



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



In the matter of:

)
)
)
)
)

ISCR Case No. 14-05653

Applicant for Security Clearance

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel

For Applicant: *Pro se*

02/14/2017

Decision

HARVEY, Mark, Administrative Judge:

Applicant has four unresolved tax liens totaling \$27,696 filed in 2005 and 2012. In addition, he failed to timely file his federal income tax returns for tax years 2003, 2005, 2007, 2008, 2009, and 2011. Applicant misunderstood the question about federal taxes on his March 12, 2014 Questionnaire for National Security Positions (SF 86) or security clearance application (SCA) when he incorrectly denied that he had delinquent taxes, and he denied that he failed to timely file his federal tax returns. Personal conduct security concerns are mitigated; however, financial consideration security concerns are not mitigated. Access to classified information is denied.

History of the Case

On March 12, 2014, Applicant completed and signed an SCA. (Government Exhibit (GE) 1) On March 2, 2016, 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*, 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* (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF did not find 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. (Hearing Exhibit (HE) 2) Specifically, the SOR set forth security concerns arising under the financial considerations and personal conduct guidelines.

On May 9, 2016, Applicant responded to the SOR and requested a hearing. On July 18, 2016, Department Counsel indicated he was ready to proceed. On August 8, 2016, the case was assigned to me. On September 6, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for October 5, 2016. (HE 1) The hearing was held as scheduled.

Department Counsel offered five exhibits; Applicant did not offer any exhibits; and all proffered exhibits were admitted without objection. (Tr. 20, 27-34; GE 1-5) Applicant explained that he was not conceding he falsified his SCA. (Tr. 32-33) On October 12, 2016, DOHA received the transcript of the hearing. A post-hearing delay was granted until October 27, 2016, to permit Applicant to provide additional information about his finances. (Tr. 58) On November 30, 2016, Applicant provided 11 exhibits, which were admitted without objection. (AE A-AE K)

Findings of Fact¹

In Applicant's SOR response, he admitted the allegations in SOR ¶¶ 1.a through 1.e, and he denied the allegation in SOR ¶ 2.a. He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is 55 years old, and he has worked as a field service technician for a company since 2008. (Tr. 11, 38) In 1979, he graduated from high school, and in 1983, he received an associate's degree in computer repair. (Tr. 12) He served in the Army from 1987 to 1989, and he received an honorable discharge. (Tr. 13) In 1987, he married, and he was subsequently divorced. (Tr. 14) His children are ages 28 and 32, and he does not have any children living in his home. (Tr. 14-15) He has never held a security clearance. (Tr. 37)

Financial Considerations

Applicant repairs computers and terminals for his employer. (Tr. 38) He is sporadically paid by the job, and recently he has not received any income. (Tr. 39) He does odd jobs such as cutting lawns to earn income. (Tr. 40) He does not have any money in his bank accounts. (Tr. 40) He does not own any vehicles, and he receives \$127 monthly in Section 8 housing assistance. (Tr. 40-41) He has not received any credit counseling. (Tr. 50) He "had plenty of times" when he was unemployed. (Tr. 53) The evidence from Applicant's credit reports, SOR response, Office of Personnel Management personal subject interview (OPM PSI), and hearing record establish the following status for his SOR debts:

¹Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

Applicant accepted responsibility for the telecommunications-collection debt in SOR ¶ 1.a for \$556, and he said he would pay it when able to do so. (Tr. 35-36) The debt accrued two or three years ago. (Tr. 41) He negotiated a cell-phone plan with the creditor. (Tr. 42) He eventually rejected the cell-phone plan. (Tr. 42)

The SOR alleges and Applicant acknowledged responsibility for four tax liens totaling \$27,696 as follows: ¶ 1.b for \$9,267 entered in 2005; ¶ 1.c for \$8,586 entered in 2012; ¶ 1.d for \$4,668 entered in 2012; and ¶ 1.e for \$5,175 entered in 2012. For several years Applicant brought his tax documentation to the Internal Revenue Service (IRS), and the IRS prepared his tax returns. (Tr. 54) He said he did not understand why the IRS changed from giving him refunds to wanting more funds. (Tr. 49, 57) More recently he had difficulty finding tax assistance. (Tr. 55) He said he filed all of his tax returns, except for tax year 2015. (Tr. 36, 48) Applicant was unable to answer specific questions at his hearing about the basis for the tax liens because he did not have the documentation he sent or received from the IRS at the hearing. (Tr. 44-46) Applicant said around 2014, he had an agreement with the IRS in which he does not have to make any payments until he is financially able to do so. (Tr. 35, 46-47, 57)

The following table summarizes the federal income tax filing dates and refund or amount owed information:

