



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



In the matter of:

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ISCR Case No. 15-00029

Applicant for Security Clearance

Appearances

For Government: Carroll Connelley, Esq., Department Counsel

For Applicant: *Pro se*

08/31/2016

Decision

HARVEY, Mark, Administrative Judge:

The statement of reasons (SOR) alleges 15 delinquent debts totaling \$41,919, including one federal and two state tax debts and a Chapter 13 bankruptcy was dismissed in 2004. He has made some progress paying his delinquent tax debts and improving his finances. However, his history of owing federal and state income taxes continues to raise unresolved financial considerations security concerns. Access to classified information is denied.

History of the Case

On October 13, 2012, Applicant completed and signed a Questionnaire for National Security Positions (e-QIP) or security clearance application (SCA). (Government Exhibit (GE) 1) On September 14, 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 November 28, 2015, Applicant responded to the SOR and requested a hearing. On February 5, 2016, Department Counsel was ready to proceed. On April 20, 2016, the case was assigned to me. On May 16, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for June 6, 2016. (HE 1) The hearing was held as scheduled.

During the hearing, Department Counsel offered eight exhibits into evidence. (Tr. 18-19, 38; Government Exhibit (GE) 1-8) Applicant offered two exhibits. (Tr. 20-21; Applicant Exhibit (AE) A-B) The transcript was received on June 14, 2016. On June 17, 2016, Applicant provided four exhibits. (AE C-F) Applicant requested and received an extension to submit additional evidence until July 1, 2016. (HE 4) He did not provide any additional documents after June 17, 2016, and on August 24, 2016, I asked him whether he provided any additional evidence. (HE 5) On August 24, 2016, he provided an updated credit report, and he indicated he had received several offers of employment with substantial increases in pay, which could be used to pay his delinquent debts. (AE G; AE H) On August 25, 2016, he provided a draft property settlement agreement related to his pending divorce, a rental application, and an August 25, 2016 letter from Applicant's divorce attorney. (AE I-AE K) All exhibits were admitted without objection. The record closed on August 25, 2016.

Findings of Fact

In Applicant's SOR response, he admitted some of the underlying facts of the SOR allegations. The facts admitted are cited in the Findings of Fact section. He also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 60-year-old software deployment engineer continuously employed by a defense contractor since 2009. (Tr. 8-9, 29) In 1974, he graduated from high school. (Tr. 6) He has the equivalent to an associate's degree. (Tr. 6) He received several technical certifications in information technology. (AE C) He never served in the military. (Tr. 8) In 1974, he married, and in 1980, he divorced. (Tr. 7) In 1981, he married, and in 1986, he divorced. (Tr. 8) In 1992, he married his spouse. (Tr. 7; GE 1) About 18 months before his hearing, he separated from his spouse. (Tr. 27-28) He and his spouse are negotiating a property-settlement agreement for their divorce. (AE I; AE K) He has an adult son and an adult stepson. (Tr. 28)

Financial Considerations

Applicant's spouse had medical problems in the 1990s. (Tr. 24) In 2002, Applicant and his spouse filed for protection under Chapter 13 of the Bankruptcy Code, and his bankruptcy was dismissed in 2004. (Tr. 31-38; GE 8; SOR ¶ 1.p) In 2005, Applicant's property was damaged by Hurricane Katrina. (Tr. 24) In 2006, Applicant had

cancer. (Tr. 24) His income was reduced through various employment issues, including the loss of part-time employment, intermittent unemployment before 2009, and his spouse's intermittent unemployment. (Tr. 73-75) Applicant wanted to obtain part-time employment to increase his income so he could pay his debts. (Tr. 76) Applicant has endeavored to reduce his expenses. (AE H; AE J)

Applicant's spouse was responsible for paying the family bills, and when Applicant found out about their delinquent debts, especially a large garnishment in April 2014, he claimed that he was surprised. (Tr. 80-81) She had a long history of not paying their debts extending back to the 1990s. (Tr. 82-83) He described her as a "financial abuser." (Tr. 30-31) She repeatedly promised to reform her behavior, and then he discovered that she failed to pay the family debts and caused checks to be returned for insufficient funds. (Tr. 30-31; 82-84)

