



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



In the matter of:

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ISCR Case No. 15-01515

Applicant for Security Clearance

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel

For Applicant: *Pro se*

05/24/2016

Decision

HARVEY, Mark, Administrative Judge:

Applicant failed to timely file and pay his federal and state income taxes for tax years 2005 through 2009. His statement of reasons (SOR) lists 22 delinquent debts totaling \$6,897. He paid 11 SOR debts, 1 SOR debt is in a payment plan, 3 SOR debts are disputed, and 7 SOR debts are unresolved. His federal income tax returns are now filed, and his federal tax debt has been reduced to about \$11,000. However, his history of failing to timely file and pay his federal and state income taxes continues to raise unresolved financial considerations security concerns. Access to classified information is denied.

History of the Case

On August 7, 2012, Applicant completed and signed a Questionnaire for National Security Positions (e-QIP) (SF 86). (Government Exhibit (GE) 1) On August 28, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF could not make the affirmative finding under the Directive that it is clearly consistent with the national interest to grant

or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. (HE 2) Specifically, the SOR set forth security concerns arising under the financial considerations guideline.

On October 8, 2015, Applicant responded to the SOR and requested a hearing. On January 6, 2016, Department Counsel was ready to proceed. On January 21, 2016, the case was referred to me. On February 3, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for February 11, 2016. (HE 1) Applicant waived his right to 15 days of notice of the date, time, and location of his hearing. (Tr. 16) The hearing was held as scheduled using video teleconference (VTC).

During the hearing, Department Counsel offered four exhibits, which were admitted into evidence without objection. (Tr. 19-20; Government Exhibit (GE) 1-4) At his hearing, Applicant offered four exhibits, which were admitted without objection. (Tr. 20-22; Applicant Exhibit (AE) A-D) The transcript was received on February 19, 2016. I held the record open until May 1, 2016, to permit Applicant to submit additional documents. On May 1, 2016, Applicant provided 22 additional documents, which were admitted without objection. (AE E-Z)

Procedural Ruling

Department Counsel moved to amend SOR ¶¶ 1.a to 1.e to include state income taxes for tax years 2005 through 2009. (Tr. 73-74) Applicant did not object, and I granted the motion. (Tr. 74)

Findings of Fact

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

Applicant is a 46-year-old aircraft mechanic employed by a defense contractor, who is seeking a security clearance. (Tr. 6, 24) In 1988, he graduated from high school. (Tr. 7) He completed some college classes, and he did not receive a degree. (Tr. 7) He served on active duty in the Army from 1990 to 2001 and in the National Guard from 2001 to 2012. (Tr. 7-8, 15) He received an honorable discharge, and he has qualified for retirement benefits when he is age 60. (Tr. 8; AE C) In 1990, he married, and in 1991, he divorced. (Tr. 8) In 1993, he married, and in 2008, he divorced. (Tr. 9, 15; GE 1) His son is 21 years old. (Tr. 50; GE 1)

Financial Considerations

SOR ¶¶ 1.a through 1.e allege, and the record establishes, that Applicant did not file his federal income taxes, as required, for tax years 2005 through 2009. He did not file because of a dispute over whether he or his spouse should take a deduction for their

child. (Tr. 38) He was also anxious and depressed from the loss of friends while he served in Iraq and his divorce. (Tr. 38, 50, 71) He was working three jobs and he was under great stress. (Tr. 50) The Internal Revenue Service (IRS) filed tax returns for Applicant. (Tr. 31, 36; AE A) Starting in 2007 or 2008, the IRS garnished about \$225 every two weeks of his wages for about 30 months to address his tax debt for tax years 2002 through 2004. (Tr. 38-42)¹ In about 2010, the garnishment stopped after he filed his 2009 or 2010 tax return. (Tr. 38-40) He timely filed his 2010 federal income tax return. (Tr. 41)

Applicant provided IRS account transcripts for tax years 2012 through 2014. (AE E) Those three IRS accounts show application of refunds for each year to previous tax debts, and the IRS transcripts and his 2015 Form 1040EZ are summarized in the following table:

