



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



In the matter of:

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ISCR Case No. 17-00285

Applicant for Security Clearance

**Appearances**

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

For Applicant: *Pro se*

01/12/2018

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant failed to make enough progress resolving his delinquent state and federal income tax debts. He did not establish his financial responsibility. Financial considerations security concerns are not mitigated. Access to classified information is denied.

**Statement of the Case**

On November 19, 2015, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). Government Exhibit (GE) 1. On March 13, 2017, 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 May 7, 2017, Applicant provided a response to the SOR, and he requested a hearing. HE 3. On July 6, 2017, Department Counsel was ready to proceed. On August 28, 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 six exhibits; Applicant offered five exhibits; there were no objections; and all proffered exhibits were admitted into evidence. Transcript (Tr.) 18-21, 29, 48; GE 1-6; Applicant Exhibit (AE) A-E. On December 13, 2017, DOHA received a copy of the hearing transcript.

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.a through 1.l and 1.q. HE 3. He denied the other SOR allegations. Applicant's admissions are accepted as findings of fact. Additional findings of fact follow.

Applicant is 54 years old, and a DOD contractor has employed him as an information technology engineer since March 2015. Tr. 5; GE 1. In 1981, he graduated from high school. Tr. 5. In 1988, he received a bachelor's degree with a major in computer information systems. Tr. 6. Applicant has taken courses at several schools towards a master's degree. Tr. 6-7. In 1987, he married, and his children are ages 25, 30, and 31. Tr. 7. He has not served in the U.S. armed forces. Tr. 8. He has been separated from his spouse since 2002. Tr. 8, 29.

### **Financial Considerations**

Applicant was unemployed from 1996 to 1998, and his nonpriority unsecured debts were discharged under Chapter 7 of the Bankruptcy Code in 1999. Tr. 31-32.<sup>3</sup> From 2009

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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.

<sup>3</sup> 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.

to 2012, Applicant provided care for his father who had a long-term debilitating illness. Tr. 22, 28. He pays the mortgage on his spouse's residence, and he claims her address for his permanent residence. Tr. 29. Applicant had periods of underemployment and unemployment. GE 1. Applicant's SOR alleges the following financial concerns:

SOR ¶¶ 1.a, 1.b, 1.c, and 1.g allege four federal tax liens: (1) in 2002, for \$7,181; (2) in 2002, for \$7,191; (3) in 2007, for \$16,275; and (4) in 2010, for \$12,796. The IRS lifted the lien filed in 2002 because of Applicant's hardship, and then the liens were reinstated when Applicant was unable to make payments under the IRS installment agreement. Tr. 33. Electronic records indicate federal tax liens filed in 2002, for \$7,181 and in 2004, (not 2002) for \$7,191. GE 4. The electronic records also show federal tax liens in 2007, for \$16,275 and in 2010, for \$12,796. GE 4. Applicant is credited with mitigating the debt in SOR ¶ 1.a as a duplication of the lien in SOR ¶ 1.b. None of the other federal tax liens are mitigated.

SOR ¶¶ 1.d, 1.e, 1.f, 1.h, 1.i, and 1.j, allege six state tax liens: (1) in 2009, for \$1,256; (2) in 2009, for \$46; (3) in 2014, for \$4,357; (4) in 2014, for \$1,398; (5) in 2014, for \$289; and (6) in 2015, for \$2,176. The electronic record shows the six state tax liens. GE 4.

SOR ¶ 1.k alleges a Social Security debt for \$1,574 placed for collection. Applicant said he made one payment, and he owes \$1,000 for a Social Security overpayment after his father died. Tr. 43. Applicant is credited with having this debt in a payment plan.

SOR ¶ 1.l alleges a charged-off debt for \$1,350. Applicant's 2016 credit report indicates this debt originated from a line of credit. GE 3. There is no evidence of efforts to resolve this debt.

SOR ¶¶ 1.m, 1.n, 1.o, and 1.p allege four medical accounts placed for collection for \$151, \$187, \$463, and \$283. Applicant provided proof that in November 2015, he paid the debt in SOR ¶ 1.m for \$151. Tr. 41. He said he paid the other three medical debts; however, he did not have receipts. Tr. 43. The three medical debts do not appear on his most recent credit report. Tr. 44. He is credited with resolving the debts in SOR ¶¶ 1.m through 1.p.

SOR ¶ 1.q alleges Applicant failed to file as required his federal income tax returns for tax years 2014 and 2015. Applicant's tax returns for 2014, 2015, and 2016 were filed sometime in 2017. Tr. 38, 50. He did not know how much he owed the IRS or the state government for any of those three tax years. Tr. 38-39. He has been working with an accountant since October 2013. Tr. 39. He had another period of unemployment in 2014. Tr. 40.

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*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)). The allegations not alleged in the SOR will not be considered except for the five purposes listed above.

On February 2, 2010, the IRS wrote Applicant and indicated he had a payment arrangement to pay \$200 monthly to address tax debts for tax years 1997, 1998, 1999, 2000, 2002, 2005, and 2006.<sup>4</sup> The IRS letter did not indicate the amount of Applicant's IRS tax debt. After one year, the monthly payment was scheduled to increase to \$760. The agreement required Applicant to pay on time all future taxes when due. Applicant said his tax debts were caused when he claimed too many exemptions and failed to have sufficient funds withheld from his income to pay his taxes. Tr. 32-33. Applicant said he was unable to make any payments under the 2010 agreement because he lost his employment when his clearance was "hung up." Tr. 27, 36.

On November 27, 2017, Applicant completed an IRS Form 9465, Installment Agreement Request, in which he indicated he owed the IRS \$84,000, and he offered to pay \$100 a month to the IRS. Tr. 49; AE A. He advised the IRS as follows regarding his ability to pay: gross monthly pay is \$6,800; net monthly pay is \$6,000; monthly expenses are \$3,700; his vehicles were paid off in 2015; he owes \$1,000 on a credit card; and he does not have any funds in the bank. Tr. 30; AE A.

