



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01384

**Appearances**

For Government: Bryan J. Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

07/18/2018

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant did not make sufficient progress resolving his delinquent debts. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

**History of the Case**

On March 14, 2016, Applicant completed and signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On May 19, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an 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 Guideline F.

On June 27, 2017, Applicant responded to the SOR. (HE 3) On July 14, 2017, Department Counsel was ready to proceed. On November 20, 2017, the case was assigned to another Administrative Judge. On February 16, 2018, the case was transferred to me for administrative reasons. On March 6, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for March

28, 2018. (HE 1) Applicant waived his right to 15 days of notice of the date, time, and location of the hearing. (Tr. 19-20) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits; Applicant offered one exhibit; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 21-26; GE 1-4; Applicant Exhibit (AE) A (54 pages). On March 29, 2018, two exhibits were received and admitted without objection. (AE B; AE C) On April 11, 2018, DOHA received the hearing transcript. On May 28, 2018, the record closed. (Tr. 110, 120)

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 the allegations in SOR ¶¶ 1.a through 1.e. (HE 3) He also provided mitigating information. His admissions are accepted as findings of fact.

Applicant is a 45-year-old mechanical engineer, who is seeking employment with a DOD contractor. (Tr. 6, 8) On February 2, 2016, a government contractor offered to hire Applicant at an annual salary of \$111,000. (AE A at 1-5) A security clearance is a requirement for this employment. (AE A at 3) In 1992, he graduated from high school. (Tr. 6) In 1998, he received a bachelor's degree in manufacturing engineering, and in 2003, he received a master's degree in mechanical engineering. (Tr. 7) He has never served in the military. (Tr. 7) In 1999, he married, and in 2009, his divorce was final. (Tr. 8, 35) He has no children. (Tr. 8)

### **Financial Considerations**

From 1998 to 2010, a large corporation employed Applicant. (Tr. 28) He was unemployed from 2010 to about mid-2011. (Tr. 32) While he was unemployed, he received unemployment compensation and utilized funds from his 401(k) account. (Tr. 32) From June 2011 to January 2015, a different large corporation employed Applicant as an engineering project manager with an annual salary of about \$95,000. (Tr. 43-44, 51) He is seeking about \$270,000 from the employer for wrongful termination in January

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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.

2015. (Tr. 45) He had some litigation expenses such as for court reporter services. (Tr. 88-90; AE A at 40-44)

From January 2015 to July 2017, Applicant had several brief employments and periods of unemployment. (Tr. 46-47) Since July 2017, a corporation has employed him. (Tr. 48) His current annual income is about \$120,000. (Tr. 49, 84) He put \$1,000 monthly into a 401(k) account because his employer matches some or all of it. (Tr. 92-94; AE A at 35-36) As for contributions to his 401(k) account, his February 28, 2018 pay statement indicates he contributed \$2,271 year-to-date, and his employer contributed \$795 year-to-date. (AE A at 35) His financial counselor observed “Things you’re doing well already”: included, “Pay yourself first, 10% recommended retirement savings” and “No back owed taxes or levies.” (AE C at 3)

Applicant has or had two small businesses. (Tr. 61-63) One business had a potential to generate more than \$200,000, about 10 years ago, and the other was used for financing vehicle purchases, but was not providing significant income. (Tr. 61-63)

In 2015, Applicant withdrew \$49,340 from his 401(k) account, and acknowledged he had a federal tax liability of \$4,934 (early withdrawal penalty 10%) in addition to the federal state and local taxes on those amounts if not withheld during withdrawal. (AE B at 2; AE C at 7-10) In 2016, Applicant withdrew \$6,224 from his IRA, and he acknowledges a federal tax liability of \$622 (early withdrawal penalty 10%) in addition to the federal state and local taxes on those amounts if not withheld during withdrawal. (AE B at 2) He provided documentation showing \$2,260 was withheld for payment of federal income taxes in 2015, and \$642 was withheld for state income taxes in 2015. (AE C at 7-10) He did not provide an estimate of overall state and federal taxes owed for tax years 2015 and 2016.