Applicant's December 27, 2012 Office of Personnel Management (OPM) personal subject interview discussed many of the debts alleged in the SOR, including the debts in SOR ¶¶ 1.a (\$23,556), 1.f (\$4,434), 1.j (\$4,000), 1.m (\$1,725), 1.n (\$1,015), and 1.o (\$3,425). (GE 2)

SOR ¶ 1.a alleges a \$23,556 collection debt owed to an apartment complex. He said he went to court and lost a lawsuit. (SOR response) He said three months of rent with charges and interest became \$23,556. (SOR response) He said, "I do plan to contact and negotiate the bill down to pay it but current back IRS taxes and bills [have] not opened up the ability to make payments just yet but I [plan to]." (Tr. 54-56; SOR response) He was not able to make an offer to the creditor because he did not have sufficient funds to make a credible settlement offer. (Tr. 54-58)

SOR ¶ 1.b alleges a \$500 collection debt owed to the same apartment complex as in SOR ¶ 1.a. Applicant said he was unsure about whether this debt was a mistake or not, but if the debt is legitimate, he will pay it. (SOR response)

SOR ¶ 1.c alleges a \$278 utility collection debt. He said, "I will investigate it. I had [a debt dispute company] help clean up any non-bills on credit report." (SOR response) He did not pay this debt. (Tr. 58-59)

SOR ¶ 1.d alleges a credit card debt in collections for \$569 and SOR ¶ 1.e alleges a credit card debt in collections for \$130. He acknowledged he used these credit cards. (SOR response) He said, "I had this check[ed] out by [a debt dispute company] and thought it was settled if not [he] will set up a repayment plan." (SOR response) He did not present any evidence that either of the debts were settled.

SOR ¶ 1.f alleges a \$4,434 collection debt owed to an apartment complex. Applicant acknowledged the debt was in his name. (SOR response) He said he would seek his former spouse's assistance paying this debt; however, he planned to pay this debt. (SOR response)

SOR ¶ 1.g alleges a telecommunications collection debt for \$293. He had an account with the creditor; however, he wants the debt dispute company to have it removed, if it is not his bill. (SOR response) He said if it was his bill, he would pay it. (SOR response)

SOR ¶ 1.h alleges a telecommunications collection debt for \$204. He said the bill is in his name, and it needs to be paid. (SOR response)

SOR ¶ 1.i alleges a telecommunications collection debt for \$744. He had an account with the creditor; however, he wants the debt dispute company to have it removed, if it is not his bill. (SOR response) This debt may be a duplication of the debt in SOR ¶ 1.g because they originate from the same telecommunications company. (SOR response) He said if it was his bill, he would pay it. (SOR response)

SOR ¶ 1.j alleges a medical collection debt for \$4,000. He admitted he was responsible for this debt, which related to his cancer treatment. (SOR response) He said payment of his current bills did not permit him to make payments on this debt; however, he planned to pay it. (Tr. 66; SOR response)

SOR ¶ 1.k alleges a credit union collection debt for \$744. He said he believed the debt was paid around the time of Hurricane Katrina. (SOR response) His debt dispute company was successful in having it removed from his credit report. (SOR response)

SOR ¶ 1.l alleges a telecommunications collection debt for \$302. He said he owed this debt, and he planned to make arrangements to pay this debt. (SOR response)

SOR ¶ 1.m is a state tax debt for \$1,725 from 2000. Applicant said when he purchased a home in 2000, it may have had a state tax lien on it. (Tr. 41) The previous owners took back a second mortgage on the property and may owe the debt. (Tr. 41) He employed a debt-verification company to find out whether the debt was legitimate. (Tr. 39-42) He did not have any documentation indicating the debt was invalid or incorrect. (Tr. 43)

