



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



In the matter of:

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ISCR Case No. 16-03289

Applicant for Security Clearance

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel

For Applicant: *Pro se*

04/10/2018

**Decision**

HARVEY, Mark, Administrative Judge:

In December 2017, Applicant filed his state and federal income tax returns for tax years 2010, 2011, and 2012. Financial considerations security concerns are not mitigated. Access to classified information is denied.

**Statement of the Case**

On February 5, 2016, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). Government Exhibit (GE) 1. On December 2, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006 (Sept. 1, 2006 AGs). Hearing Exhibit (HE) 2. The SOR set forth security concerns arising under the financial considerations guideline.

On January 5, 2017, Applicant provided a response to the SOR, and he requested a hearing. HE 3. On August 29, 2017, Department Counsel was ready to proceed. On September 6, 2017, the case was assigned to me. On November 8, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for November 30, 2017. HE 1. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered 5 exhibits; Applicant offered 14 exhibits; there were no objections; and all proffered exhibits were admitted into evidence. Transcript (Tr.) 15-19; GE 1-5; Applicant Exhibit (AE) A-AE N. On December 13, 2017, DOHA received a copy of the hearing transcript. I received one exhibit after the hearing. AE O (43 pages). The record closed on January 22, 2018. Tr. 42; AE O.

The Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position on or after June 8, 2017. The new AGs supersede the previous AGs. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.<sup>1</sup>

### **Findings of Fact<sup>2</sup>**

In Applicant's SOR response, he admitted SOR ¶ 1.h, and he denied the other SOR allegations. HE 3. He said he planned to file his state and federal tax returns for tax year 2010 as soon as he acquired W-2s from his employer. HE 3. Applicant's admissions are accepted as findings of fact. Additional findings of fact follow.

Applicant is 43 years old, and a DOD contractor has employed him as a calibration test equipment specialist for 14 years. Tr. 5-8; GE 1. He is also a union shop steward, and he represents about 20 employees. Tr. 9.

In 1992, Applicant graduated from high school. Tr. 5. He completed three or four college classes. Tr. 6-7. He estimated that he was married from 1997 to 2001, and from 2005 to 2011. Tr. 7, 26; GE 1. In 2013, he married, and he does not have any children. Tr. 7-8; GE 1. He served in the Air Force from 1992 to 1998; he left active duty as a senior airman (E-4); he received an honorable discharge; and his Air Force specialty was electronic warfare systems specialist. Tr. 6-7. He has not had any periods of unemployment in the previous five years. Tr. 8.

### **Financial Considerations**

Applicant's second divorce caused financial hardship. Tr. 19. He relied on his second spouse to pay the family debts. Tr. 20. She sent the city real estate taxes for their home to the wrong city. Tr. 20. In 2010, he was separated from his second spouse. Tr. 26. Applicant's pay was garnished to pay the city real estate taxes on his home. Tr. 20. Applicant was upset about the demise of his marriage. He decided not to answer the phone or to open bill statements. Tr. 21. He has recovered from the end of his second marriage, and now he opens bill statements. Tr. 21. His current annual salary is \$96,000. Tr. 22. His current spouse has a Ph.D. in engineering; her annual salary is about

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<sup>1</sup> Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at [http://ogc.osd.mil/doha/SEAD4\\_20170608.pdf](http://ogc.osd.mil/doha/SEAD4_20170608.pdf).

<sup>2</sup> Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

\$150,000; and she handles the family finances. Tr. 21-22, 25. They utilize a budget. Tr. 22-23. He and his spouse have some separate bank accounts. His spouse is very frugal. Tr. 25. He has a total of about \$8,000 in his bank accounts. Tr. 24; AE K. He has excellent communications with his current spouse about their finances. Tr. 38.

The SOR alleges seven delinquent debts and failure to timely file some federal and state tax returns. The record establishes the status of the SOR allegations is as follows:

SOR ¶ 1.a alleges a mortgage past due in the amount of \$29,954 with a total loan balance of \$147,309. Applicant refinanced his home, and the new mortgage was solely in Applicant's name. Tr. 27. Applicant fell behind on his mortgage payments because of the garnishment for city real estate taxes assessed on his home. Tr. 21. His second spouse worked outside their home, and when they separated, the family income was reduced. Tr. 27. After the garnishment for city real estate taxes was completed, he resumed his mortgage payments, and he included an extra \$100 to address the arrearage. Tr. 21. The mortgage company foreclosed. Tr. 21. In 2013, the creditor issued an IRS Form 1099-A indicating: the lender acquired Applicant's residence in January 2013; the fair market value of the property is \$169,484; and the mortgage principal outstanding is \$147,309. Tr. 28-29; AE D.

