



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 15-06452

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

11/21/2016

Decision

Harvey, Mark, Administrative Judge:

Applicant did not make sufficient progress addressing her delinquent tax debts. She has owed delinquent federal income taxes since 2005. Financial considerations trustworthiness concerns are not mitigated. Eligibility for a public trust position is denied.

Statement of the Case

On April 11, 2014, Applicant signed an Electronic Questionnaires for Investigations Processing (e-QIP) (SCA). (Government Exhibit (GE) 1) On March 28, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, and modified; DOD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), which became effective on September 1, 2006.

The SOR alleges trustworthiness concerns under Guideline F (financial considerations). (HE 2) The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility to occupy a public trust position, which entails access to sensitive

information. (HE 2) The DOD CAF recommended referral to an administrative judge to determine whether such access to sensitive information should be granted, continued, denied, or revoked. (HE 2)

On May 17, 2016, Applicant responded to the SOR allegations. (HE 3) On July 11, 2016, Department Counsel indicated she was ready to proceed. On August 1, 2016, the case was assigned to me. On September 1, 2016, the Defense Office of Hearings and Appeals issued a hearing notice setting the hearing for September 26, 2016. (HE 1) The hearing was held as scheduled. At the hearing, the Government provided nine exhibits; Applicant offered five exhibits; and all exhibits were admitted into evidence without objection. (Tr. 20-22, 49-50; Government Exhibits 1-9; Applicant Exhibits (AE) A-E) On October 4, 2016, I received a transcript of the hearing (Tr.). On October 24, 2016, Applicant submitted 19 documents, which were admitted into evidence without objection. (AE F-X) On October 26, 2016, the record closed. (Tr. 54, 77, 85-86)

Findings of Fact¹

In her Answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a through 1.c. She also provided extenuating and mitigating information. (HE 3) Her admissions are accepted as findings of fact.

Applicant is a 41-year-old senior software test engineer, who has been working for her employer for five years. (Tr. 6, 23) In 1993, she graduated from high school. (Tr. 7) She has 68 college credits, and she expects to receive a science degree in May 2017. (Tr. 7) She has worked on a DOD project since 2003. (Tr. 8) She has not served in the U.S. military. (GE 1) In July 2005, she married, and she has two children, who are ages 10 and 20 years old. (Tr. 19, 73; GE 1) Her 20-year-old son has excellent potential in university-level athletics and academically. (AE H; AE I) In September 2016, she filed for divorce. (Tr. 47, 73; AE L) There is no evidence that Applicant committed criminal offenses, abused alcohol or drugs, or violated her employment rules. (GE 1)

Financial Considerations

Applicant's SOR response, SCA, credit reports, Office of Personnel Management personal subject interview (OPM PSI), bankruptcy filings, and hearing record establish the SOR allegations.

In 2003 or 2004, Applicant purchased a residence for about \$212,000. (Tr. 25, 27; SOR response) Her monthly mortgage payment was about \$1,300, and in 2006, her renters stopped making their rent payments. (Tr. 25, 27) In turn, Applicant defaulted on her mortgage payments. (Tr. 27-28) The mortgage company said she should stop making payments, and they were going to adjust the mortgage or make a mortgage modification. (Tr. 28) Applicant requested a mortgage modification; however, it was never approved. (Tr. 28)

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

In August 2007, Applicant's nonpriority unsecured delinquent debts totaling \$41,030 were discharged under Chapter 7 of the Bankruptcy Code. Her 2007 bankruptcy listed total liabilities of \$348,192, including \$9,000 in delinquent federal taxes from 2005 or 2006. (Tr. 24; SOR response ¶ 1.a; GE 1; GE 2; GE 7) The defaulted mortgage was listed in her 2007 bankruptcy. (Tr. 29) She believed her mortgage debts were discharged by her 2007 bankruptcy. (Tr. 30)