Tax Year AE	Date Filed	Adjusted Gross Income	Federal Tax Due	Federal Tax Withheld	Federal Taxes Owed	Credit	Tax Year Credited
2004-G	Oct. 16, 2006	\$46,537	\$6,383	\$3,706	\$3,677		
2005							
2006-H	Apr. 8, 2013	\$43,744	\$5,380	\$3,605	\$1,675		
2007-I	Apr. 8, 2013	\$57,747	\$8,673	\$5,101	\$3,572		
2008-J	Apr. 8, 2013	\$55,284	\$7,927	\$4,994	\$2,933		
2009-K	Apr. 8, 2013	\$53,102	\$7,125	\$3,527	\$3,598		
2012-E	Mar. 18, 2013	\$62,054	\$6,999	\$10,370	-\$3,371	\$3,371	2007
2013-E	Nov. 2, 2015	\$56,583	\$7,573	\$9,518	-\$1,945	\$1,493	2006
						\$452	2007
2014-E	May 11, 2015	\$63,362	\$9,163	\$11,120	-\$1,957	\$1,927	2006
2015-E	Undated	\$67,049	\$9,975	\$11,853	-\$1,878	\$1,878	

Applicant's taxes owed for tax year 2004 were paid on March 14, 2011. (AE G) His taxes owed for tax year 2006 were paid on February 19, 2016. (AE H) As of March 16, 2016, he owes the IRS the following amounts: \$2,360 for tax year 2007 (AE I);

¹Applicant's SOR does not allege that he failed to pay his federal income taxes as required for tax years 2002 to 2004. He mentioned the IRS garnishment to an Office of Personnel Management investigator; however, he did not indicate the garnishment predated 2005. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See *also* ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). Consideration of the possibility that Applicant failed to timely file his federal income tax returns and pay his taxes as required for tax years 2002 to 2004 will not be considered except for the five purposes listed above.

\$4,957 for tax year 2008 (AE J); and \$6,290 for tax year 2009 (AE K). Applicant estimated he still owes about \$6,000 to the IRS (Tr. 43, 49); however, he actually owes about \$11,000 to the IRS after he is credited \$1,878 for his 2015 tax refund. He believes his state income tax returns were filed for tax years 2005 through 2009, and he did not owe any state income taxes. (Tr. 37-38) I asked him to provide evidence that his state taxes were filed, paid, and in current status (Tr. 45, 74). An April 18, 2016 letter from the state tax authority indicates no taxes are due for tax year 2012. (AE F) Applicant did not provide documentation addressing his state taxes for tax years 2005 through 2009.

Applicant makes \$125 monthly payments to address his federal income tax debt. (Tr. 29-30; AE A) In October 2016, he is scheduled to increase his monthly payments to \$225. (Tr. 30)

Applicant did not attempt to resolve his debts because he was reluctant to address them. (Tr. 52) He conceded he was financially irresponsible, and his receipt of the SOR motivated him to investigate and resolve his delinquent debts. (Tr. 52)²

SOR ¶ 1.f is an alleged collection debt for \$884. Applicant settled and paid \$429 on February 2, 2013. (Tr. 53-56; AE A at 1)

SOR ¶¶ 1.g through 1.i are three alleged medical debts for \$778, \$500, and \$465. Applicant hurt his back in a motorcycle accident. (Tr. 58-59) He is attempting to convince an insurance company to pay the debts in SOR ¶¶ 1.g and 1.h. (Tr. 56) He assured he will pay SOR ¶¶ 1.g and 1.h if his insurance declines to pay them. (Tr. 56) He said he paid the debt in SOR ¶ 1.i, and he provided a confirmation number. (AE B)

Applicant paid the debts in SOR ¶¶ 1.j for \$395 on February 2, 2016, and 1.k for \$290 on November 2, 2015. (Tr. 59-61; AE A at 2, 14; AE D at 22)

Applicant did not resolve the seven debts owed to the creditors totaling \$1,882 as follows: SOR ¶¶ 1.l for \$89; 1.r for \$50; 1.s for \$123; 1.t for \$51; 1.u for \$79; 1.w for \$462; and 1.aa for \$1,028. (Tr. 62, 69) The debt in SOR ¶ 1.aa is about 10 years old. (Tr. 69)

Applicant paid the medical debts in SOR ¶¶ 1.m for \$57, 1.n for \$56, and 1.o for \$27 on October 16, 2015, with a check for \$137. (Tr. 65; AE D at 7) On February 4, 2016, Applicant paid \$389 and resolved the telecommunications debt in SOR ¶ 1.p for \$513. (Tr. 63-64; AE A at 1)

On October 14, 2015, Applicant contacted the telecommunications creditor for the debt in SOR ¶ 1.q for \$149. (Tr. 62) The creditor advised the account was closed.

