DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 14-04538
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Braden M. Murphy, Esq., and Andre Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

07/20/2017

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Decision

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Harvey, Mark, Administrative Judge:

Applicant owes delinquent federal and state income taxes for at least five tax years, and he did not timely file his federal and state income tax returns for tax years 2003 through 2015. *See* note 6, *infra*. He did not provide sufficient evidence of resolution of financial issues, and financial considerations security concerns are not mitigated. From 2001 to 2015, Applicant was arrested seven times for alcohol-related driving offenses. In the last three years, he did not attend any alcohol counseling or therapy, and he did not receive an alcohol-use diagnosis or prognosis. He continues to consume alcohol. Alcohol consumption security concerns are not mitigated. Eligibility for access to classified information is denied.

History of the Case

On August 27, 2009, and January 28, 2016, Applicant completed and signed Questionnaires for National Security Positions (SF 86) or security clearance applications (SCA). (Government Exhibit (GE) 1-2) On December 31, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, which became effective on September 1, 2006 (Sept. 1, 2006 AGs).

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. (Hearing Exhibit (HE) 9) Specifically, the SOR set forth security concerns arising under Guidelines F (financial considerations) and G (alcohol consumption). (HE 9)

On February 3, 2016, Applicant responded to the SOR and requested a hearing. (HE 4) On July 22, 2016, Department Counsel was ready to proceed. On August 31, 2016, the case was assigned to me. On September 1, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for September 27, 2016. (HE 6) The hearing was cancelled because Applicant hired counsel shortly before his hearing, and counsel needed time to prepare for the hearing. (HE 5-6) On October 14, 2016, DOHA issued a notice of hearing, setting the hearing for November 10, 2016. (HE 8) The hearing was cancelled because Applicant lost sponsorship shortly before his hearing. (HE 7-8) On February 8, 2017, DOHA issued a notice of hearing, setting the hearing for February 27, 2017. (HE 10)[1] Applicant's hearing was held as scheduled on February 27, 2017.

During the hearing, Department Counsel offered 9 exhibits; Applicant offered 17 exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 42-43, 71, 105-118, 167; Government Exhibits (GE) 1-9; Applicant Exhibits (AE) A-Q) On March 8, 2017, DOHA received a copy of the transcript of the hearing. On May 17, 2017, Applicant provided six exhibits, which were admitted without objection. (AE R-AE W) Applicant's initial suspense was April 27, 2017; however, he received an extension, and the record closed on June 21, 2017. (Tr. 14-15, 198-199; AE S; HE 13) His final exhibit indicated he had become unemployed. (HE 13)

While this case was pending a decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.[2]

Legal Issue

Applicant requested three witnesses employed at DOHA or DOD CAF because he wanted to cross-examine them about the processing of his security clearance in 2011.

[1] At his hearing, Applicant requested an additional delay to hire counsel; however, he said he had met with four attorneys and he was unable to afford their legal fees. (Tr. 6)

[2] Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/5220-6_R20170608.pdf.

(Tr. 19-20; AE P) On June 23, 2011, Applicant signed for interrogatories, and he had 20 days to provide a response. (AE W) On September 27, 2011, Applicant's security clearance was revoked because Applicant failed to respond to the DOHA interrogatories in a timely manner. (AE D) On October 5, 2011, Applicant sent a telefax asking for reinstatement of his security clearance. (AE G) On October 18, 2011, DOHA denied Applicant's request to reopen his case. (AE D) DOHA advised Applicant that his employer could sponsor him for a security clearance on or after September 27, 2012 (one year after his clearance was revoked). (AE D) On January 10, 2012, DOHA advised Applicant that his case would be reopened and his security clearance would be immediately reinstated if his employer sponsored him for a security clearance. (AE D)

Applicant believed the decision to revoke his security clearance was improper because he did not receive an extension to submit his response to interrogatories or a hearing, and he did not receive an attorney. (Tr. 28; HE 2) The loss of his security clearance caused him to be unemployed for eight months and led to his non-tax financial problems. (Tr. 25-26) Department Counsel objected to compelling the witnesses to appear at his hearing because of my lack of authority to subpoena them and because of lack of relevance to the current case. (Tr. 20-24) A supervisor can direct a government employee to appear at a hearing without a subpoena. There was no evidence presented that anyone asked the witnesses to voluntarily appear or that anyone asked their supervisors to direct their appearance.