SOR ¶ 1.b alleges a charged-off bank debt for \$1,345. On January 4, 2017, Applicant paid \$1,345, and the creditor wrote that he was credited with payment in full of the debt. Tr. 29-30; AE A.

SOR ¶¶ 1.c, 1.e, and 1.g allege three bank debts placed for collection for \$287, \$1,209, and \$741; SOR ¶ 1.d alleges a telecommunications debt placed for collection for \$209; and SOR ¶ 1.f alleges a utility debt placed for collection for \$71. In December 2016, Applicant paid these five debts. Tr. 30-32; AE B; AE F; AE H; AE J at 3; GE 4 at 1.

SOR ¶ 1.h alleges Applicant failed to timely file his federal and state tax returns for at least 2010. He disclosed his failure to file his federal and state tax returns for tax year 2010 on his February 5, 2016 SCA, and he said he planned to "amend/file" his 2010 tax return this year. GE 1. He did not indicate he failed to file any other tax returns on his February 5, 2016 SCA. On May 2, 2016, Applicant told an Office of Personnel Management investigator that he had not filed his state and federal income tax return for tax year 2010, and he said that 2010 is the only year he did not file his tax returns. GE 3 at 2.<sup>3</sup> When he separated from his spouse in 2010; she took the family computer with her;

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<sup>3</sup> Applicant's SOR does not allege that Applicant intentionally provided false information on his February 5, 2016 Questionnaire for National Security Positions or security clearance application and during his May 2, 2016, Office of Personnel Management personnel subject interview about not filing his federal and state tax returns for tax years 2011 and 2012. 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

and it contained information necessary to file his tax returns. Tr. 33. At the time of his hearing, he had not filed his tax returns for tax year 2010. Tr. 34. He said three times that he filed all of his other tax returns. Tr. 34, 36. When he was asked the fourth time about filing his other tax returns, he said, “[I]t was a blur, so I’m not sure, sir. I’m not sure if it’s federal and state or just state . . . . That’s part of the process that I need to check. I believe I did. Those years I do believe I did.” Tr. 37. Later, he hesitantly said he was pretty sure he had filed all of his tax returns, except for tax year 2010. Tr. 37-38. He did not owe any delinquent taxes for tax years 2011 through 2016. Tr. 34. I suggested that Applicant provide tax transcripts to show his tax status after 2010 and the IRS Form 1040 for tax year 2010. Tr. 42-43.

Applicant provided information for tax years 2010 to 2016, which is depicted in the below table:

Tax Year	Date Tax Returns Filed	Federal Tax Refund	State Tax Refund	Ex. O Page No.
2010	Dec. 2017	\$384	\$124	6, 18-19
2011	Dec. 2017	\$922	\$242	7, 20-21
2012	Dec. 2017	\$978	\$261	8, 22-23
2013	Apr. 2014	\$901	\$368	9, 27-28
2014	Apr. 2015	\$92	\$304	29-34, 41-43
2015	Apr. 2016	\$439	\$362	12-16, 24-26
2016	Apr. 2017	\$1,895	\$574	3, 35-40

In sum, Applicant resolved the debts alleged in SOR ¶¶ 1.a through 1.g. He does not have any currently delinquent debts. Tr. 32-33. He filed his state and federal income tax returns for tax years 2010, 2011, and 2012 in December 2017. AE O. All of his state and federal income tax returns are filed.

## Character Evidence

Applicant has excellent performance evaluations, and his career is going very well. Tr. 38; AE L-AE N. He is diligent, conscientious, and detail oriented. Tr. 38; AE L-AE N. There is no evidence of abuse of alcohol or use of illegal drugs.

## 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

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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)). These allegations will not be considered except for the five purposes listed above.

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.

