



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



In the matter of:)
)
) ISCR Case No. 17-01471
)
Applicant for Security Clearance)

Appearances

For Government: Robert B. Blazewick, Esq., Department Counsel
For Applicant: Francis J. Flanagan, Esq.

07/17/2018

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant did not timely file her federal or state income tax returns for tax years 2013 through 2016. She filed her delinquent tax returns in October 2017 and has repaid all past-due income tax liabilities, but her recent and recurrent failure to comply with her tax-filing obligations casts doubt on her judgment and reliability and whether she can be counted on to comply with tax-filing deadlines in the future. Clearance is denied.

Statement of the Case

On October 16, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for her. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for*

Access to Classified Information or Eligibility to Hold a Sensitive Position (AG) effective within the DOD on June 8, 2017.

Applicant responded to the SOR through her Counsel on November 2, 2017, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On January 9, 2018, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On January 11, 2018, I scheduled a hearing for February 6, 2018.

At the hearing, three Government exhibits (GEs 1-3) were admitted in evidence. A December 4, 2017 letter forwarding discovery of the GEs to Applicant's counsel was marked as a hearing exhibit (HE 1) but not admitted as an evidentiary exhibit. Applicant and three witnesses testified, as reflected in a transcript (Tr.) received on February 13, 2018.

I held the record open until February 23, 2018, for post-hearing submissions from Applicant. On February 26, 2018, I received a letter authored by a certified public accountant (CPA), which was marked and admitted without objection as Applicant exhibit (AE) A.

Summary of SOR Allegations

The SOR alleges under Guideline F that, as of October 16, 2017, Applicant had not yet filed her federal and state income tax returns for tax years 2010 through 2016 (SOR ¶¶ 1.a-1.n). Additionally, Applicant is alleged to owe delinquent federal income taxes of \$4,208 for 2010 (SOR ¶ 1.a), \$2,581 for 2011 (SOR ¶ 1.c), and \$20,898 for 2012 (SOR ¶ 1.e) and state income taxes of \$833 for 2010 (SOR ¶ 1.b), \$3,671 for 2012 (SOR ¶ 1.f), \$555 for 2013 (SOR ¶ 1.h), \$2,867 for 2014 (SOR ¶ 1.j), and \$547 for 2015 (SOR ¶ 1.l). Under Guideline E, Applicant is alleged to have deliberately falsified her April 2016 security clearance application (SF 86) by disclosing her noncompliance with her federal and state income tax filing obligations only for tax years 2013 and 2014 (SOR ¶ 2.a). When Applicant answered the SOR allegations, she admitted that she did not timely file her federal and state income tax returns for the tax years alleged, but she denied that they were still unfiled. Concerning the tax debts, she indicated that her federal income tax debts for 2010, 2011, and 2012 were being repaid under an agreed upon payment plan, while all of her state income tax debts were satisfied. Applicant denied that she intended to falsify her SF 86 and indicated that her answer to the tax inquiry was "inadvertently mistaken." (Answer.)

Findings of Fact

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 58-year-old senior manager in subcontracts, who has worked for her defense-contractor employer since October 2006. She was initially cleared for classified

access in 1984, and she held a security clearance during her previous employment with a defense contractor from April 2002 to October 2006. She currently holds a Secret clearance for her duties, but held a Top Secret clearance in the past. Applicant has a bachelor's degree awarded in 1991. She has been in a common-law marriage since approximately October 2010. She was previously married from December 1979 to August 1995 and has a 30-year-old son from that marriage. Applicant's ex-husband was not involved in their son's life after their divorce. (GEs 1-2; Tr. 15-17.)