Applicant wanted to present evidence through the three witnesses that his clearance was improperly denied in 2011, and he believed the DOD owed him lost wages. (Tr. 21; HE 2) On December 4, 2015, the DOHA Director denied Applicant's request for payment citing the Director's lack of jurisdiction for a claim filed more than one year after the alleged loss or damages accrued. (Tr. 21; HE 1) Applicant said he filed his claim to DOHA on January 13 or 28, 2014. (Tr. 30-31; HE 2) Applicant disputed the DOHA Director's determination that his clearance was reinstated on March 13, 2012.[3] (Tr. 27-30) Applicant believed he should be able to claim reimbursement one year after the date he found employment, which was on February 1, 2013. (Tr. 27-39; HE 2 at 4) The DOHA Director also indicated the decision to revoke Applicant's security clearance on September 27, 2011, "was proper and taken in good faith." (HE 1)[4]

[3] See Appendix A to Part 155 - Additional Procedural Guidance, ¶ 43 ("Claims for reimbursement must be filed with the Director, DOHA, or designee, within 1 year after the date the security clearance is granted.").

[4] *See id*. at ¶ 44 ("Reimbursement is authorized only if the applicant demonstrates by clear and convincing evidence to the Director, DOHA, that all of the following conditions are met: a. The suspension, denial, or revocation was the primary cause of the claimed pecuniary loss; and b. The suspension, denial, or revocation was due to gross negligence of the Department of Defense at the time the action was taken, and not in any way by the applicant's failure or refusal to cooperate."). Applicant's failure to timely submit requested documents or to obtain an extension (not merely to request an extension) appears to be an additional bar to payment of his claim under App. A to pt. 155 ¶ 44(b)

I concluded Applicant could present evidence that his loss of employment from October 21, 2011 to February 1, 2013,[5] was not due to his own misconduct or his unemployment was a circumstance beyond his control as potential mitigation of the financial consideration security concerns. (Tr. 32) Department Counsel did not dispute Applicant's description of the actions of the DOD CAF or DOHA employees, and I accept his description as accurate. Statements from the DOD CAF employee and/or the DOHA employee are unnecessary because they were redundant; the government did not contest Applicant's statement that his security clearance was revoked and reinstated; the timeline is supported by documentation from Applicant and DOHA; and there is no evidence that the witnesses would contradict the documentation. Accordingly, his request for the three witnesses was denied.

Findings of Fact

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 1.a through 1i, 1.l through 1.n, 2.b through 2.e, 2.g, and 2.i. He also provided extenuating and mitigating information. His admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 48-year-old specialized senior system engineer who has worked for the same defense contractor for one month. (Tr. 7-9, 169) In 1987, he graduated from high school. (Tr. 8; GE 1) In 1994, he received a bachelor's degree in mechanical engineering, and he has earned 30 credit hours towards a master's degree in engineering management. (Tr. 8, 118) He attended a government master's degree program from 1996 to 1997. (Tr. 118) He has post-graduate credits in government contracting and aerospace engineering. (Tr. 118-119) He has worked for three different employers in the past 18 months. (Tr. 9, 169-171; HE 4; AE J) His current annual salary is $155,000. (Tr. 174) He has never married, and he has a 13-year-old son. (Tr. 10) He has never served in the military. (Tr. 10)

Financial Considerations

Applicant's January 28, 2016 SCA indicates he was unemployed as follows: from November 2013 to June 2014; from October 2011 to November 2012; from July 2010 to September 2010; from September 2009 to November 2009; and from November 2007 to April 2009. (GE 1) Applicant's December 16, 2014, and February 9, 2016 credit reports, bankruptcy documents, and hearing record are the basis for the allegations in the SOR. When Applicant was unemployed, he attempted to refinance his mortgage. (Tr. 80) He was unable to sell his residence. (Tr. 80) Applicant provided the following information about the status of the SOR allegations:

[5] Applicant said his loss of employment was for over eight months, and then later he said it was for eight months. (Tr. 25-26, 28, 163, 196) One of his resumes does not show a break in employment from 2010 to 2012. (HE 4) Another resume shows breaks in employment from September 2010 to present as follows: from May 2016 to August 2016; and from January 2014 to September 2014. (AE C) I asked Applicant to carefully prepare a chronology of his employment and to provide it after his hearing. (Tr. 200-201) He did not provide the requested chronology.