In November 2013, Applicant filed for bankruptcy protection under Chapter 13 of the Bankruptcy Code. Her liabilities totaled \$169,634, including \$64,000 owed to the Internal Revenue Service (IRS) for tax years 2005 to 2010, and student loans totaling \$41,933. (SOR response ¶ 1.b; GE 8) Her nonpriority unsecured debts totaled \$89,756. (GE 8) According to the bankruptcy trustee's status report, her first payment was due in December 2013; her monthly payment was \$300; she paid \$3,450; and she was \$450 behind when her bankruptcy trustee's status report was issued. (GE 8) In April 2015, the bankruptcy court dismissed her bankruptcy. (SOR response ¶ 1.b; GE 1; GE 2; GE 8)

In June 2015, Applicant filed for bankruptcy under Chapter 7 of the Bankruptcy Code. Her liabilities totaled \$164,035, and included \$64,279 owed to the IRS for tax years 2005 to 2010 and \$41,933 of guaranteed student loan debt. (GE 9) The bankruptcy court discharged her nonpriority unsecured debts on September 14, 2015. (SOR response ¶ 1.c; GE 1; GE 2; GE 9)

For tax years 2005 through 2010, Applicant did not have enough money withheld from her paycheck for her taxes. (Tr. 30-32) In 2006, the IRS contacted Applicant and informed her that she owed about \$15,000 for her 2005 taxes. (Tr. 32-33) Applicant contacted a company to assist her with her taxes; however, the company was a fraudulent company. (Tr. 33) She made some payments, and the company said they were working with the IRS. (Tr. 34) She contacted the IRS and learned the company was not working with the IRS to resolve her tax debt. (Tr. 34) In 2007, she may have made \$50 monthly payments to the IRS for about 6 to 12 months. (Tr. 34) After 2007, she made \$50 to \$100 monthly payments to the IRS. (Tr. 38)

Around 2012 or 2013, Applicant and her spouse separated because of his alcoholism, abuse, and erratic employment history. (Tr. 45-46; AE G; SOR response) He refused to provide financial support to Applicant. (Tr. 47; AE G) In 2013, Applicant had medical expenses from her father, who had treatments for cancer for 12 months, and her son, who had a football injury. (Tr. 39; SOR response) Her father passed away, and there were funeral expenses after her father's death. (Tr. 39) She decided to file for bankruptcy under Chapter 13 because she wanted to reorganize and pay her debts. (Tr. 43) Starting in December 2013, she had a requirement under Chapter 13 to make monthly \$300 payments. (Tr. 39) From December 2013 to May 2015, the bankruptcy trustee made monthly payments to the IRS of \$100 to \$300. (Tr. 39; GE 8 at 52) In April 2015, her Chapter 13 bankruptcy was dismissed. (Tr. 39) Applicant said her bankruptcy was dismissed because she believed she could make greater progress on her taxes without utilizing the Chapter 13 bankruptcy payment plan. (Tr. 41-42) The cited legal basis for dismissal of the Chapter 13 bankruptcy was Applicant's failure to provide the

\$490 refund of her taxes to the trustee, and the IRS filed claim of \$64,279 made completion of the plan impossible. (AE W; AE X) The IRS had intercepted the \$490 refund.

Once Applicant became eligible for a Chapter 7 bankruptcy, she filed for it. (Tr. 44) On May 9, 2015, she completed financial processing and a budget as part of the bankruptcy process. (SOR response, GE 9) She was able to obtain discharge of \$164,000 in nonpriority unsecured debt. (Tr. 44) Her student loans and tax debts survived the Chapter 7 bankruptcy. (Tr. 44-45)

Applicant is working with a money management company (MMC) to help her organize her finances and arrange payments to her creditors. (Tr. 62) The MMC budget she generated showed a \$558 monthly deficit and a proposed budget with a \$308 monthly deficit. (SOR response, MMC Plan at 5 of 8) She acknowledged that she used credit excessively and did not use a budget as part of the cause of her financial problems. (Tr. 63) In April 2016, she purchased a 2013 vehicle for \$33,000, and her monthly payments are \$667. (Tr. 64-65) Her September 25, 2016 credit report shows her vehicle loan is in paid as agreed status. (Tr. 71; AE D at 3) Applicant's April 2016 budget shows she has a monthly surplus of about \$350. (Tr. 67-69)