In 2015, Applicant filed his state income tax return for tax year 2010, and he owed \$1,600. (Tr. 37) In February 2018, he paid his state tax debt for tax year 2010. (Tr. 37; AE A at 24-32) As of March 2018, he had not filed his state and federal income tax returns for tax years 2015 and 2016. (Tr. 38, 99)<sup>3</sup> He said he did not file his tax returns for 2015

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<sup>3</sup> Applicant’s SOR does not allege Applicant failed to timely file his state income tax return for tax year 2010, and he has not filed his 2015 and 2016 federal and state income tax returns. I sustained Applicant’s objection to amendment of the SOR to include allegations that he did not file his tax returns for 2015 and 2016. (Tr. 99-102) 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)). The allegation that Applicant failed to file his 2015 and 2016 federal and state income tax returns will not be

and 2016 because he was suing a former employer for wrongful termination, and he could not make payments to the IRS because he owed taxes for the funds withdrawn from his 401(k) account. (Tr. 39, 57)

Applicant did not file his tax returns because “they’re going to immediately start coming after me.” (Tr. 40) By not filing his tax returns, he remained “under their radar.” (Tr. 41) He further explained that he decided not to file his tax returns until he had more financial resources or resolved some other financial issues, and he asked rhetorically, “am I going to add another piece of kindling to this fire, or am I going to deal with the fire that I have, . . . and then I’ll deal with that later, when I’m in a better position to deal with it?” (Tr. 41)

Later Applicant said he did not file his 2015 tax returns because he wanted to wait until he obtains a judgment against his former employer, and if he had not been terminated, he would not have had to take funds out of his 401(k) account. (Tr. 98) He believes this argument will convince the IRS to waive penalties for not filing or paying his taxes. (Tr. 98) He did not have a firm date for resolution of his lawsuit against his former employer. (Tr. 98)

Applicant received some financial advice and counseling. (Tr. 73; AE A at 46-54) He generated a payment plan for his debts. (Tr. 73; AE A at 48-49) He stated that he pays \$1,285 monthly to his creditors. (Tr. 75) His budget shows he has a monthly remainder of about \$200 after making payments. (Tr. 85; AE A at 38-39)

The status of the financial issues alleged in the SOR is as follows:

SOR ¶ 1.a alleges a medical account placed for collection for \$46. Because this debt is not further described in his credit report, and is of relatively low magnitude. It does not raise a security concern, and it is mitigated.

SOR ¶ 1.b is an account placed for collection for \$973. Applicant’s April 27, 2017 credit report shows a balance of \$973. (GE 4 at 2) He said he plans to make \$150 monthly payments, and he made his first payment the month of his hearing. (Tr. 67) On March 30, 2018, he paid the creditor \$158, and on May 15, 2018, he paid \$79 to the creditor. (AE B at 2; AE C at 5) He paid about one quarter of this debt, and it is mitigated.

SOR ¶ 1.c alleges a charged-off debt for \$16,498. Applicant’s April 27, 2017 credit report shows a balance of \$16,888. (GE 4 at 3) He said he pays the creditor between \$400 and \$450 on a monthly basis. (Tr. 70) His first payment was in January 2018. (Tr. 72) On January 11, 2018, he paid the creditor \$100; on January 26, 2018, he paid the creditor \$400; and on March 5, 2018, he paid the creditor \$450. (Tr. 70-72; AE A at 45) His three payments were made on three consecutive months, and they are sufficient to establish a payment plan. This debt is mitigated even though he paid less than ten percent of the overall debt.

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considered except for how it affects rehabilitation, mitigation, and under the whole-person concept. (Tr. 102-103)

SOR ¶ 1.d alleges a charged-off debt for \$4,841. Applicant's April 27, 2017 credit report shows a balance of \$4,841. (GE 4 at 4) He said he pays the creditor \$150 on a monthly basis with the first payment being made in March 2018. (Tr. 76-79) He provided proof that he paid \$150 on March 27, 2018, and on April 27, 2018. (AE C at 6) His two payments totaling \$300 are insufficient to establish a track record of payments, and this debt is not mitigated.