Tax Year	Date Federal Tax Return Received by IRS	Adjusted Gross Income	Federal Refund (+) ² Or Owed (-)	Exhibit
2003	Oct. 18, 2011	\$40,095	-\$6,123	B
2005	Sept. 18, 2007	\$17,250	+\$55	C
2006	Sept. 18, 2007	\$9,330	+\$1,061	D
2007	Aug. 13, 2013	\$23,205	-\$661	E
2008	Oct. 18, 2011	\$20,449	-\$5,830	F
2009	Oct. 18, 2011	\$11,954	-\$3,030	G
2010	Oct. 18, 2011	\$23,303	-\$8,462	H
2011	Aug. 13, 2013	\$19,097	-\$4,154	I
2012	Oct. 16, 2014	\$3,524	-\$420	J
2013	Oct. 16, 2014	\$38,610	-\$510	K

Generally, filing an extension for taxpayers residing inside the United States results in an extension limited to six months after the April 15 due date following the tax year, and the six-month extensions are automatic.³

²Applicant's refunds for tax years 2005 and 2006 were intercepted to pay federal income taxes for 1998.

³See Internal Revenue Service (IRS) Form 4868, Application for Automatic Extension of Time To File U.S. Individual Income Tax Return, <https://www.irs.gov/pub/irs-pdf/f4868.pdf>.

Personal Conduct

Section 26, Financial Record, of Applicant's SCA asks in the past seven (7) years: have "you failed to file or pay Federal, state, or other taxes when required by law or ordinance?" (GE 1) Applicant answered "no" to this question. Applicant denied that he understood the question, and explained he had a payment agreement with the IRS. All his tax returns are filed, and he does not have to pay any taxes. (Tr. 51-52; HE 2) Because of his payment agreement with the IRS, "all of that is like null and void." (Tr. 51)

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 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 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 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.

Applicant’s history of delinquent debt is documented in his credit reports, SOR response, and hearing record. 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.” AG ¶ 19(g) is not established. The record established the disqualifying conditions in AG ¶¶ 19(a) and 19(c) 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 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).

No mitigating conditions fully apply; however, Applicant presented some important positive financial information. Applicant was unemployed or underemployed for several years. He acknowledged his delinquent debts, and he said he intends to pay his debts.

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)).

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.⁵ 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.⁶

The negative financial considerations concerns are more substantial. The SOR alleges and Applicant acknowledged responsibility for four tax liens totaling \$27,696 filed in 2005 and 2012. In addition, the record establishes that Applicant failed to timely file his federal income tax returns for tax years 2003, 2005, 2007, 2008, 2009, and 2011. His income was below the filing threshold in 2012. 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.

⁵Title 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).

⁶Applicant's SOR does not allege that he did not timely file his federal tax returns for tax years 2003, 2005, 2007, 2008, 2009, and 2011. 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)). Applicant's failure to timely file his federal tax returns for six tax years from 2003 to present will not be considered except for the five purposes listed above.

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. 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 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 reversal:

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).

The negative financial and judgment information in Applicant’s case is significant. The record established that Applicant has owed four tax liens totaling \$27,696 since 2012. He has owed federal taxes since 1998 as indicated by his tax year 2005 and 2006 refunds being diverted to pay 1998 taxes, and the 2005 tax lien for \$9,267. He did not disclose any payments to address his tax debts. In 2014, the IRS put Applicant’s case into an uncollectible status. This IRS determination is insufficient to fully mitigate financial considerations security concerns.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes one condition that could raise a security concern and may be disqualifying in this case. AG ¶ 16(a) provides, "(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . used to conduct investigations, [or] determine security clearance eligibility. . . ." ⁷

Applicant answered "no" to financial questions in Section 26 about his failure to file or pay federal income taxes. Applicant credibly explained he did not understand the requirement to report his delinquent taxes, tax liens, and failure to timely file his tax returns because the IRS had placed his tax debt in an uncollectible status, and he was not being required to make payments to the IRS. He has refuted the falsification allegation, and he did not intentionally provided false information on his SCA with intent to deceive. *See also* AG ¶ 17(f) (stating, "the information was unsubstantiated . . ."). Personal conduct security concerns 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(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

⁷The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

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 55 years old, and he has worked as a field service technician for a company since 2008. In 1979, he graduated from high school, and in 1983, he received an associate's degree in computer repair. He served in the Army from 1987 to 1989, and he received an honorable discharge. In 1987, he married, and in 2007, he was divorced. His children are ages 28 and 32, and he does not have any children living in his home. He has never held a security clearance.

Applicant presented some positive financial information. Circumstances beyond his control adversely affected Applicant's finances. He was unemployed or underemployed for several years. He acknowledged his delinquent debts, and he said he intends to pay his debts.

Applicant has four tax liens totaling \$27,696 filed in 2005 and 2012. In addition, he failed to timely file his federal income tax returns for tax years 2003, 2005, 2007, 2008, 2009, and 2011. When a tax issue 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.⁸ The primary problem is Applicant failed to timely file several

⁸The 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 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

tax returns, has owed taxes since 1998, and failed to provide evidence of payments since 2007.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. 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 a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

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. Personal conduct security concerns are mitigated; however, financial considerations security 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
Subparagraphs 1.a through 1.e:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

MARK HARVEY
Administrative Judge

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.").