SOR ¶ 1.a alleges Applicant filed a Chapter 13 bankruptcy petition on April 10, 2013, declaring $226,864 in assets and $440,880 in liabilities. On September 13, 2013, his nonpriority, unsecured debts were discharged under Chapter 7 of the Bankruptcy Code. (Tr. 105; GE 6-GE 8; AE B; HE 4)

SOR ¶ 1.b alleges Applicant had a delinquent federal income debt for $12,167 on his 2013 bankruptcy filing. The debt is shown on his bankruptcy as being for "tax period 2001-2003" for $13,545, and it is indicated as a secured claim. (GE 6 at 43 (Schedule D); HE 4)

SOR ¶ 1.c alleges Applicant had a delinquent child support debt for $3,500 on his 2013 bankruptcy filing. (GE 6 at Schedule E) His child support is approximately $1,040 monthly. (Tr. 51-53, 60) Since 2006, he has been about $10,000 behind on two occasions, and the mother of his son forgave the arrearages because of his unemployment. (Tr. 51-53, 57-60) He currently pays two thirds of her son's private school tuition as his child support obligation. (Tr. 52-54, 60) Applicant provided documentation from 2007 to 2010 showing his court-ordered child support payments were reduced during periods of unemployment. (Tr. 66; AE A) Applicant has a great relationship with his son. (Tr. 70) I requested that Applicant provide child support documentation after 2010 along with a statement connecting his periods of unemployment with arrearages in his child support. (Tr. 68, 105) The mother of his son said she was not seeking payment of the $3,500 debt.

SOR ¶ 1.d alleges Applicant had a state tax lien issued in June 2014 for $1,853. Applicant admitted responsibility for this debt. (HE 4; GE 7; GE 8)

SOR ¶ 1.e alleges Applicant had a federal tax lien issued in April 2009 for $9,042. Applicant did not indicate the tax year debt that was the source of the lien. (Tr. 177) He said he made two or three payments, and then he lost his employment because his clearance was revoked. (Tr. 177) He was seeking information from the Internal Revenue Service (IRS) to support his belief that the bankruptcy discharged his IRS debt. (Tr. 164) He promised to supply documentation showing the result of his inquiry to the IRS. (Tr. 164) There is sufficient evidence to conclude this tax debt for $9,042 was discharged because there is no evidence the lien was attached to any property. *See* note 6, *supra*. This debt could also be a duplication of the debt in SOR ¶ 1.d, which would not be discharged by his bankruptcy. *Id*. I have credited Applicant with mitigating the debt in SOR ¶ 1.e.

SOR ¶ 1.f alleges Applicant failed to timely file his federal and state tax returns for tax years 2001 to 2012. I granted Department Counsel's motion to amend SOR ¶ 1.f to allege Applicant failed to timely file his federal and state tax returns for tax years 2003 to 2012. (Tr. 182) Around 2001, the IRS audited Applicant's tax return for tax year 2001. (Tr. 151) He timely filed his tax returns for tax years 2001 and 2002. (Tr. 152) In early February 2017, he filed his federal and state tax returns for tax year 2003. His federal tax return was late more than three years, and he lost his $2,500 refund. (Tr. 154-155) He said he lost about $17,000 or $20,000 in refunds because he failed to file his tax returns within three years of when they were due. (Tr. 156, 168) During his Office of Personnel Management (OPM) personal subject interview (PSI) it was noted that his tax returns for

tax years 2003 through 2008 were not filed. (Tr. 156) He said the audit in 2001 was so traumatic he did not want to complete his tax returns. (Tr. 156) He filed his federal and state tax returns for tax years 2007 through 2012 on or about May 1, 2013 (the date Applicant signed the tax returns) through June 21, 2013 (the date Applicant's tax preparer signed the tax returns). (Tr. 151, 156; GE 4) He was unclear about whether he was aware of the requirement to file a tax return every year. (Tr. 155, 158) Some of the tax returns indicated he owed additional taxes: 2009 owes IRS $535; 2009 owes state $284; 2010 owes IRS $1,505; 2010 owes state $764; 2011 owes IRS $5,073; 2011 owes state $4,553; 2012 owes IRS $488; and 2012 owes state $749 (GE 4 at 78, 85, 89, 93, 95, 99, 102, 108)

