



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



In the matter of:

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ISCR Case No. 15-04180

Applicant for Security Clearance

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

06/30/2017

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges, and the record establishes: he did not file his federal and state tax returns for tax years 1997 through 2013; he owes delinquent federal taxes for tax years 2009, 2012, and 2013; and he has five additional delinquent debts totaling approximately \$80,000. He did not provide sufficient evidence of resolution of financial issues, and financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On February 6, 2014, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Item 2) On December 8, 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 him, and recommended referral to an administrative judge to determine

whether a clearance should be granted, continued, denied, or revoked. (Item 1) Specifically, the SOR set forth security concerns arising under the financial considerations guideline.

On February 11, 2016, Applicant provided a response to the SOR, and he requested a decision without a hearing. (Item 1) On March 15, 2016, Department Counsel completed the File of Relevant Material (FORM). On March 25, 2016, Applicant received the FORM. Applicant did not respond to the FORM. On June 7, 2017, the case was assigned to me. The case file consists of six exhibits. (Items 1-6) Applicant did not object to any of the Government exhibits.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing *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.¹

Findings of Fact²

In Applicant’s SOR response, he admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.f, 1.g, and 1.i. (Item 2) He also made some partial admissions, and he provided extenuating and mitigating information. Applicant’s admissions are accepted as findings of fact. Additional findings of fact follow.

Applicant is 53 years old, and he is seeking employment with a DoD contractor as a ship fitter.³ In 1985, he received an associate’s degree, and he subsequently completed some college classes; however, he did not receive a degree. From 1996 to December 2008, he was self-employed. He has not served in the military. In 2002, he married, and his three children were born in 2005, 2007, and 2007.

Financial Considerations

Applicant attributed his financial problems to the decline in the economy and his business’ income. (Item 3) His ability to work was also limited because he was caring for his children while his spouse worked. (Item 3) In 2014, he indicated he intended to resolve his delinquent debts through Chapter 7 of the Bankruptcy Code. (Items 2, 3)

¹ 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.

² Some details were excluded to protect Applicant’s right to privacy. Specific information is available in the cited exhibits.

³ Unless stated otherwise, the source of the information in this paragraph is Applicant’s February 6, 2014 Questionnaire for National Security Positions (SF 86). (Item 2)

Applicant's February 20, 2014, and April 8, 2015 credit reports and March 10, 2014 Office of Personnel Management personal subject interview (OPM PSI) are the basis for the allegations in the SOR. In January 2013, Applicant filed for bankruptcy under Chapter 13 of the Bankruptcy Code, and in February 2013, the court dismissed his bankruptcy because he failed to file necessary documentation. (SOR ¶ 1.a) He failed to file his federal and state income tax returns from 1997 through 2013. (SOR ¶¶ 1.b and 1.f) He owes federal income taxes for three tax years as follows: ¶ 1.c 2009—\$4,668; ¶ 1.d 2012—\$508; and ¶ 1.e 2013—\$597. The SOR describes five delinquent debts as follows: ¶ 1.g—\$24,328; ¶ 1.h—\$9,836; ¶ 1.i—\$18,981; ¶ 1.j—\$17,609; and ¶ 1.k—\$15,199.

In his SOR response, Applicant agreed with the SOR allegations in ¶¶ 1.a, 1.b, 1.f, 1.g, and 1.i without elaboration. (Item 2) For SOR ¶¶ 1.d and 1.e, he said the debts were paid in full on January 27, 2016. For SOR ¶¶ 1.c and 1.h, he said "I need more time to look into this. I cannot agree or dispute at this time." For SOR ¶¶ 1.j and 1.k, he said he disputed the amounts, and the correct amounts should be approximately \$16,000 and \$7,000 respectively.

