



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



In the matter of:

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ISCR Case No. 15-06596

Applicant for Security Clearance

**Appearances**

For Government: Benjamin R. Dorsey, Esq., Department Counsel  
For Applicant: *Pro se*

01/10/2017

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges his debts were discharged under Chapter 7 of the Bankruptcy Code in April 2015, and a state obtained a \$12,201 judgment against Applicant in 2014. His bankruptcy included \$213,857 in federal and state tax debt that had been delinquent since 2010. His tax debts were not discharged. Financial considerations security concerns are not mitigated. Access to classified information is denied.

**History of the Case**

On September 26, 2014, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On April 20, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a

clearance should be granted, continued, denied, or revoked. (Hearing Exhibit (HE) 2) Specifically, the SOR set forth security concerns arising under the financial considerations guideline.

On May 16, 2016, Applicant responded to the SOR and requested a hearing. On June 29, 2016, Department Counsel indicated he was ready to proceed. On August 1, 2016, the case was assigned to me. On August 30, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for September 21, 2016. (HE 1) The hearing was held as scheduled.

Department Counsel offered 5 exhibits; Applicant offered 15 exhibits; and all proffered exhibits were admitted without objection. (Tr. 23-28; GE 1-5; Applicant Exhibits (AE) A-O) On September 29, 2016, DOHA received the transcript of the hearing. A post-hearing delay was granted until October 27, 2016, to permit Applicant to provide additional information about his finances. (Tr. 58) On October 27, 2016, Applicant requested and received an extension until November 25, 2016. (HE 4) On November 25, 2016, Applicant provided 14 additional exhibits, which were admitted without objection. (AE Q-AE AD)

### **Findings of Fact<sup>1</sup>**

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

Applicant is 49 years old, and he has worked as a sales account executive on an intelligence community team starting in September 2016. (Tr. 6, 33-34) His base salary is \$125,000 with another \$125,000 possible incentive bonus. (Tr. 35; AE G) From 2012 to 2015, he worked for a corporation, and his annual salary was about \$160,000. (Tr. 35) He was unemployed from January to September 2016. (Tr. 36) He provided a copy of his resume and biography (bio). (AE H; AE I)

In 1985, Applicant graduated from high school. (Tr. 6) He has two years of college classes, and he majored in biology and chemistry. (Tr. 7) He served in the Army from 1986 to 1989, and he received a general discharge under honorable conditions. (Tr. 7-8) Applicant has been married four times: from 1988 to 1991; from 1991 to 1995; from 2001 to 2008; and in 2013, he married his current spouse. (Tr. 8-9; GE 1) His three children are ages 2 months, 9 years, and 25 years. (Tr. 9) He held a security clearance from 2007 to 2012. (Tr. 33)

In 2010, Applicant completed two security courses. (Tr. 18-19; AE D; AE E) In January 2014, Applicant was diagnosed with cancer, and he was unable to work for about 60 days because of cancer surgery, and other cancer treatments. (Tr. 17, 20, 29,

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<sup>1</sup>Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits. Applicant's opening statement was accepted as substantive evidence. (Tr. 22-23)

36-37; AE B) On December 19, 2014, Applicant received financial counseling as part of the bankruptcy process. (Tr. 17, 30; AE C) After his debts were discharged under Chapter 7 of the Bankruptcy Code, he has not accrued any additional delinquent debt. (Tr. 18) Applicant has a membership in multiple civic organizations. (Tr. 19) Applicant has also been politically active, and he unsuccessfully ran for an important political office in 2009-2010. (Tr. 19)

## **Financial Considerations**

Applicant's financial problems were caused by an economic downturn and mismanagement of his company by his subordinates. (Tr. 20, 37-38) In 2003, Applicant started Company A to provide research and engineering services to DOD. (Tr. 37; AE O; AE P) In 2006, Company A began operations; Company A eventually had 25 employees; in 2010, Company A stopped making a profit; and in 2011, Company A ended operations. (Tr. 37-39) He was a subcontractor, and he said, the prime contractor did not pay their subcontractors. (Tr. 21, 39) Other contracts ended and were not renewed. (Tr. 47) Applicant was the chief executive officer (CEO) and facility security officer (FSO) for Company A, and he signed on credit cards to make purchases on behalf of Company A. (Tr. 31-32) He was personally liable for Company A's debts. (Tr. 40)

Applicant's history of delinquent debt is documented in his credit reports, SOR response, and hearing record. His SOR alleges two financial issues of security concern. The status of the SOR allegations is as follows:

SOR ¶ 1.a alleges in 2014, State X obtained a judgment against Applicant for \$12,201 for tax year 2010. (Tr. 40-41) Applicant was raised in State X; he paid taxes in State X through tax year 2009; and he ran for political office in State X in 2010. (Tr. 41) In 2010, he moved to State Y, and he said State X agreed that he did not owe taxes to State X because he was not a resident of State X. (Tr. 42) He said he provided proof to State X that he paid taxes to State Y, and he predicted that State X would assist him in getting the judgment removed from his record. (Tr. 42)

SOR ¶ 1.b alleges that Applicant's delinquent debts were discharged under Chapter 7 of the Bankruptcy Code on April 9, 2015. (Tr. 43; GE 5; AE J) Applicant's Schedule F (nonpriority unsecured debts) shows a total of \$84,020. (GE 4) His Schedule I shows: gross monthly income of \$11,665; net monthly income of \$7,870; and a negative monthly remainder of negative \$352. (GE 4) At his hearing, he presented a September 20, 2016 personal financial statement indicating monthly gross income of \$17,500 and a monthly positive remainder of \$3,813. (AE F)

Applicant's Schedule E shows a debt for 2009 and 2010 federal payroll taxes of \$190,000 and a State Y tax debt of \$23,857 for a total owed of \$213,857. (Tr. 45-46, 49; GE 4) The State Y tax debt was for income taxes for 2010 to 2013. (GE 4) Applicant said that while he was running for public office, a Company A employee took over the business and failed to pay Company A's Federal and State Y taxes. (Tr. 45) The \$190,000 federal payroll tax debt survived the bankruptcy, and Applicant has not had to

pay the tax debt because the Internal Revenue Service (IRS) has designated the tax debt as uncollectible. (Tr. 47)<sup>2</sup> Applicant is working out a plan with his accountants to pay the payroll tax debt. (Tr. 47) He said he has been working on the plan to pay the IRS for the payroll taxes since 2010. (Tr. 48) Applicant offered to provide documentation showing that he has been working with the IRS and State Y to resolve the tax debts. (Tr. 49) I requested that Applicant provide documentation showing he communicated with the IRS about payment plans. (Tr. 53) He did not provide any documentation showing proffered or approved IRS payment plans.

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

Tax Year	Date Federal Tax Return Signed <sup>3</sup>	Federal Refund Or Owed	State Refund or Owed State X (X) State Y (Y)
2010	Nov. 17, 2016	\$15,086	\$528 (Y) \$4,334 (X)
2011	Nov. 17, 2016	\$1,408	\$269 (X)
2012	Nov. 17, 2016	\$660	\$124 (Y)
2013	Nov. 17, 2016	\$2,123	(\$469) (Y)
2014	Nov. 17, 2016	\$7,225	(\$1,404)(Y)
2015	Nov. 17, 2016	(\$10,782)	(\$436) (Y)

At his hearing, Applicant said his federal and state tax returns for tax years 2011 through 2015 are not filed;<sup>4</sup> however, he said those five tax returns are in the process of being filed. (Tr. 51-52, 55) I requested, and he said he could provide evidence that state and federal filing extensions had been granted. (Tr. 52-55) After the hearing, he provided evidence that he requested extensions for tax year 2013 on April 5, 2014, for tax year 2013; on April 15, 2015, and for tax year 2014; on January 31, 2016 for tax

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<sup>2</sup>He did not provide his tax returns, and the amount of his adjusted gross income for tax years 2010 through 2015 is not part of the record evidence. Thus, it is not possible to address whether he had the ability to establish a payment plan to address the \$213,857 tax debt listed in Schedule E of his 2015 Chapter 7 bankruptcy.

<sup>3</sup>Applicant provided information from his accountant showing his tax returns for tax years 2010, 2011, 2013, 2014, and 2015 were prepared on November 17, 2016. (AE S-AE AD) In a post-hearing email, Applicant said he filed his federal income tax returns for 2011 through 2015, and he provided information about the taxes owed or to be refunded, which has been included in this table. I have credited Applicant with filing his state and federal tax returns for 2010 through 2015 around November 17, 2016.

<sup>4</sup>Section 26 of Applicant's September 26, 2014 Questionnaire for National Security Positions (SF 86) or security clearance application (SCA), asked "In the past seven (7) years have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?" (Government Exhibit (GE) 1) Applicant answered, "No." (GE 1) Applicant was not confronted with his failure to disclose information about his taxes at his hearing, and this issue will not be used against him for any purpose in this decision.

year 2015.<sup>5</sup> (AE Q) Generally, filing an extension for taxpayers residing inside the United States results in an extension limited to six months after the April 15 due date following the tax year, and the six-month extensions are automatic.<sup>6</sup>

## Character Evidence

A colleague from work described Applicant as a person of good character. Applicant is patriotic, energetic, loyal, and reliable. (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 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.