Department Counsel moved to amend the SOR to add SOR ¶ 1.o, which alleges that Applicant failed to timely file his federal and state tax returns for tax years 2013, 2014, and 2015. (Tr. 182-183) Applicant was unclear about whether he objected to the amendment. (Tr. 183) At the hearing, I granted the amendment request subject to Applicant presenting post-hearing evidence about filing his tax returns for tax years 2013, 2014, and 2015. (Tr. 183) Applicant did not provide any post-hearing evidence. Upon further consideration, the motion to amend the SOR is denied.[6]

Applicant has not filed his federal and state tax returns for tax year 2013. (Tr. 159-160) In 2009, Applicant received a mortgage loan modification. (AE M) Applicant listed two secured debts on his bankruptcy filing owed to the same mortgage lender for $161,179 (arrearage $18,887) and $232,785 (arrearage $13,879). (GE 6) The mortgage lender obtained a $200,000 deficiency judgment. (Tr. 179) He said he received a Form 1099 in 2013 indicating he received a discharge of $241,000 debt owed to his mortgage lender. (Tr. 180) He said his property was foreclosed and resold in 2016, and he expected to receive a Form 1099 from the lender "for the sales price of the house, which counterbalances the 2013 [Form] 1099 that they showed me as a deficiency." (Tr. 159-160, 179) He said, in 2016, the lender resold the property for $365,000, and the lender did not have a loss on the property. (Tr. 179-180) I requested that he provide a copy of the "2013 Form 1099" he received from the mortgage lender. (Tr. 181) Applicant provided two Form 1099-As for tax year 2015 indicating his lender acquired his property on June 13, 2014. (AE R) For one loan, the fair market value was $184,500, and the balance of principal outstanding was $144,216. For the other loan, the fair market value was

[6] The SOR did not allege that Applicant failed to file his tax returns for tax years 2013, 2014, and 2015 and that he owes federal and state income taxes for tax years 2010 and 2012. 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.

(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)). I have considered the non-SOR negative evidence for the four purposes (reasons (b) to (e)), and not for any other purpose.

$277,000, and the balance of principal outstanding was $232,785. (AE R) From Applicant's description of the foreclosure and bankruptcy discharge of his mortgages, he does not owe any additional taxes from the discharge of his mortgage debts.[7]

Applicant did not file his federal and state tax returns for tax year 2014 because he was unemployed; however, he took money out of his retirement fund, which he acknowledged was taxable income. (Tr. 161) He did not file his federal and state tax returns for tax year 2015 because he wanted to get a Form 1099 on the sale of his residence. (Tr. 161) He did not provide a credible reason for not filing his 2013, 2014, and 2015 federal and state tax returns.

SOR ¶ 1.g alleges Applicant owes delinquent federal income taxes for tax year 2009 for $905. (GE 1; HE 4) This tax debt could have been discharged if the IRS filed Applicant's tax return in 2010; however, there is no evidence it was filed in 2010. *See* note 6, *supra*.

SOR ¶¶ 1.h and 1.i allege Applicant owes delinquent federal income taxes for tax year 2011 for $7,111 and for tax year 2012 for $682. (GE 1; HE 4) These tax debts are too close in time to Applicant's 2013 bankruptcy, and they were not discharged. *See* note 6, *supra*.

SOR ¶¶ 1.j and 1.k allege Applicant owes delinquent medical debts for $230 and $106. SOR ¶¶ 1.l, 1.m, and 1.n allege Applicant owes delinquent utility debts to the same company for $106, $104, and $134. Department Counsel withdrew SOR ¶¶ 1.j through 1.n. (Tr. 46-47)

Applicant's January 28, 2016 SCA indicates that he was working out arrangements with the IRS via their "Offer and Compromise," and he is seeking reimbursement from DOHA for the improper revocation of his security clearance. (GE 1 at 74-75) He also said he did not file his 2013 tax return "in the amount of $1,726," and he will file later this year. (GE 1 at 75)

Applicant said the IRS filed several tax returns for him, and he refiled and made adjustments. (Tr. 179) I asked Applicant to provide IRS tax transcripts for each tax year at issue. (Tr. 179) Applicant claimed his tax debts were "rolled into part of my 2013 bankruptcy that I was told by the IRS, now that I've completed the 2003 tax returns." (Tr. 165) He said he would supply documentation from the IRS indicating his tax debts were discharged. (Tr. 165, 176) He said his tax liens were "zeroed out" once he filed his 2013 tax return. (Tr. 165) He is not making any payments to the IRS or state tax authority. (Tr. 166, 168)

[7] *See* Internal Revenue Service website ("The Mortgage Forgiveness Debt Relief Act of 2007 generally allows taxpayers to exclude income from the discharge of debt on their principal residence. Debt reduced through mortgage restructuring, as well as mortgage debt forgiven in connection with a foreclosure, qualify for this relief."), https://www.irs.gov/uac/home-foreclosure-and-debt-cancellation. In addition, debts discharged through bankruptcy do not result in income through the IRS Form 1099-C process. *See* Legal Zoom website, http://info.legalzoom.com/bankruptcy-supercede-1099c-27085.html.