SOR ¶ 1.e alleges a charged-off debt for \$15,268. Applicant's April 27, 2017 credit report shows a balance of \$15,268. (GE 4 at 4) Applicant said he pays the creditor between \$400 and \$450 on a monthly basis. (Tr. 70, 74) On October 31, 2017, he paid the creditor \$400; on December 5, 2017, he paid the creditor \$450; and on March 5, 2018, he paid the creditor \$450 (Tr. 10-16) He said he may have made additional payments after October 31, 2017. (Tr. 81) He believes the current balance owed to the creditor is about \$18,000. (Tr. 83) He did not make consistent monthly payments; the total amount of the payments is relatively low in comparison to the \$18,000 debt; and there is no proof of payments after March 5, 2018. This debt is not mitigated.

SOR ¶ 1.f alleged a utility debt placed for collection for \$293. Applicant said he paid the debt in 2016. (Tr. 83) He did not provide proof of payment. (Tr. 83-84) He provided an account statement showing his account is current. He is credited with mitigating this debt. (AE B at 2; AE C at 2)

Applicant owes student loans totaling about \$14,000. (Tr. 84) He has communicated with the student loan creditor; his student loans are in deferment; and when he starts payments, his monthly payments will be about \$250. (Tr. 84) He made some payments on some non-SOR debts. (AE A at 18-23, 37) On March 17, 2018, Applicant's FICO score was 615. (AE A at 18)<sup>4</sup>

## **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

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<sup>4</sup> A FICO score is a type of credit score created by the Fair Isaac Corporation. Lenders use borrowers' FICO scores along with other details on borrowers' credit reports to assess credit risk and determine whether to extend credit.

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 Director of National Intelligence 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 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 two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations."

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

(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, 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;

(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).

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

Applicant provided some mitigating information. He had periods of unemployment and underemployment, and he was divorced in 2009. These circumstances were beyond his control and adversely affected his finances. He resolved several debts and made sufficient payments on others to establish payment plans. He received financial counseling and has a budget.

Applicant did not act responsibly under the circumstances when he failed to make sufficient and consistent payments on the debts in SOR ¶¶ 1.d and 1.e to establish payment plans, and when he failed to file his federal and state income returns for tax years 2015 and 2016.

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>5</sup> For purposes of this

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<sup>5</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 . . . .



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 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 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).

Applicant did not give good enough reasons for not filing his federal and state income tax returns for tax years 2015 and 2016. He knew he needed to timely file his 2015 and 2016 federal and state income tax returns, and he did not show the requisite diligence in filing those tax returns. He did not make sufficient progress resolving the debts in SOR ¶¶ 1.d and 1.e in light of his income from his current employment. There is insufficient assurance that similar problems will not recur in the future. Under all the circumstances, he failed to establish mitigation of financial considerations security concerns.

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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).

## 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 a 45-year-old mechanical engineer, who is seeking employment with a DOD contractor. In 1998, he received a bachelor's degree in manufacturing engineering, and in 2003, he received a master's degree in mechanical engineering. From his presentation at hearing, it is evident that that he is exceptionally intelligent. He understands his financial obligations.

Applicant provided some important mitigating information. His finances were adversely affected by circumstances beyond his control including divorce, unemployment, and underemployment. He resolved several debts and made sufficient payments on others to establish payment plans. He received financial counseling and has a budget.

The evidence against mitigation is more persuasive. Since July 2017, he has been employed by a corporation, and his current annual income is about \$120,000. He did not make sufficient progress resolving two of his SOR debts. SOR ¶¶ 1.d for about \$4,500 and 1.e for about \$18,000 are not mitigated.

Based on the decisions of the DOHA Appeal Board, the evidence against grant of a security clearance outweighs the positive evidence of his background and financial responsibility. 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>6</sup> In this case, there is no evidence that the IRS generated his tax returns, and when he does file his tax returns for 2015 and 2016, he will likely owe federal income taxes. The primary problem here is that Applicant has known that he needed to file federal income tax returns for several years. He had a legal requirement to timely file his tax returns. His actions raise unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

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 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 of a track record of behavior consistent with his obligations, Applicant 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 consideration security concerns are not mitigated.

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<sup>6</sup> The 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 private 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.c: | For Applicant     |
| Subparagraphs 1.d and 1.e:     | Against Applicant |
| Subparagraph 1.f:              | For Applicant     |

## **Conclusion**

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Mark Harvey  
Administrative Judge