Applicant filed her income tax returns as head of household after her divorce. For tax years 2010 through 2012, Applicant and her common-law spouse filed tax returns as married, filing separately, which apparently resulted in a significant income tax underpayment for Applicant. She entered into an installment arrangement with the IRS to pay taxes owed. The government alleged in the SOR that Applicant owed federal taxes of \$4,208 for 2010, \$2,581 for 2011, and \$20,898 for 2012, although no documentation was presented of that tax liability or of the installment agreement. In 2014 or 2015, Applicant adjusted her deduction to "zero" for income tax withholding purposes. (Tr. 31-33.) While she continued to have taxes withheld from her income, she did not file her federal or state income tax returns for tax years 2013, 2014, and 2015. (GE 1.) Applicant collected the information needed to file her tax returns but made no effort to prepare her income tax returns, and her spouse was no help in that regard. (Tr. 34, 37.) She received some notices from the IRS about missing returns for 2013 and 2014 and does not now recall whether she ever responded, although they served to remind her that she needed to file her tax returns. She does not remember receiving any notice from the IRS for tax year 2015 or any correspondence from the state for any of the tax years. (Tr. 37-38.)

On April 21, 2016, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). She responded affirmatively to an inquiry concerning whether she had failed to file or pay federal, state, or other taxes in the last seven years, and stated, "I have not filed my income tax returns on time." She cited tax years 2013 and 2014 specifically with regard to which tax years for which she had not filed, and added that she was in the process of compiling the information needed to file the returns and that she intended to complete all filings by July 2016." (GE 1.) Applicant denies any intention to deceive the government by failing to specifically disclose that she had not filed her tax returns on time for 2015 or that she had owed past-due taxes. She testified that she was trying to offer information but did not state it correctly. (Tr. 26-27.)

On January 31, 2017, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). She indicated that she had yet to file her income tax returns for tax years 2013, 2014, and 2015 because she had not collected the paperwork needed to file them. She expressed an intention to file her tax returns by late February 2017, and she expected tax refunds for each year. (GE 2.)

On July 31, 2017, DOHA sent interrogatories to Applicant asking in part about her tax filings and tax debts. She was asked to submit account transcripts from the IRS for tax years 2010 through 2016.¹ Applicant requested an extension of time to respond because of

¹ It is unclear whether those account transcripts were ever provided by Applicant. They are not in evidence,

her demanding work schedule. Additionally, she sustained a head injury in an accident on August 25, 2017, that caused lingering medical issues, and she has been working on resolution of a claim from a car accident her son had on September 6, 2017. When she responded to the interrogatories on October 3, 2017, Applicant admitted that she had failed to timely file some of her state income tax returns, but she denied owing any state income taxes. She did not specify which tax years were involved. She admitted that she owed some past-due federal income taxes, and explained in part:

With regard to prior year tax returns, the delay was primarily attributable to 1) the belief that in modifying deductions there would be no federal tax owed and 2) the need to collect appropriate receipts to ensure that upon submission of the returns they were accurate and complete.

Applicant added that she had retained an accountant to prepare her delinquent income tax returns and based on her meeting with him, all tax returns should be completed by the end of October 2017.² She indicated that for those years where tax returns had been filed and she owed taxes, she was repaying the taxes under an installment agreement. She did not anticipate owing any taxes for tax years 2013 through 2016. She stated that she understood it was her responsibility to ensure that she meets her obligations. (GE 2.)

On October 10, 2017, Applicant's counsel forwarded to DOHA an email from the accountant retained to prepare Applicant's delinquent income tax returns. The accountant confirmed that he met with Applicant on October 3, 2017, to begin preparing her tax returns for tax years 2013 through 2016. He expressed his belief that he could complete the tax returns by the middle of that next week. (GE 3.)

On October 16, 2017, an SOR was issued to Applicant alleging that she had yet to file her federal and state income tax returns for tax years 2010 through 2016 and that she owed past-due federal income taxes totaling \$27,687 (\$4,208 for 2010, \$2,581 for 2011, and \$20,898 for 2012) and past-due state income taxes of \$8,473 (\$833 for 2010, \$3,671 for 2012, \$555 for 2013, \$2,867 for 2014, and \$547 for 2015). On November 2, 2017, Applicant indicated that her federal and state income tax returns for tax years 2010 through 2016 were filed late, but they had been filed. As for the past-due taxes, she was repaying her federal tax debts for 2010, 2011, and 2012 under an installment agreement. She asserted that her delinquent state income taxes for tax years 2010 and 2012 through 2015 were satisfied in full. (Answer.) At her hearing, she testified discrepantly that she obtained an extension of the tax-filing deadline for 2010 and that her tax returns were filed before the extended deadline. (Tr. 28.) She testified that the years for which she filed late returns "without an extension period" were tax years 2013 through 2016, but that she filed those returns within the same week in October 2017.³ (Tr. 30-31.) Regarding tax payments, she

and no other records were provided showing the dates of her tax filings for the tax years alleged in the SOR.