Aside from Applicant's uncorroborated statements, there is no documentary evidence that Applicant paid, arranged to pay, settled, compromised, or otherwise resolved the debts in SOR ¶¶ 1.c through 1.e and 1.g through 1.k. He did not describe financial counseling. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for his financial problems and other mitigating information. The FORM stated, "**The Applicant has, at this juncture, failed to provide any written documentation to support resolution of any of his financial delinquencies.**" FORM at 3 (emphasis in original). The FORM also informed Applicant that he had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. (FORM at 3-4)

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 in this decision should be construed to suggest that it is based, 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 for financial problems:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to

protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information 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
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

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 credit reports, OPM PSI, and SOR response. The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(b), 19(c), and 19(f) requiring additional inquiry about the possible applicability of mitigating conditions.

Seven financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago,⁴ was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;⁵ 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;
- (f) the affluence resulted from a legal source of income; and

⁴ 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)).

⁵ 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)).

(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; however, Applicant disclosed some circumstances beyond his control which adversely affected his finances. Applicant attributed his financial problems to decline in the economy and his business' income. His ability to work was also limited because he was caring for his children while his spouse worked. He has been mostly unemployed for the last eight or nine years. He did receive some income otherwise he would not owe any state or federal income taxes for those years. He cannot be credited with mitigating financial concerns under AG ¶ 20(b) because he did not provide enough information about his income and taxes.

Applicant did not timely file his federal income tax returns for tax years 1997 to 2013. 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.⁶ 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. He did not receive notice of a Guideline J or E security concern in the SOR.

⁶ 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).

The record establishes that Applicant failed to timely file federal and state income tax returns for 16 years. 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 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 when the tax returns were filed 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, “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's has delinquent federal taxes for 2009, 2012, and 2013. He also failed to file his state and federal tax returns for tax years 1997 through 2013. He has several other delinquent SOR debts. Applicant did not provide enough details with documentary corroboration about what he did to address his SOR debts. He did not provide documentation relating to any of the SOR debts: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditors; (2) correspondence to or from the creditors to establish maintenance of contact;⁷ (3) credible debt disputes indicating he did not believe he was responsible for the debts and why he held such a belief; (4) more evidence of attempts to negotiate payment plans, such as settlement offers or agreements to show that he was attempting to resolve these debts; or (5) other evidence of progress or resolution. Applicant failed to establish mitigation under AG ¶ 20(e) because he did not provide documented proof to substantiate the existence, basis, or the result of any debt disputes.

There is insufficient evidence about why Applicant was unable to make greater progress resolving his tax debt and the other SOR debts. 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.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are

⁷ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is 53 years old, and he is seeking employment with a Government contractor as a ship fitter. In 1985, he received an associate's degree, and he subsequently completed some college classes. From 1996 to December 2008, he was self-employed in a business. In 2002, he married, and his three children were born in 2005, 2007, and 2007. His financial problems were caused by unemployment and the decline in the economy and a reduction in his his business' income. His ability to work was also limited because he was caring for his children while his spouse worked.

Applicant did not provide proof that he filed his federal and state tax returns for 1997 through 2013.⁸ He owes federal income taxes for tax years 2009, 2012, and 2013, and Applicant has not agreed to a payment plan to address this tax debt. See AG ¶ 20(g). He is not credited with paying his taxes for tax years 2012 and 2013 because he did not provide documentary proof of his payments.

Applicant provided insufficient corroborating or substantiating documentary evidence of payments and established payment plans for his SOR debts. He did not provide a detailed plan about how he intended to resolve all of his delinquent SOR debts. His actions show lack of financial responsibility and judgment and raise unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More documented information about inability to pay debts,

⁸The recent emphasis of the Appeal Board on security and trustworthiness 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 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."). The Director of National Intelligence's decision to issue AG ¶ 20(g) establishes mitigation for those who have made and complied with a tax payment plan; and this new AG must be considered for decisions issued after June 8, 2017.

financial history, or documented financial progress is necessary to mitigate security concerns.

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 resolution of his past-due debts, 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 consideration security concerns are not mitigated. It is not clearly consistent with the interests of national security to grant Applicant security clearance eligibility at this time.

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.k:	Against Applicant

Conclusion

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

MARK HARVEY
Administrative Judge