



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



In the matter of:

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ISCR Case No. 15-06623

Applicant for Security Clearance

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

01/17/2017

**Decision**

HARVEY, Mark, Administrative Judge:

Four of Applicant's real estate properties were foreclosed from 2008 to 2010; his debts were discharged under Chapter 7 of the Bankruptcy Code on June 17, 2014; and he owes a state tax debt of \$126,123. He did not establish his financial responsibility. Financial considerations security concerns are not mitigated. Access to classified information is denied.

**History of the Case**

On May 28, 2014, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On May 18, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (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 June 9, 2016, Applicant responded to the SOR and requested a hearing. On July 20, 2016, Department Counsel indicated he was ready to proceed. On August 30, 2016, the case was assigned to me. On September 30, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for October 26, 2016. (HE 1) The hearing was held as scheduled.

Department Counsel offered 9 exhibits; Applicant offered 10 exhibits; and all proffered exhibits were admitted without objection. (Tr. 15-20; GE 1-9; Applicant Exhibits (AE) A-J) On November 3, 2016, DOHA received the transcript of the hearing.

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

In Applicant's SOR response, he admitted the allegation in SOR ¶ 1.a, and he denied the allegations in SOR ¶¶ 1.b and 1.c. He also provided extenuating and mitigating information. Applicant's admission is accepted as a finding of fact.

Applicant is a 50-year-old weapons and explosives specialist, and he has worked for a defense contractor for 28 years. (Tr. 8) He has held a security clearance for 30 years. (Tr. 9) There is no evidence of security violations.

In 1981, Applicant graduated from high school. (Tr. 6) He has an associate's degree in general studies. (Tr. 6) He served in the Army from 1985 to 1989, and he received an honorable discharge. (Tr. 7) His primary military occupational specialty (MOS) was heavy wheeled vehicle mechanic, and he left active duty as a sergeant. (Tr. 7) He married in 1998, and his children are ages 13, 17, and 22. (Tr. 8, 45)

### **Financial Considerations**

In 2004, Applicant purchased his first rental property, and he financed \$300,000. (Tr. 23) When the value of the property increased to about \$800,000, Applicant borrowed a substantial part of the equity, and he used the funds to purchase three more properties in 2006 and 2007. (Tr. 23)

Applicant lived in residence LH from July 2006 to August 2010. (GE 2 at 2) Applicant fell behind on his mortgage payments, and residence LH was foreclosed in August 2010. (GE 2 at 2)<sup>2</sup> The mortgages on LH were \$900,000 and \$200,000. (GE 2 at 2) Applicant purchased three rental properties in 2005 or 2006 for \$1,200,000; \$600,000; and \$286,000. (Tr. 24; GE 2 at 2) For several years, real estate prices increased, and then the prices declined. (Tr. 21-22) The mortgages were variable

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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)

<sup>2</sup>This property may have been foreclosed in 2009.

interest rate loans, and he said the payments doubled after about two years. (Tr. 25) Applicant said he could not afford his mortgages, and his four properties went into foreclosure. (Tr. 22) He said he took about \$50,000 out of his retirement account in an attempt to retain the properties. (Tr. 26) Even though Applicant was a real estate agent, he said he did not fully understand how much his mortgage payments would increase. (Tr. 25)

In 2011, the Internal Revenue Service (IRS) audited Applicant's taxes for tax year 2009, and the IRS considered the reduction in Applicant's liability after the foreclosures as income and assessed him for \$400,000 in taxes, interests, and penalties. (Tr. 26-28, 33-34) As a result of the IRS audit, in 2012, he learned that he owed State X \$19,000 for taxes. (Tr. 28-29, 35) Applicant did not make any payments to the IRS or attempt to make any offers to compromise his tax debts. (Tr. 34) On January 7, 2014, he received financial counseling in the course of a planned bankruptcy. (GE 3 at 19) Applicant followed his attorney's advice, and on July 1, 2014, he filed for protection under Chapter 7 of the Bankruptcy Code. (Tr. 30; GE 6) He stopped paying on all of his debts when he filed his Chapter 7 bankruptcy. (Tr. 31) He used the funds he would have otherwise used to pay his debts to pay his son's college expenses. (Tr. 31-32) On September 23, 2014, Applicant's nonpriority unsecured debts were discharged under Chapter 7 of the Bankruptcy Code. (SOR ¶ 1.c; GE 3 at 17; AE B)

Applicant's bankruptcy discharge states, "Some of the most common types of debts which are not discharged in a chapter 7 bankruptcy are: a. Debts for most taxes." (AE B at 2) Applicant reaffirmed his mortgage and two car payments, and obtained a discharge for the remainder of his debts. (Tr. 30, 58)