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<sup>5</sup>Applicant’s SOR does not allege that he did not timely file his federal and state tax returns for tax years 2010 through 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 that Applicant did not timely file his federal and state tax returns for tax years 2010 through 2015 will not be considered except for the five purposes listed above.

<sup>6</sup>See Internal Revenue Service (IRS) Form 4868, Application for Automatic Extension of Time To File U.S. Individual Income Tax Return, <https://www.irs.gov/pub/irs-pdf/f4868.pdf>.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the security concern relating to financial problems:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant's history of delinquent debt is documented in his credit reports, SOR response, and hearing record. AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" "(c) a history of not meeting financial obligations;" and "(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same." Based on the information in the SOR, AG ¶ 19(g) is not established. The record established the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

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

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;<sup>7</sup> 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.

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<sup>7</sup>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)).

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

No mitigating conditions fully apply; however, Applicant presented some important positive financial information. Applicant was unemployed; he lost money while seeking public office; and he suffered from cancer. While receiving cancer treatments, he was unable to work, and he generated medical bills. In November 2016, Applicant filed his federal tax returns for 2010 through 2015. He acknowledged his delinquent debts, and he said he intends to pay his debts.

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.<sup>8</sup> For purposes of this decision, I am not weighing Applicant's failure to timely file his federal income tax returns against him as a federal crime. See *also* note 5, *supra*.

The negative financial considerations concerns are more substantial. Applicant's bankruptcy filing indicates Applicant has owed \$213,857 in federal and state taxes since 2010. In addition, the record establishes that Applicant failed to timely file his federal and state income tax returns for tax years 2010 through 2015. The DOHA Appeal Board has commented:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems.

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<sup>8</sup>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 (9<sup>th</sup> Cir. 1973); *United States v. McCabe*, 416 F.2d 957 (7<sup>th</sup> Cir. 1969); *O'Brien v. United States*, 51 F.2d 193 (7<sup>th</sup> Cir. 1931).



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). See ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)). ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015). The Appeal Board clarified that even in instances where an “[a]pplicant has purportedly corrected [the applicant’s] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant’s security worthiness in light of [applicant’s] longstanding prior behavior evidencing irresponsibility” including a failure to timely file federal income tax returns. See ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. June 15, 2016) (characterizing “no harm, no foul” approach to an Applicant’s course of conduct and employed an “all’s well that ends well” analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR).

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

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

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

Failure to comply with Federal and/or state tax laws suggests that an applicant has a problem with abiding by well-established Government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information. . . . By failing to file his 2011, 2012, and 2013 Federal income tax returns in a timely manner, Applicant did not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information.

ISCR Case No. 15-01031 at 4 (App. Bd. June 15, 2016) (citations omitted).

The negative financial and judgment information in Applicant's case is significant. The record established that Applicant has owed \$213,857 in federal and state taxes since 2010. He did not disclose any payments to address this tax debt. In addition, Applicant failed to timely file his federal and state income tax returns for tax years 2010 through 2015. His explanations are insufficient to fully mitigate financial considerations security concerns.

### **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 49 years old, and he has worked as a sales account executive on an intelligence community team starting in September 2016. His base salary is \$125,000 with another \$125,000 possible incentive bonus. From 2007 to 2012, he held a security clearance; in 2010, Applicant completed two security courses; and there is no evidence of security violations.

Circumstances beyond his control adversely affected his finances including: lack of income while he pursued political office; funds in his company were misused while he ran for political office; he was unemployed for a lengthy period in 2016; and he suffered from cancer, which necessitated time off from work and medical expenses. After his debts were discharged under Chapter 7 of the Bankruptcy Code, he has not accrued any additional delinquent debt. Applicant has a membership in multiple civic organizations. A colleague from work described Applicant as a person of good character, who is patriotic, energetic, loyal, and reliable.

Applicant has owed \$213,857 in federal and state taxes since 2010. In addition, the record establishes that Applicant failed to timely file his federal and state income tax returns for tax years 2010 through 2015. 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.<sup>9</sup> The primary problem here is that Applicant waited several years (until November 2016) to file all required federal and state tax returns, and he has owed substantial state and federal tax debts since 2010.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations concerns are not mitigated.

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<sup>9</sup>The recent emphasis of the Appeal Board on security concerns arising from tax cases is instructive. See ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016) (reversing grant of security clearance 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.").

### **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 and 1.b:                      Against Applicant

### **Conclusion**

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

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MARK HARVEY  
Administrative Judge