Applicant's bankruptcy discharge states, "Some of the most common types of debts which are not discharged in a chapter 7 bankruptcy are: a. Debts for most taxes." (GE 6) For scheduled creditors, Applicant's 2013 bankruptcy filing indicates:

Name	Class	Claim Scheduled	Claim Asserted	Claim Allowed
IRS	Unsecured	N/A	$2,888	$2,888
IRS	Secured	N/A	$13,545	$13,545
IRS	Priority	$25,712	$9,279	$9,279

Applicant believed his tax debts were discharged through his Chapter 7 bankruptcy. IRS tax transcripts are one means of showing his federal income tax debts were resolved through his bankruptcy in 2013.[8] No post-hearing tax transcripts were received.

Alcohol Consumption

SOR ¶ 2.a alleges Applicant consumed alcohol from 1991 to about June 2015 at times to intoxication. He consumes alcohol once or twice a week in moderation. (Tr. 144) He does not drive after consuming alcohol. (Tr. 145) He attended some Alcohol Anonymous meetings, mostly in the 2008 to 2009. (Tr. 146-147) He does not believe he has a problem with alcohol consumption. (Tr. 147) He said he would provide the medical diagnosis proving he did not have an alcohol problem. (Tr. 148) He attributed his legal problems with alcohol to his diabetes. (Tr. 148; AE O) Before he learned he was diabetic, he mixed high-sugar drinks, such as cranberry with alcohol, which caused a "huge spike" in his blood sugar. (Tr. 149)

SOR ¶ 2.b alleges Applicant was arrested on December 20, 2001, and charged with driving under the influence of alcohol (DUI). On August 2, 2002, Applicant pleaded guilty to DUI, and he was sentenced to pay a $1,000 fine and to probation before judgment for one year. (Tr. 121, 131; HE 4) He does not have a conviction for his 2001 DUI offense. His successful completion of probation resulted in dismissal of his case without a judgment of guilty.

[8] Applicant is correct that federal tax debt can be discharged through bankruptcy provided the debt meet the Internal Revenue Service (IRS) criteria for discharge under Chapter 7 of the Bankruptcy Code. *See* Nolo website, (In general, four criteria must be met before tax debts are discharged: (1) The return was due at least three years before the bankruptcy is filed; (2) The return was filed at least two years before the bankruptcy is filed; however, the return must be accurate; (3) A tax lien must not be attached to any property; and (4) The taxing authority must have assessed the tax (entered the liability on the taxing authority's records) at least 240 days before the bankruptcy is filed.), http://www.nolo.com/legal-encyclopedia/tax-debt-chapter-7-bankruptcy.html. *See also* Findlaw Website, "Bankruptcy and Taxes: Eliminating Tax Debts in Bankruptcy," (stating same) http://files.findlaw.com/pdf/bankruptcy/bankruptcy.findlaw.com_chapter-7_bankruptcy-and-taxes-eliminating-tax-debts-in-bankruptcy.pdf; Nolo website, Will Filing For Chapter 7 Bankruptcy Remove A Tax Lien?, http://www.thebankruptcysite.org/resources/bankruptcy/debt-relief/will-filing-for-bankruptcy-remove-a-tax-lien.

SOR ¶ 2.c alleges Applicant was arrested on October 27, 2002 and charged with DUI. On September 22, 2003, Applicant pleaded guilty to DUI, and he received a $750 fine. (Tr. 121; HE 4)

SOR ¶ 2.d alleges Applicant was arrested on January 7, 2005 for driving while intoxicated by alcohol (DWI). (Tr. 122-123) Because of problems with the breathalyzer test, he was taken to a hospital for a blood test. (AE F at 4) His blood alcohol content (BAC) at the hospital was .073. (AE F at 4, 12) He did not provide the time of the arrest and the time of the blood test. He was unsure about whether he was acquitted of this offense. (Tr. 123-124) However, in his January 28, 2016 SCA he said he was acquitted of all charges in March 2005. (GE 1 at 56) In another document, he said he was acquitted. (AE F at 4)