²It is important to be mindful of the Appeal Board's admonition that "an applicant who begins to resolve debts only after an SOR placed him on notice that his clearance was in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his own interests." ISCR Case No. 14-05476 at 4 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 14-03358 at 4 (App. Bd. Oct. 9, 2015)).

(Tr. 62) On October 16, 2015, Applicant paid the utilities debt in SOR ¶ 1.v for \$158. (Tr. 64; AE D at 7)

The three debts in SOR ¶¶ 1.x for \$55, 1.y for \$662, and 1.z for \$66 were owed to the same collection company. Applicant paid SOR ¶¶ 1.x and 1.z, and he is making \$50 monthly payments to address the debt in SOR ¶ 1.y. (Tr. 66-67; AE A at 4, 8, and 13; AE D at 8)

As soon as Applicant pays a debt, he plans to use the funds to pay other debts. (Tr. 67) He assures he plans to pay all of his debts. (Tr. 70) Applicant's annual income is about \$57,500. (Tr. 24) About three months before his hearing, Applicant began working part time as a clerk in a retail establishment to supplement his income. (Tr. 25) He received about \$250 monthly from his part-time employment. (Tr. 26) His monthly rent is \$1,150, and he recently began receiving \$300 monthly from a roommate. (Tr. 26) In 2015, he was diagnosed with Type 2 diabetes, and his monthly medications cost about \$125. (Tr. 48) He estimated he had about \$1,800 remaining at the end of the month to address his debts. (AE P at 4)

Character Evidence

Applicant provided 11 character statements from friends, colleagues, and supervisors, some of whom have known Applicant for almost 20 years and many served with him in the most elite aviation unit in the Army. (AE S-Y, AA-AD) The statements laud Applicant's duty performance, leadership, trustworthiness, integrity, and important contributions to the national defense. The 11 statements support continuation of his security clearance.

Applicant has received the following awards: Army Commendation Medal (ARCOM); five Army Achievement Medals (AAM); Joint Service Achievement Medal (JSAM); Joint Meritorious Unit Award (JMUA); Army Superior Unit Award (ASUA); Army Good Conduct Medal (3rd Award); National Defense Service Medal (NDSM); Armed Forces Expeditionary Medal (AFEM); Southwest Asia Service Medal with Bronze Service Star (SWASM w/ BSS); Noncommissioned Officer Professional Development Ribbon (NCOPDR); Army Service Ribbon (ASR); Overseas Service Ribbon (OSR); Senior Aviation Badge; and various other badges. (AE C)

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's 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 revised 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 this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It 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*, 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

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" "(c) a history of not meeting financial obligations;" and "(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same." Applicant's history of delinquent debt is documented in his credit reports, SF 86, SOR response, and hearing record. Applicant's SOR alleges, and the evidence establishes Applicant had 22 delinquent debts totaling \$6,897. He also failed to timely file his state and federal income tax returns for tax years 2005 through 2009. Failure to file tax returns may be a federal criminal offense as such conduct can violate 26 U.S.C. § 7203.³ The Government established the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(g) requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 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

³ 26 U.S.C. § 7203, willful failure to file return, supply information, or pay tax, provides:

Any person required under this title to pay any estimated tax or tax, or 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 pay such estimated tax or tax, 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 and, upon conviction thereof, shall be fined not more than \$25,000 (\$100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution.

downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;⁴ 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.

The Appeal Board concisely 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).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 20(a) through 20(d) apply to the non-tax delinquent debts in SOR ¶¶ 1.f, 1.i-1.p, and 1.r-1.aa. AG ¶ 20(e) applies to the debts he disputed in SOR ¶¶ 1.g, 1.h, and 1.q. Applicant's SOR lists 22 delinquent debts totaling \$6,897. He paid 11 debts, 1

⁴The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

debt is in a payment plan, 3 debts are disputed, and 7 debts for \$1,882 are unresolved. He assured he intends to pay the unresolved debts and the disputed debts, should the creditors continue to seek payment from him. He admitted he made some poor financial decisions. Applicant made excellent progress bringing his non-tax delinquent debts to current or paid status.

Separation and divorce, disputes over the deduction for his son on his federal income tax returns, depression, anxiety, and diabetes are all circumstances beyond Applicant's control which adversely affected his finances. Applicant was able to continue his employment as an aircraft mechanic and these issues do not excuse his failure to timely file and pay his federal and state income taxes.