The following table summarizes the federal income tax filing dates and refund or amount owed from IRS tax transcripts Applicant provided:

Tax Year	Adjusted Gross Income	Refund Or Owed	Current Balance	Citation
2006	\$72,625	Owed: \$3,042	\$0	AE M
2007	\$78,356	Owed: \$5,816	\$0	AE N
2008	\$78,234	Owed: \$6,164	\$0	AE O
2009	\$75,908	Owed: \$6,981	\$0	AE P
2010	\$96,414	Owed: \$10,421	\$12,096	AE Q
2011	\$83,465	Owed: \$5,438	\$6,259	AE R
2012	\$87,736	Refund: \$469	\$0	AE S
2013	\$93,243	Refund: \$907	\$0	AE T
2014	\$90,998	Owed: \$5,613	\$6,371	AE U
2015	\$91,868	Owed: \$13,217	\$14,055	AE V

Applicant only provided the first page of her tax transcripts. (AE M-AE V) Without complete copies of the tax transcripts, it is not possible to determine how or when the delinquent taxes for several years were resolved. The "Refund or Owed" column does not include interest and penalties charged by the IRS. Some of the tax transcripts showed late filing of Applicant's tax returns and IRS-imposed financial penalties for late filings. (AE M-AE V) For example, her 2007 tax return was filed October 6, 2008, and her late filing penalty was \$1,308. (AE N) Her 2008 tax return was filed on October 5, 2009, and her late filing penalty was \$1,385. (AE O) Her 2009 tax return was filed on May 2, 2011, and her late filing penalty was \$1,484. (AE P) Applicant incorrectly stated

at her hearing that she filed her income taxes on time every year (by April 15 of the next year). (Tr. 75) Applicant had some delinquent state taxes; however, the last \$200 she owes will be paid in October 2016. (Tr. 76-77; SOR response) The SOR does not allege Applicant failed to timely file her federal income tax returns, or that she failed to timely pay her federal income taxes after 2010.²

Applicant did not significantly address her tax problems for several years because she was focused on taking care of her family and the issues involving her husband. (Tr. 56) Applicant's September 25, 2016 credit report indicates she had a \$42,000 federal tax lien filed in 2012. (AE 6; AE B at 4) She said as of September 16, 2016, her current tax debt is \$23,984; however, she did not provide any IRS documentation showing this total for her tax debt. (Tr. 48, 52; AE E) After her debts were discharged through bankruptcy, she said she made \$100 monthly payments to the IRS. (Tr. 51) About three months before Applicant's hearing, she consulted a certified public accountant. (Tr. 38) Applicant said the IRS asked her to pay \$500 monthly to address her tax debt. (Tr. 38) Around March 2016, she instructed her employer to start taking \$500 monthly out of her pay to address her tax debt. (Tr. 50; AE E)

Applicant is currently attending college, and her student loans are deferred. (Tr. 57-58) She plans to pay her student loans when her loan deferment ends. (Tr. 61) Applicant's son is in college, and she is making payments on his student loans. (Tr. 59) She is helping him with his other college expenses. (Tr. 60)

Character Evidence

A division manager, a program manager, senior principal, and an assistant executive director provided character statements on Applicant's behalf. (SOR response) The general sense of their statements is that Applicant is diligent, positive, motivated, capable, dependable, reliable, and professional. (SOR response) She showed leadership, was a team player, and made solid contributions to mission accomplishment. (SOR response)

²Applicant's SOR does not allege that she did not timely file her federal tax returns for several years or that she failed to pay her required taxes in full for tax years 2014 and 2015. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

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

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). Consideration of her failure to timely file her federal income tax returns or that she failed to pay her required taxes in full for tax years 2014 and 2015 will not be considered except for the five purposes listed above.

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 [public trust position].” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Government’s authority to restrict access to classified information applies similarly in the protection of sensitive, unclassified information. As Commander in Chief, the President has the authority to control access to information bearing on national security or other sensitive information and to determine whether an individual is sufficiently trustworthy to have access to such information. See *Id.* at 527.