SOR ¶ 2.e alleges Applicant was arrested on January 21, 2006 and charged with DUI and driving with a revoked license. His BAC was .13. (AE F at 6; GE 3) On May 2, 2007, Applicant was convicted of operating a vehicle under the influence of alcohol (OUI) and driving with a revoked license. (AE F at 8) He was sentenced to 18 months of probation and a fine. (Tr. 132; GE 1 at 57) On April 24, 2007, he completed a 26-week alcohol counseling course. (AE F at 16-18) On August 20, 2008, his probation was revoked following his arrest on May 5, 2008, for operating a vehicle while intoxicated (OWI). (Tr. 124-127) Applicant said his probation was revoked because he was late for an appointment with his probation officer due to traffic, and he was accused of failing to timely use the home breathalyzer for alcohol content on several occasions. (Tr. 124-126; AE F at 7) When his probation was revoked, he spent about six months in jail. (Tr. 127, 129) He lost him employment while he was in jail. (Tr. 128)

SOR ¶ 2.f alleges Applicant was arrested on May 5, 2008, and charged with OWI and OWI. In January 2009, he pleaded guilty to OWI, and he was sentenced to pay a $1,000 fine and one year of probation. Applicant pulled his vehicle over to the side of the road, and he fell asleep. (Tr. 128-129) His counsel told the judge that indicated he was diabetic. (Tr. 128-131) He presented a letter from his physician indicating he was diabetic. (AE N) He denied that he had consumed alcohol and asserted he was sleepy due to a sugar spike from eating pancakes. (Tr. 133)

SOR ¶ 2.g alleges Applicant was arrested in July 2012 and charged with driving while impaired by alcohol. He denied that he as consuming alcohol. (Tr. 134) He said he was arrested because he refused to continue the field sobriety test on a rocky path, and he argued with the police officer. (Tr. 134-135; GE 1) The case was dismissed on December 27, 2012. The file does not contain a police report concerning this incident.

SOR ¶ 2.h alleges Applicant was terminated from a 26-week alcohol treatment program in January 2013 for non-attendance. Applicant's probation officer recommended that he voluntarily attend an alcohol treatment program. (Tr. 137) Each class cost $38, and at that time Applicant was unemployed. (Tr. 136-137) Applicant attended two or three classes, and he decided he could not afford additional classes. (Tr. 136) He did not believe the classes had value. (Tr. 137)

SOR ¶ 2.i alleges Applicant was arrested on June 18, 2013 and charged with DUI. He has not driven after consuming alcohol for four years. (Tr. 147) He said he would provide proof that he had completed some alcohol rehabilitation programs after his hearing. (Tr. 178) He said he was never diagnosed as alcohol dependent. (Tr. 178)

In June 2015, the police stopped Applicant for running a red light. (Tr. 138-139) Applicant had consumed a couple of beers, and he was arrested for DUI. (Tr. 139-140) The case was dismissed. (Tr. 140; GE 1 at 54)

Character Evidence

Applicant's friend and coworker, who has known Applicant for 22 years, described Applicant as highly intelligent, having a positive attitude, reliable, generous, diligent, and protective of classified information. (Tr. 74-88) Applicant's manager and friend, who has known Applicant about six years, described him as protective of classified information, diligent, a responsible consumer of alcohol, a great father, generally responsible, and careful with his spending. (Tr. 90-103)

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 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 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, Secretary of Defense, and DNI 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. 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 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. . . . 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 in order 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 four disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts;" "(b) unwillingness to satisfy debts regardless of the ability to do so;" "(c) a history of not meeting financial obligations;" and "(g) failure to file annual Federal, state, or local income tax returns as required." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

> It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented in his SCAs, credit reports, SOR response, bankruptcy records, and hearing. The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(b), 19(c), and 19(g) requiring additional inquiry about the possible applicability of mitigating conditions.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

> (a) the behavior happened so long ago,[9] 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;

[9] A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. February 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sep. 13, 2016)).

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;[10]

(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 DOHA 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).