Applicant provided information from seven tax years (AE C), which is duplicated in the below table:<sup>5</sup>

Tax Year	Tax Assessed	Tax Paid	Tax Owed
2005	\$6,453	\$716	\$7,169 <sup>6</sup>
2006	\$9,926	\$1,101	\$11,027 <sup>7</sup>
2009	\$9,771	\$1,235	\$11,007
2010	\$6,293	\$905	\$7,199
2011	\$9,750	\$1,880	\$11,630
2012	\$18,355	\$4,454	\$22,808
2013	\$8,371	\$2,449	\$10,870
Total	\$68,919	\$12,740	\$81,710

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<sup>4</sup> The source for the information in this paragraph is a February 2, 2010 IRS installment payment agreement. AE D. He said he paid the taxes for tax years 1997, 1998, 1999, 2000, and 2002. Tr. 36.

<sup>5</sup> Applicant said he obtained the information in this table from the IRS website. Tr. 24. He did not understand why the figures on his 2005 and 2006 federal tax returns were different from the information from the IRS website. Tr. 24-26. Some of the differences are due to IRS assessments of interest and penalties.

<sup>6</sup> Applicant said in 2008, his accountant generated a revised 2005 tax return for Applicant that showed: adjusted gross income of \$31,526; total tax of \$3,885; tax payments of \$856; and tax owed of \$3,071. Tr. 22-23. His revised 2005 federal and state tax returns were sent to the tax authorities "maybe" in 2008. Tr. 23. The 2005 state tax return showed Applicant owed \$454. Tr. 23.

<sup>7</sup> Applicant said in 2008, his accountant generated a revised 2006 tax return for Applicant that showed: adjusted gross income of \$47,908; total tax of \$8,917; tax payments of \$3,896; and tax owed of \$5,021. Tr. 22-24. The revised 2005 federal and state tax returns were sent to the tax authorities "possibly" in 2009. Tr. 26. The 2006 state tax return showed Applicant owed \$1,202. Tr. 24.

Applicant said his accountant is reviewing tax years 2010 through 2013 to ensure accuracy and compliance with tax laws. Tr. 36. He has additional receipts, and wants to receive credit for all legal deductions. Tr. 37. Applicant was unsure when some of his tax returns were filed. Tr. 37. Applicant hopes that his tax debt will be substantially reduced through his accountant's ongoing assessment. Tr. 46-47.

Applicant works in one state and has an address in another state. Tr. 50. He may owe taxes to the state where he is employed. Tr. 50-51.

## **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.

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 four disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; "(b) unwillingness to satisfy debts regardless of the ability to do so"; "(c) a history of not meeting financial obligations"; and "(f) failure to file or fraudulently filing annual Federal, state, or local

income tax returns or failure to pay annual Federal, state, or local income tax as required.” The record establishes AG ¶¶ 19(a), 19(b), 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>8</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 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>9</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

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<sup>8</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)).

<sup>9</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)).

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

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

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

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

Applicant's unemployment, underemployment, his father's illness and death, and his separation from his spouse were outside his control and adversely affected his finances. He is credited with mitigating the following SOR allegations: ¶ 1.a as a duplication; ¶ 1.k is in payment plan; and ¶¶ 1.m, 1.n, 1.o, and 1.p are paid.

Applicant has taken an important step towards showing financial responsibility. He is employing an accountant to assess and reevaluate his tax debt. Applicant currently owes about \$80,000 in federal income taxes for tax years 2005, 2006, and 2009 through 2013, and he has about \$10,000 in state tax liens. He also failed to timely file his 2014 and 2015 federal income tax returns.

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>10</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. In regard to the failure to timely file federal and state income tax returns, the DOHA Appeal Board has commented:

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<sup>10</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 (9th Cir. 1973); *United States v. McCabe*, 416 F.2d 957 (7th Cir. 1969); *O'Brien v. United States*, 51 F.2d 193 (7th Cir. 1931).



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 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). AG ¶ 20(g) does not fully apply because it is too soon to know whether the IRS will agree to his \$100 monthly payment plan or that Applicant will make the necessary payments to the IRS under the installment payment plan.

There is insufficient evidence about why Applicant was unable to make greater progress sooner resolving his tax issues and insufficient assurance his financial problems are resolved, under control, and will not recur in the future. 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 54 years old, and DOD contractors have employed him as an information technology engineer since March 2015. In 1988, he received a bachelor's degree, and he majored in computer information systems. Applicant has taken courses at several schools towards a master's degree. There is no evidence of security violations.

Applicant's unemployment, underemployment, his father's illness and death, and his separation from his spouse were outside his control and adversely affected his finances. He is credited with mitigating the debts in SOR ¶¶ 1.a, 1.k, 1.m, 1.n, 1.o, and 1.p. He is employing an accountant to assess and reevaluate his tax debt.

The evidence against grant of his security clearance is more substantial. Applicant currently owes about \$80,000 in federal income taxes for tax years 2005, 2006, and 2009 through 2013 and about \$10,000 in state tax liens. He also failed to timely file his 2014 and 2015 federal income tax returns. 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>11</sup> The primary problem here is that Applicant has known that he needed to file federal income tax returns for several years. He knew he needed to increase his withholding or set aside more money to pay his taxes when due. He does not have an established payment plan to resolve his federal income tax debt. His actions in 2017 are too little, too late to mitigate security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the 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. With more effort towards documented resolution of his past-due debts, and a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

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

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<sup>11</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 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b through 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraphs 1.m through 1.p:	For Applicant
Subparagraph 1.q:	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