A July 7, 2014 IRS letter indicates "We propose to assess additional tax on your account for the taxable year shown above [tax year 2009]." (GE 3 at 11) The IRS concluded Applicant had taxable income of \$1,028,093 for tax year 2009 (mostly due to his lender's releases from liability on his mortgages), and the IRS assessed additional tax, penalty, and interest of \$125,440. (GE 3 at 11)

Applicant believed his tax debts were discharged through the Chapter 7 bankruptcy. (Tr. 36) On March 19, 2015, which was after the Chapter 7 discharge, State X wrote Applicant and advised him that State X reassessed his taxes and determined that he owed \$126,393 in taxes, interest, and penalties. (Tr. 36; SOR ¶ 1.b; GE 3 at 12) His evidence showing the federal income tax debts were resolved are IRS tax transcripts. (Tr. 49)<sup>3</sup> His March 17, 2015 IRS account transcript for tax year 2009

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<sup>3</sup>Applicant's federal tax debts meet the Internal Revenue Service (IRS) criteria for discharge under Chapter 7 of the Bankruptcy Code. See Nolo website, (In general, three criteria must be met before tax debts are discharged: (1) The return was due at least three years before the bankruptcy is filed; (2) The return was filed at least two years before the bankruptcy is filed; however, the return must be accurate; (3) A tax lien must not be attached to any property; and (4) The taxing authority must have assessed the tax (entered the liability on the taxing authority's records) at least 240 days before the bankruptcy is filed.), <http://www.nolo.com/legal-encyclopedia/tax-debt-chapter-7-bankruptcy.html>. (HE 4) See also Findlaw Website, "Bankruptcy and Taxes: Eliminating Tax Debts in Bankruptcy," (stating same)

indicates the IRS assessed an additional \$306,230 in taxes owed on April 1, 2013, and ultimately the IRS wrote off his \$398,278 tax debt. (GE 3 at 21)

In 2011, Applicant's adjusted gross income (AGI) on his and his spouse's tax return was \$283,955. (GE 3 at 23) In 2012, his AGI was \$295,783. (GE 3 at 25) In 2013, Applicant and his spouse filed separate tax returns, and his AGI was \$96,108. (GE 3 at 26)

In 2013, Applicant purchased two new vehicles and financed \$70,000. (Tr. 40) One vehicle was for Applicant's 18-year-old son, who was in college. (Tr. 40) In July 2015, he assessed the value of the two vehicles to be \$54,467. (GE 7 at 6)

After his nonpriority unsecured debts were discharged in 2014, Applicant filed a Chapter 13 bankruptcy to control his payments on his taxes and secured debts on July 19, 2015.<sup>4</sup> (Tr. 31; GE 7) Applicant is currently paying \$926 monthly under his April 2016 amendment to his Chapter 13 60-month payment plan. (Tr. 41; AE A) The trustee will make payments on his mortgage of \$366,175 and on a vehicle loan of \$34,467. (GE 9) There is no indication of allocations to pay his delinquent state tax debt. Applicant is paying three debts outside of the Chapter 13 process. (GE 9) In April 2016, Applicant purchased a timeshare property for family vacations for an unspecified amount. (Tr. 41-42) Applicant and his spouse's incomes have increased after their Chapter 7 bankruptcy discharge. (Tr. 44, 51) On his personal financial statement (PFS), Applicant said his monthly income is about \$8,300. (GE 3 at 9) In his July 19, 2015 bankruptcy filing, he indicated that he and his spouse have monthly income of \$22,200. (GE 7 at 2) Applicant has about \$300,000 in his 401(k) retirement account. (Tr. 45) His July 19, 2015 Chapter 13 filing indicates he has a State X debt for 2009 taxes of \$96,393 and a \$202,907 federal income tax debt for tax year 2009. (GE 7 at 15, 17)

Applicant said that before his properties went into foreclosure, his credit was excellent. (Tr. 47) Applicant currently owns two properties. (Tr. 22) Applicant lives in one property, and his father and Applicant are co-owners of the other property. (Tr. 23)

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[http://files.findlaw.com/pdf/bankruptcy/bankruptcy.findlaw.com\\_chapter-7\\_bankruptcy-and-taxes-eliminating-tax-debts-in-bankruptcy.pdf](http://files.findlaw.com/pdf/bankruptcy/bankruptcy.findlaw.com_chapter-7_bankruptcy-and-taxes-eliminating-tax-debts-in-bankruptcy.pdf). (HE 5)

<sup>4</sup>Applicant's SOR does not allege that he filed for bankruptcy under Chapter 13 of the Bankruptcy Code. 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 this allegation will not be considered except for the five purposes listed above.