None of the mitigating conditions fully apply. Applicant is credited with mitigating SOR ¶¶ 1.a, 1.c, and 1.e. His unemployment was the primary cause of his bankruptcy, and the situation was partially beyond his control. He has partial responsibility for his unemployment, because in 2011, when his security clearance was revoked, Applicant had not filed his federal and state tax returns for tax years 2003 to 2010, and he had five alcohol-related arrests from 2001 to 2010. He owed delinquent federal taxes from 2001

[10] The 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)).

to 2003. He is credited with mitigating his child support debt. The mother of his son acknowledged that she was unaware of any current child support delinquent debt. The tax debt in SOR ¶ 1.e for $9,042 was most likely part of the tax debt in SOR ¶ 1.b for $12,167. SOR ¶ 1.e is mitigated as a duplication.

Applicant's owes delinquent federal and state income taxes for about five years, and he did not timely file his federal and state income tax returns for tax years 2003 through 2015. *See* note 6, *supra*.

A willful failure to timely make (means complete and file with the IRS) a federal income tax return is a misdemeanor-level federal criminal offense.[11] For purposes of this decision, I am not weighing Applicant's failure to timely file his federal income tax returns against him as a federal crime. *See* note 6, *supra*.

The record establishes that Applicant failed to timely file his federal and state income tax returns for tax years 2003 through 2015. The DOHA Appeal Board has commented:

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

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis in original). *See* 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

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[11] Title 26 U.S.C, § 7203, willful failure to file return, supply information, or pay tax, reads:

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

A willful failure to make return, keep records, or supply information when required, is a misdemeanor without regard to 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).

Appeal Board clarified that even in instances where an "[a]pplicant has purportedly corrected [the applicant's] 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 [applicant's] longstanding prior behavior evidencing irresponsibility" including a failure to timely file federal income tax returns. *See* ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. June 15, 2016) (characterizing "no harm, no foul" approach to an Applicant's course of conduct and employed 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).

In ISCR Case No. 15-01031 at 2 (App. Bd. June 15, 2016), the Appeal Board reversed the grant of a security clearance, and noted the following primary relevant disqualifying facts:

> Applicant filed his 2011 Federal income tax return in December 2013 and received a $2,074 tax refund. He filed his 2012 Federal tax return in September 2014 and his 2013 Federal tax return in October 2015. He received Federal tax refunds of $3,664 for 2012 and $1,013 for 2013.

Notwithstanding the lack of any tax debt owed in ISCR Case No. 15-01031 (App. Bd. June 15, 2016), the Appeal Board provided the following principal rationale for reversing the grant of a security clearance:

> Failure to comply with Federal and/or state 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. . . . By failing to file his 2011, 2012, and 2013 Federal income tax returns in a timely manner, Applicant did not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information.

ISCR Case No. 15-01031 at 4 (App. Bd. June 15, 2016) (citations omitted). Applicant did not provide proof that he "made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements," and AG ¶ 20(g) does not apply.

There is insufficient evidence about why Applicant was unable to make greater progress resolving his tax issues. There is insufficient assurance that his financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, he failed to establish that financial considerations security concerns are mitigated.

Alcohol Consumption

AG ¶ 21 articulates the Government's concern about alcohol consumption, "Excessive alcohol consumption often leads to the exercise of questionable judgment or

the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness."

AG ¶ 22 lists two conditions that could raise a security concern and may be disqualifying in this case including:

> (a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; and
>
> (c) habitual or binge consumption of alcohol[12] to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

An Administrative "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." ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted).

AG ¶¶ 22(a) and 22(c) apply. Applicant's has seven arrests and three convictions for alcohol-related driving offenses. When Applicant was arrested on January 21, 2006, his BAC was .13, establishing that he engaged in binge-alcohol consumption to the extent of impaired judgment.

AG ¶ 23 details conditions that could mitigate security concerns including:

> (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
>
> (b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has

[12] Although the term "binge" drinking is not defined in the Adjudicative Guidelines, the generally accepted definition of binge drinking for males is the consumption of five or more drinks in about two hours. The definition of binge drinking was approved by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) National Advisory Council in February 2004. *See* U.S. Dept. of Health and Human Services, NIAAA Newsletter 3 (Winter 2004 No. 3), http://www.pubs.niaaa.nih.gov/publications/Newsletter/winter2004/NewsletterNumber3.pdf. "Binge drinking is the most common pattern of excessive alcohol use in the United States." *See* the Center for Disease Control website, (stating "The National Institute on Alcohol Abuse and Alcoholism defines binge drinking as a pattern of drinking that brings a person's blood alcohol concentration (BAC) to 0.08 grams percent or above. This typically happens when men consume 5 or more drinks, and when women consume 4 or more drinks, in about 2 hours."), https://www.cdc.gov/alcohol/fact-sheets/binge-drinking.htm.

demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

(c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

(d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Security clearance cases are difficult to compare, especially under Guideline G, because the facts, degree, and timing of the alcohol abuse and rehabilitation show many different permutations. The DOHA Appeal Board has determined in cases of substantial alcohol abuse that AG ¶ 23(b) did not mitigate security concerns unless there was a fairly lengthy period of abstaining from alcohol consumption. *See* ISCR Case No. 06-17541 at 3-5 (App. Bd. Jan. 14, 2008); ISCR Case No. 06-08708 at 5-7 (App. Bd. Dec. 17, 2007); ISCR Case No. 04-10799 at 2-4 (App. Bd. Nov. 9, 2007).

I have carefully considered the Appeal Board's jurisprudence on alcohol consumption and Applicant's history of alcohol consumption. He presented some mitigating information: he has a good record of employment ; he received education about alcohol abuse several years ago; he successfully completed several periods of probation; he paid a heavy penalty for his alcohol-related offenses; and he does not have any alcohol-related convictions since 2009 (for conduct in 2008). He is credited with mitigating SOR ¶ 2.h because he did not have the funds to pay for the alcohol treatment program in 2013.

The evidence against mitigation is more substantial. From 2001 to 2015, Applicant was arrested seven times for alcohol-related driving offenses (2001, 2002, 2005, 2006, 2008, 2012, and 2015), and he was convicted three times of DWI, DUI, or OUI (2003, 2007, and 2009). In the last three years, he did not attend any alcohol counseling or therapy, and he did not receive an alcohol-use diagnosis or prognosis. He continues to consume alcohol. The evidence has not resolved my doubts about Applicant's current reliability, trustworthiness, and good judgment. Alcohol consumption security concerns are not 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 Guidelines F and G are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 48-year-old specialized senior system engineer who has worked for the same defense contractor for one month. In 1994, he received a bachelor's degree in mechanical engineering, and he has earned 30 credit hours towards a master's degree in engineering management. He attended a government master's degree program from 1996 to 1997. He has post-graduate credits in government contracting and aerospace engineering. He has worked for three different employers in the past 18 months. His current annual salary is $155,000.

Applicant's two character witnesses described Applicant as highly intelligent, having a positive attitude, responsible, reliable, generous, a great father, diligent, a responsible consumer of alcohol, careful of his spending, and protective of classified information. Their statements support his continued access to classified information.

Applicant has held a security clearance for more than two decades, and there is no evidence of a security violation. He has an excellent record of employment; he received a substantial penalty for his DUIs, DWIs, and OUI; and he completed all court-ordered requirements. He received some alcohol-related education.

The evidence against reinstatement of his security clearance is more substantial. From 2001 to 2015, the police arrested Applicant seven times for alcohol-related driving offenses, and he received three alcohol-related convictions. In the last three years, he did not attend any alcohol counseling or therapy, and he did not receive an alcohol-use diagnosis or prognosis. He continues to consume alcohol.

Applicant failed to timely file his federal and state tax returns for several years. He has not filed his federal and state tax returns for tax years 2013, 2014, and 2015. He has unresolved state and federal income tax debts, and his unresolved debts are not in an established payment plan. When a tax issue is involved, an administrative judge is required to consider how long an applicant waits to file his or her 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.[13] The primary problem here is that Applicant has

[13] The recent emphasis of the Appeal Board on security concerns arising from tax cases is instructive. *See* ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016) (reversing grant of security clearance

known that he owed substantial state and federal tax debts for several years and his federal and state tax debts have been increasing even after the SOR was issued. His filing of all unfiled tax returns shortly before his hearing is too little too late to mitigate security concerns.

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. Alcohol consumption and criminal conduct security concerns are 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f through 1.i:	Against Applicant
Subparagraphs 1.j through 1.n:	Withdrawn

and stating, "His delay in taking action to resolve his tax deficiency for years and then taking action only after his security clearance was in jeopardy undercuts a determination that Applicant has rehabilitated himself and does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation's secrets."); 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 allegations regarding his failure to file tax returns in the 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). *See also* 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.").

Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a through 2.g:	Against Applicant
Subparagraph 2.h:	For Applicant
Subparagraph 2.i:	Against Applicant

Conclusion

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

_____
Mark Harvey
Administrative Judge