2 ¶ 2(b).

SOR ¶ 1.a alleges and the record establishes that Applicant failed to timely file and pay his FIT for TYs 2017 through 2023.

SOR ¶¶ 1.b through 1.i allege Applicant is indebted to the Federal Government for delinquent taxes for TYs in the following amounts (rounded to nearest $100): 2016 ($13,700); 2017 ($19,100); 2018 ($16,200); 2019 ($22,800); 2020 ($31,700); 2021 ($20,700); 2022 ($24,000); and 2023 ($0), respectively. The record establishes that he had delinquent FIT debts for TYs 2016 through TY 2023 at the time the SOR was issued. On August 12, 2026, the IRS acknowledged Applicant completed payment in accordance with his OIC agreement. The taxes owed for TYs 2021 and 2022 may not be resolved because the IRS letters pertaining to the OIC agreement do not mention those two TYs as part of the agreement. For purposes of this decision, I assume that Applicant honestly believed that all of his FIT debts are paid.

SOR ¶ 1.j alleges that Applicant failed to timely file and pay his SIT for TYs 2022, 2023, and 2024. He filed and paid his SIT debt.

Applicant disclosed his FIT issues on his August 19, 2024 SCA. On his SCA, he said he owed about $80,000 because his "[t]ax preparer didn't turn in tax reports since 2017," and he was "[w]orking to settle." (GE 1 at 35) He did not mention any of his own culpability; however, his disclosure of his FIT problems on his SCA is a positive consideration. On August 29, 2025, he responded to DOHA interrogatories. On October 11, 2024, he filed his seven overdue FIT returns for TYs 2017 through 2022. The timing of his filing of his tax returns for TYs 2017 through 2022 and establishment of his IRS payment plan may be related to his receipt of DOHA interrogatories and SOR, which was issued on October 29, 2025.

AG ¶ 20(a) does not apply to SOR ¶¶ 1.a through 1.h. "It is also well established that an applicant's ongoing, unpaid debts [and history of not timely filing tax returns and paying taxes] demonstrate a continuing course of conduct and can be viewed as recent for purposes of the Guideline F mitigating conditions." 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 was divorced; he had to move out of his house; he was "working crazy work" shifts; he lost dependency deductions; and he owed a significant tax debt. (Tr. 49-50) He said that these factors caused him to lose it all and "it knocked me off my square." (Tr. 50) He suffered from "anxiety compounded by shift work disorder [or] shift workers' disorder." Anxiety is one of the disability ratings he received from the VA. These circumstances do not fully mitigate his tax issues. He has an independent responsibility to file his tax returns or to employ someone with tax expertise to file his tax returns. After he hired a tax preparer, he was still responsible to monitor the tax preparer to ensure he or she is competent and diligently working to file his tax returns. He did not assert a good enough reason or other circumstances partially or fully beyond his control, which caused him not to timely file multiple FIT returns and pay required FIT for such a long period of time.

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 for 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).

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Evidence of delinquent FIT prior to TY 2017 is not alleged in the SOR and will not be considered for disqualification purposes. However, this information will be considered in the mitigation analysis.

AG ¶ 20(g) is applicable. In 2024 to 2026 Applicant made great strides in the resolution of his tax issues after he received the DOHA interrogatories. He has filed all overdue tax returns and believes he has paid all overdue taxes. However, these positive actions are not sufficient to fully mitigate SOR ¶ 1.a.

Applicant's overall handling of his taxes, especially his failure to timely file his FIT returns, and he owing FIT from 2014 (for TY 2013 were due) to 2026 leaves lingering security concerns. *See* ISCR Case No. 24-02104 at 2 (App. Bd. Jan. 26, 2026) (affirming denial of security clearance, and noting despite some mitigation under AG ¶ 20(g), that the evidence was insufficient to establish full mitigation).

In ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007), the Appeal Board said:

> The application of disqualifying and mitigating conditions and whole-person factors does not turn simply on a finding that one or more of them apply to the particular facts of a case. *See, e.g.,* ISCR Case No. 01-14740 at 7 (App. Bd. Jan.15, 2003). Thus, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance

> decision. As the trier of fact, the Judge must weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or vice versa.

Applicant's history of filing his FIT returns and paying his FIT shows an absence of timely, prudent, responsible, and good-faith actions regarding his FIT before October of 2024. His behavior over multiple years 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," his failures regarding filing his FIT returns in SOR ¶ 1.a are not mitigated; however, the other SOR allegations are 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), "[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 49-year-old radio access network engineer, and he has worked for his current employer since August of 2022. He has about one year of college. He served in the Army from 1995 to 1999, and he received an honorable discharge. He has a 90% VA disability rating. Three witnesses spoke on his behalf at his hearing. The general sense of these character statements is that he is diligent, kind, respectful, honest, reliable, and intelligent. He learns from his mistakes, and he is an asset to his employer.

The evidence supporting denial of Applicant's security clearance are 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, 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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b through 1.j:	For Applicant

Conclusion

I conclude that it is 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