SOR ¶ 1.n is a state tax debt for \$1,015. Applicant said, "I admit this is a tax bill that was set up for repayment by my ex-wife and was to be paid back. If I still owe I will address this also." (SOR response) From July 2012 to present, he has been making \$50 monthly payments to address the debt; however, he did not provide proof of the current amount owed or resolution of the debt. (Tr. 43-45; GE 2)

SOR ¶ 1.o is a federal tax debt for \$3,425. Applicant admitted he failed to withhold sufficient funds to pay his federal income taxes for tax years 2010 and 2011, resulting in a tax debt he could not pay when he filed his annual tax returns. (Tr. 47-50; SOR response; GE 1) He provided documentation showing \$50 monthly payments from August 2012 to June 2014. (GE 2) He began paying the IRS \$100 monthly in July 2014, and he has continued to pay \$100 monthly to the IRS. (Tr. 49; GE 2) He may not have withheld sufficient funds for additional tax years. (Tr. 47-50) He estimated his total

federal income tax bill to be about \$10,000. (Tr. 50) He expects to receive a refund on his 2015 federal income taxes. (Tr. 51)

In June 2014, Applicant generated a budget.¹ In 2014, Applicant's gross monthly pay was \$6,038, not including his spouse's pay. (GE 2) It shows payments to address his state and federal income tax debts (SOR ¶¶ 1.n and 1.o) and one bank debt. It also includes \$4,356 in monthly income from his spouse. His monthly net remainder is \$1,446. This budget is obsolete as he is separated from his spouse and the family income is substantially reduced.

Applicant provided a June 5, 2016 TransUnion credit report, which gave him a "very poor" credit score at 505, and this credit report did not contain several of the collection debts he acknowledged, as well as his state and federal tax debts. The TransUnion credit report revealed Applicant has a \$45,827 collection debt owed to the federal government for a post-Hurricane Katrina loan. (Tr. 66-69; AE B) When he completed his October 13, 2012 SCA, he said he was five payments of \$170 per month behind on this debt, because of lack of income and maxed out credit cards. (GE 1) He said the federal government threatened to garnish his pay, and he is now paying \$814 monthly to address this debt. (Tr. 66-68)² He did not provide proof of the \$814 monthly payments or amount currently owed on this debt.

On August 24, 2016, Applicant said he had two offers of employment with significant pay increases. (AE G) He would use the pay increases to address his delinquent debts. (AE G) His July 18, 2016 combined credit report shows improvement as it only contains two delinquent and three derogatory entries. (AE H) This credit report does not show entries for his delinquent state and federal taxes or his unpaid post-Hurricane Katrina federal disaster loan. (AE H)

¹The source for the information in this paragraph is from Applicant's personal financial statement. (GE 2)

²Applicant's SOR does not allege that he failed to repay his federal loan received in the aftermath of Hurricane Katrina, resulting in a delinquent debt for about \$45,000, and it does not allege all of the tax years where he owes income taxes totaling about \$10,000. 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 that Applicant failed to timely repay his federal disaster loan after Hurricane Katrina and to fully pay his federal income taxes for some tax years after 2011 when due will not be considered except for the five purposes listed above.

There are several ongoing class-action lawsuits resulting from damage from Hurricane Katrina. (Tr. 71-72) He received notice that he would receive several hundred dollars, and there is at least one class-action lawsuit that is unresolved. (Tr. 72-74)

In sum, Applicant did not make any payments to any of the SOR creditors, except to the creditors in SOR ¶¶ 1.n and 1.o. (Tr. 62-63) He disputed some of the amounts of the debts, especially the debt in SOR ¶ 1.a. (Tr. 63) He used a debt dispute company to investigate his responsibility for paying the debts. (Tr. 62-66) Several SOR debts were removed from his credit report. Several debts are still under investigation.