Positions designated as ADP I and ADP II are classified as “sensitive positions.” Regulation ¶¶ C3.1.2.1.1.7, C3.1.2.2, and C3.1.2.1.2.3. “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.” Regulation ¶ C6.1.1.1. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. See Regulation ¶ C8.2.1.

When evaluating an applicant’s suitability for a public trust position, an administrative judge must consider the disqualifying and mitigating conditions in the AG. 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.

A person who seeks access to sensitive information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which may disqualify the applicant from being eligible for access to sensitive information. 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 suitability for a public trust position. 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 access to sensitive information[.]” 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).

The protection of national security and sensitive records is paramount. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.”

Analysis

Financial Considerations

AG ¶ 18 articulates the trustworthiness 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 [sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides three disqualifying conditions that raise a trustworthiness 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” Applicant’s SOR response, SCA, credit reports, bankruptcy filings, and hearing record establish the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(g) requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business 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

(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 eligibility [for a public trust position], there is a strong presumption against the grant or maintenance of a [public trust position]. 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 [trustworthiness] concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in [public trust position] decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to [sensitive] 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. Circumstances beyond her control adversely affected her finances: Applicant had medical bills from her father's illness and funeral expenses; she had medical bills from her son's injury; and she had expenses from her separation and divorce. She disclosed her financial problems on her SCA and during her OPM PSI. She filed all required state and federal tax returns, although some returns

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, 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)).

were not timely. See note 2 *supra*. She made some payments to address her delinquent tax debt over the years. She paid \$3,450 into her Chapter 13 bankruptcy plan, and her efforts in regard to her Chapter 13 bankruptcy are a mitigating circumstance.

The negative financial considerations concerns are more substantial. The SOR alleges, and the record establishes that Applicant has owed federal income taxes since 2005, and most recently she underpaid her taxes in 2014 and 2015 by about \$20,000.

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 [trust]worthiness in light of [applicant’s] longstanding prior behavior evidencing irresponsibility.” 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).

The negative financial and judgment information in Applicant’s case is significant. The record established that Applicant has owed taxes to the IRS since 2005. Her nonpriority unsecured debts were discharged under Chapter 7 of the Bankruptcy Code in 2007 and 2015. It is unclear how much she currently owes the IRS. Although she said she recently started making \$500 monthly payments to the IRS, there is an insufficient track record of making significant payments to the IRS. Her explanations do not fully mitigate financial considerations trustworthiness concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a public trust position 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.

The ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c). 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 41-year-old senior software test engineer, who has been working for her employer for five years. She has 68 college credits, and she expects to receive a science degree in May 2017. She has worked on a DOD project since 2003. In July 2005, she married, and in September 2016, she filed for divorce. There is no evidence of Applicant's criminal offenses, alcohol or drug abuse, or violations of her employment rules. Several circumstances beyond her control adversely affected her finances, including illness and death of her father, injury of her son, and her separation and divorce. The general sense of Applicant's character statements is that Applicant is diligent, positive, motivated, capable, dependable, reliable, and professional. She showed leadership, was a team player, and made solid contributions to mission accomplishment.

The negative financial information is more significant. Applicant's nonpriority unsecured debts were discharged in 2007 and September 2015. She has had a delinquent tax debt owed to the IRS since 2005. In 2014 and 2015, she generated \$20,000 in additional delinquent federal income tax debt. 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.⁴ The primary problem here is that Applicant has owed the IRS for delinquent taxes since 2005, and her tax problems are getting worse.

It is well settled that once a concern arises regarding an applicant's eligibility for a public trust position, there is a strong presumption against the grant or renewal of

⁴The 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.").

access to sensitive information. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant of access to sensitive information 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 public trust position in the future. With a track record of behavior consistent with her obligations, she may well be able to demonstrate persuasive evidence of her worthiness for a public trust position.

I have carefully applied the law, as set forth in *Egan*, the Directive, the Regulation, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations concerns are not mitigated.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Mark Harvey
Administrative Judge