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

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

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

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

## Analysis

### Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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

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

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; "(c) a history of not meeting financial obligations"; and "(f) failure to file . . . annual Federal, state, or local income tax returns . . . tax as required." The record establishes AG ¶ 19(a), 19(c), and 19(f).

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

- (a) the behavior happened so long ago,<sup>4</sup> was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear

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<sup>4</sup> A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. February 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sep. 13, 2016)).

victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;<sup>5</sup>

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

(f) the affluence resulted from a legal source of income; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

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

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

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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)).

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

Applicant's finances were adversely affected when he was separated from his spouse in 2010, and divorced in 2011. She handled the family finances and failed to pay their debts. She took the family computer with her when she left, and it contained information necessary for him to file his tax returns. These are circumstances beyond his control that adversely affected his finances. Applicant has taken important steps towards establishing his financial responsibility. He has resolved all of his SOR debts. In December 2017, Applicant filed his state and federal income tax returns for tax years 2010, 2011, and 2012. No taxes were due.

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>6</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. The failure to timely file federal and state income tax returns has security implications because:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns*. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis in original). See ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015). The Appeal Board clarified that even in instances where an "[a]pplicant has purportedly corrected [his or her] federal tax problem, and the fact that [applicant] is now motivated

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<sup>6</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 tax 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).



to prevent such problems in the future, does not preclude careful consideration of [a]pplicant's security worthiness in light of [his or her] 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 employing 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, the Appeal Board provided the following principal rationale for reversing the grant of a security clearance:

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). In this instance, AG ¶ 20(g) applies because Applicant has filed all tax returns and paid all taxes; however, the timing of the filings of his tax returns is an important criteria of the analysis. In ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017) the Appeal Board reversed the grant of a security clearance, discussed how AG ¶ 20(g) applied, and noted:

The timing of the resolution of financial problems is an important factor in evaluating an applicant's case for mitigation because an applicant who begins to resolve financial problems only after being placed on notice that his clearance was in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his own interests. In this case, Applicant's filing of his Federal income tax returns for 2009-2014 after submitting his SCA, undergoing his background interview, or receiving the SOR undercuts the weight such remedial action might otherwise merit.

Applicant did not provide a good reason for his decisions not to file his federal and state tax returns on time or at least much sooner. Under all the circumstances, he failed to establish mitigation of 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(d):

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

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is 43 years old, and a DOD contractor has employed him as a calibration test equipment specialist for 14 years. He is also a union shop steward, and he represents about 20 employees. In 1992, he graduated from high school, and he completed three or four college classes. In 2013, he married. He honorably served in the Air Force from 1992 to 1998. Applicant has excellent performance evaluations, and his career is going very well. He is diligent, conscientious, and detail oriented. There is no evidence of abuse of alcohol or use of illegal drugs.

Applicant was separated from his second spouse in 2010, and they were divorced in 2011. His spouse handled the family finances, and she failed to pay several debts. She retained the family computer, and documentation to file his tax return for 2010 was unavailable to him for some time. These circumstances beyond his control adversely affected his finances, and several debts became delinquent. He is credited with resolving all of the SOR debts and not owing any delinquent taxes.

The evidence against grant of his security clearance is more substantial. In December 2017, Applicant filed his state and federal income tax returns for tax years 2010, 2011, and 2012, and his filings of his state and federal income tax returns for those three tax years were not timely. 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>7</sup> In this case, the IRS did not generate his tax

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<sup>7</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

returns, and he did not owe taxes. The primary problem here is that Applicant has known that he needed to file federal and state income tax returns for 2010, 2011, and 2012 for several years. Even though he may have known he was going to receive refunds, he had a legal requirement to timely file his tax returns. He may not have fully understood or appreciated the importance of timely filing of tax returns. His actions in December 2017 are too little, too late to fully mitigate security concerns arising from his failure to timely file his tax returns for tax years 2010, 2011, and 2012.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations security 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.

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 security concerns are not mitigated.

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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 his 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, expenditures for his children's college tuition and expenses, 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"). Applicant's uncorroborated statements that all tax returns were filed is insufficient to prove tax returns were filed. See ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017) (citing e.g., ISCR Case No. 96-0897 at 2-3 (App. Bd. Dec. 9, 1997) and reversing grant of security clearance).

## **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.g:	For Applicant
Subparagraph 1.h:	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 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