Applicant's failure to timely file his tax returns and pay his taxes raises the most significant security concern. For tax years 2006 to 2009, the IRS filed his tax returns for Applicant on April 8, 2013. All of his tax returns are now filed. He currently owes the IRS about \$11,000. He has a payment plan to resolve his \$11,000 federal tax debt. Applicant indicated he had a remainder of \$1,800 each month, and he did not explain why he was only paying the IRS \$100 a month to address his tax debts. The material he provided from the state tax authority was for tax year 2012, and it was inadequate to address the possibility that he owed state taxes for tax years 2005 to 2009.

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(a):

(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), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

Applicant is a 46-year-old aircraft mechanic employed by a defense contractor, who is seeking to continue his security clearance. He served on active duty in the Army from 1990 to 2001 and in the National Guard from 2001 to 2012. He received an

honorable discharge, and he has qualified for retirement benefits when he is age 60. In 1993, he married, and in 2008, he divorced.

Applicant provided 11 character statements from friends, colleagues, and supervisors, some of whom have known Applicant for almost 20 years and many served with him in the most elite aviation unit in the Army. The statements laud Applicant's duty performance, leadership, trustworthiness, integrity, important contributions to the national defense, and support continuation of his security clearance. Applicant has received the following awards: ARCOM; five AAMs; JSAM; JMUA; ASUA; Army Good Conduct Medal (3rd Award); NDSM; AFEM; SWASM w/ BSS; NCOPDR; ASR; OSR; Senior Aviation Badge; and various other badges.

Applicant admitted responsibility for 22 delinquent debts totaling \$6,897. He paid 11 debts, 1 debt is in a payment plan, 3 debts are disputed, and 7 debts are unresolved. His overall efforts on non-tax debt resolution are sufficient to mitigate all of his non-tax SOR debts. Applicant's separation and divorce, disputes over who should take the tax deduction for his son, depression, stress, and diabetes are circumstances beyond his control that contributed to his adverse financial situation.

Applicant failed to timely file and pay his federal and state income taxes from 2005 through 2009. The IRS filed his federal income tax returns for tax years 2006 through 2009 in 2013, and he has been making payments on his delinquent taxes. However, his history of failing to timely file and pay his federal and state income taxes raises unresolved financial considerations security concerns. He owes about \$11,000 to the IRS, and he is only paying \$100 a month to the IRS when his personal financial statement indicates he has about \$1,800 available monthly to address his tax debt.⁵ He did not provide sufficient documentation from the state tax authority to establish his state tax returns are filed and state taxes paid. When an issue of delinquent taxes is involved, an administrative judge is required to consider how long an applicant waits to file their tax returns, whether the IRS generates the tax returns, and how long the applicant waits after a tax debt arises to begin and complete making payments.⁶

⁵See ISCR Case No. 14-03358 at 3, 5 (App. Bd. Oct. 9, 2015) (reversing grant of a security clearance, noting \$150,000 owed to the federal government, and stating "A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information.").

⁶See ISCR Case No. 14-01894 at 2-6 (App. Bd. Aug. 18, 2015) (reversing grant of a security clearance, discussing lack of detailed corroboration of circumstances beyond applicant's control adversely affecting finances, noting two tax liens totaling \$175,000 and garnishment of Applicant's wages, and emphasizing the applicant's failure to timely file and pay taxes); ISCR Case No. 12-05053 at 4 (App. Bd. Oct. 30, 2014) (reversing grant of a security clearance, noting not all tax returns filed, and insufficient discussion of Applicant's efforts to resolve tax liens). More recently, in ISCR Case No. 14-05476 (App. Bd. Mar. 25, 2016) the Appeal Board reversed a grant of a security clearance for a retired E-9 and cited applicant's failure to timely file state tax returns for tax years 2010 through 2013 and federal returns for tax years 2010 through 2012. Before his hearing, he filed his tax returns and paid his tax debts except for \$13,000, which was in an established payment plan. The Appeal Board highlighted his annual income of over \$200,000 and discounted his non-tax expenses, contributions to DOD, and spouse's medical problems. The Appeal Board emphasized the "the allegations regarding his failure to file tax returns in the

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations concerns 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
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Subparagraphs 1.a through 1.e:	Against Applicant
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Subparagraphs 1.f through 1.aa:	For Applicant
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Conclusion

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

MARK HARVEY
Administrative Judge

first place stating, it is well settled that failure to file tax returns suggest that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information." *Id.* at 5 (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002) (internal quotation marks and brackets omitted).