Character Evidence

Applicant provided his resume and documentation showing he volunteers and teaches in his community. He has a strong technical background with many years of experience providing advice and assistance to the government especially in the realm of information technology. (AE A-D) He received a letter of appreciation and two certificates of appreciation for his outstanding performance of duty and contributions to mission accomplishment in 2014. (GE 2)

Applicant's division chief describes Applicant as having very good moral character with integrity. (AE A) He is efficient, considerate, dedicated, honest, compassionate, careful, and trustworthy. (AE A) He has received several honors for his dedication to his work. (AE A)

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 two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and

“(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is documented in his credit reports, SCA, SOR response, and hearing record. The SOR alleges 15 delinquent debts totaling \$41,919, including one federal and two state tax debts and a Chapter 13 bankruptcy dismissed in 2004. He has had delinquent debts for more than four years. Applicant failed to withhold sufficient funds for his federal income taxes for 2010 and 2011, which resulted in a federal tax debt that is currently unresolved.

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). The Government 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;³ and

³The 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,

(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).

None of the mitigating conditions fully apply; however, he provided some mitigating information. Six circumstances beyond his control adversely affected his finances: (1) His spouse had medical problems in the 1990s; (2) In 2005, his property was damaged by Hurricane Katrina; (3) In 2006, Applicant had cancer; (4) His income was reduced through various employment issues, including the loss of part-time employment and intermittent periods of unemployment before 2009; (5) His spouse had intermittent periods of unemployment; and (6) His separation from his spouse and their pending divorce. However, he did not provide sufficient evidence that he acted responsibly under the circumstances. There is insufficient specific information about the effects of these circumstances on his finances, especially over the last three years.

Applicant is credited with mitigating four SOR debts: ¶ 1.b because it is a duplicate of the debt in ¶ 1.a; ¶ 1.g because it is a duplicate of the debt in 1.i; and 1.k; and 1.m are mitigated because of their age and the lack of evidence of their current validity. He has reduced his expenses, and he indicates he has two offers of employment with substantial pay increases, and he assured he intends to pay his unresolved debts.

Applicant's failure to timely pay his taxes in full raises the most significant security concern. For tax years 2010 and 2011, he failed to pay his federal income

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)).

taxes in full when due. He currently has a federal tax debt of about \$10,000. He also owes an unspecified amount of state income taxes. Although he has a payment plan to resolve his federal and state tax debts, he did not provide enough specific details about his finances to explain why he did not make more progress resolving his tax debts. Financial considerations 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(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 60-year-old software deployment engineer continuously employed by a defense contractor since 2009. He has the equivalent to an associate's degree, and he received several technical certifications in information technology. In 1992, he married his spouse. About 18 months before his hearing, he separated from his spouse.

Applicant volunteers and teaches in his community. He has a strong technical background with many years of experience providing advice and assistance to the government especially in the realm of information technology. His division chief describes Applicant as having very good moral character with integrity. He is efficient, considerate, dedicated, honest, compassionate, careful, and trustworthy. He has received several honors for his dedication to his work.

Six circumstances beyond his control adversely affected his finances; however, he did not establish that he acted reasonably under the circumstances. He had ample notice of his spouse's poor financial management. Nevertheless, he continued to allow her to have access to his bank accounts. He has had steady employment since 2009. He has reduced his expenses; he indicates he has two offers of employment with substantial pay increases; and he assured he intends to pay the unresolved debts. He

has mitigated four debts and his Chapter 13 bankruptcy is not sufficiently recent to pose a security concern.

In 2010, 2011, and perhaps for other tax years, Applicant failed to withhold sufficient funds for his federal income taxes, and he currently owes about \$10,000 to the IRS. He also owes state tax debts. He has been making payments on his delinquent taxes. However, his history of failing to fully pay his federal and state income taxes when due raises unresolved financial considerations security concerns.⁴ 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.⁵ There is no evidence Applicant failed to timely file his tax returns; however, the primary problem here is that Applicant has owed taxes to the IRS since 2010 or 2011. He did not prove his inability to make greater progress resolving his tax debts. His payment history and current balance regarding his federal disaster loan is also unclear.

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 more effort towards documented

⁴See 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.").

⁵See 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 that 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).

resolution of his past-due debt, and 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. I conclude that 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c through 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h through 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n and 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant

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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

MARK HARVEY
Administrative Judge