Applicant's home is valued at about \$600,000 and the home he owns with his father is valued at about \$350,000. (Tr. 47)

## **Character Evidence**

Applicant's received excellent performance evaluations from his employer. (AE C; AE D) Applicant presented the following documents: State X Destructive Device Permit; State X Permit to Possess and/or Transport Machine Guns; Bureau of Alcohol, Tobacco, Firearms and Explosives permit to transmit explosive materials; and Division of Occupational, Safety, and Health Administration Blaster's license. (AE E-AE H) Applicant has developed two patents for his company. (AE I, AE J)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

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

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

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

## **Analysis**

### **Financial Considerations**

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

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

Applicant’s history of delinquent debt is documented in his credit reports, SOR response, and hearing record. AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” “(c) a history of not meeting financial obligations;” and “(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.” The record established 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;<sup>5</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.

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).<sup>6</sup>

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<sup>5</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)).

<sup>6</sup> 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. The decline in real estate values in State X had a profound negative impact on Applicant's finances and constitutes a circumstance beyond his control that adversely affected his finances. This significant decline in real estate values was unexpected. Applicant's properties were heavily leveraged with variable interest rate loans. The magnitude of his borrowing and his use of variable interest rate financing was very risky, and it showed lack of judgment. He did not provide proof that it was necessary for all four properties to go into foreclosure. The fact that the four properties were all "underwater" (mortgages were higher than fair market value) is not adequate justification to walk away from them. He did not provide sufficient information to establish or rule out a concern that at least one of his properties went into foreclosure as part of a strategic default.<sup>7</sup> By 2014, Applicant's financial circumstances had become so dire that having his unsecured nonpriority debts discharged through Chapter 7 of the Bankruptcy Code was reasonable. Accordingly, I find for Applicant in regard to SOR ¶ 1.c.

The negative financial considerations concerns are substantial. Applicant did not establish that he showed good judgment when he was so heavily leveraged in the real estate market, and after he learned of his tax debts, he made no payments to the address those tax debts, even though he had the financial resources to establish payment plans. Applicant's bankruptcy filing indicates Applicant has owed significant federal and state taxes since he learned of them in 2011 and 2012. Applicant's tax deficiency was discovered through an IRS audit in 2011.

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).

The negative financial and judgment information in Applicant's case is significant. The record established that Applicant has known that he owed more than \$500,000 in federal and state taxes for tax year 2009 for more than two years. He did not disclose any payments to address these two tax debts. His explanations are insufficient to fully mitigate financial considerations security concerns.

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<sup>7</sup> A "strategic default" refers to a situation where a borrower stops paying on a debt or contractual obligation even though he or she has the financial means to make the payments." ISCR Case No. 11-08271 at 2 n.1 (App. Bd. May 30, 2013).



## **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 50-year-old weapons and explosives specialist, and he has worked for a defense contractor for 28 years. He has an associate's degree in general studies. He served in the Army from 1985 to 1989, and he received an honorable discharge. Applicant's received excellent performance evaluations from his employer. Applicant presented the following documents: State X Destructive Device Permit; State X Permit to Possess and/or Transport Machine Guns; Bureau of Alcohol, Tobacco, Firearms and Explosives permit to transmit explosive materials; and Division of Occupational, Safety, and Health Administration Blaster's license. Applicant has developed two patents for his company. He has held a security clearance for 30 years. There is no evidence of security violations.

The decline in real estate values in State X is a circumstance beyond Applicant's control that adversely affected his finances. His four properties in State X were heavily leveraged with variable interest rate loans. The magnitude of his borrowing and his use of variable interest rate financing was very risky, and it showed poor judgment. After his debts were discharged under Chapter 7 of the Bankruptcy Code, he accrued additional delinquent debt.

The record established that Applicant has known for several years that he owed more than \$500,000 in federal and state taxes for tax year 2009. He did not disclose any payments to address these tax debts. He used Chapter 7 of the Bankruptcy Code in September 2014 to discharge the \$400,000 federal income tax debt. He did not provide sufficient evidence to establish his State X tax debt was resolved by his Chapter 7 bankruptcy, and I consider that debt to continue to exist. He is using Chapter 13 to minimize his payments to address or avoid making payments on his State X debt and

several credit card debts, even though he and his spouse make more than \$200,000 annually. He did not credibly explain why he needed to obtain Chapter 13 protection shortly after his debts were discharged under a Chapter 7 bankruptcy.

When a tax issue is involved, an administrative judge is required to consider how long an applicant waits to file his or her 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>8</sup> The primary problem here is that Applicant has known that he owed substantial state and federal tax debts for several years. He did not make any payments on the federal tax debt from 2011 to 2014, and he did not provide proof of any payments to address the state tax debt which he learned about in 2012.

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.

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<sup>8</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.").

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.

### **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:	Against Applicant
Subparagraph 1.c:	For Applicant

### **Conclusion**

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

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MARK HARVEY  
Administrative Judge