² Applicant testified that she retained the accountant to prepare her delinquent income tax returns in September or October 2017. (Tr. 36.) The CPA indicates that they met on October 3, 2017. (AE A.)

³It could be inferred from Applicant's testimony that she filed for an extension of the tax-filing deadline for tax years 2011 and 2012, and that she filed her tax returns for those tax years within the extended deadlines.

testified discrepantly that the tax years covered by her installment plan with the IRS were 2008, 2009, and 2010. (Tr. 31.) She presented no documentation confirming the dates when her federal and state income tax returns were filed or when her tax liabilities were paid.⁴ Correspondence of February 5, 2018, from her accountant indicates that all of Applicant's federal and state income tax returns had been filed through 2016. (AE A.) He did not provide the dates when he completed her tax returns. As of her hearing in February 2018, Applicant was still in the process of gathering the paperwork needed to file her federal and state income tax returns for tax year 2017, which were not yet due. (Tr. 18.)

Applicant understands that it was "unacceptable" and a mistake to have put off filing her income tax returns. She explained that because she had adjusted her withholding for tax purposes to "zero," she did not think that she would owe any taxes for the years following the adjustment to her withholding.⁵ (Tr. 24.) Because of assessed interest and penalties totaling about \$8,000, she received only about \$5,600 in refunds after she filed her delinquent tax returns in October 2017. Applicant cites "time and bad time management, and prioritization" as well as her hectic work schedule as the reasons for her failure to file her income tax returns on time. Applicant has significant responsibilities at work involving all the subcontracts on a specific program to ensure that the requirements of the company's prime customer, which is usually the U.S. government, are properly incorporated into supplier contracts and executed on time. She is passionate about her work, which she finds very rewarding, and she is often sought after for extra assignments. (Tr. 18-21, 24, 30.)

Applicant's son recently earned his master's degree. She continues to support her son financially while he seeks full-time employment commensurate with his degree. (Tr. 16, 23.) Applicant's mother lives with Applicant a significant portion of the year, although the support Applicant provides her mother is emotional rather than financial. (Tr. 14, 24.)

Character References

A co-worker of Applicant's, who holds a secret clearance for her duties as a senior program manager, opined that Applicant is "the best at her job." She has been accountable and "always the voice of reason in very challenging situations." Sometime in early 2018, Applicant informed this co-worker that she failed to file her income tax returns on time for three years. Applicant did not provide an explanation, but the co-worker surmised that it was because Applicant is "a complete workaholic." She still considers Applicant to be worthy of holding a security clearance. She would believe Applicant's promise to file her returns on time in the future because Applicant is someone "that will absolutely take this as a lesson learned." (Tr. 42-47.)

⁴ If the government had information proving that Applicant owed some \$27,687 in federal income taxes and \$8,473 in state income taxes as of October 16, 2017, it was not presented in evidence at her hearing.

⁵ Applicant testified that she changed her deduction for income tax withholding purposes three years ago in response to tax underpayments for previous tax years. (Tr. 31-32.)

Another senior program manager at work has been with Applicant's employer for over 30 years. He holds a top secret clearance and has worked collaboratively with Applicant for over ten years. He trusts her and considers her to be honest. She has demonstrated the highest ethical standards. He recently became aware that she had not timely filed some income tax returns, although Applicant did not share the details with him. He was surprised that Applicant had not made her tax filings a priority, but he thinks she learned her lesson. Applicant has been dedicated to her job "to a fault." He and Applicant are usually the last two employees to leave at the end of the work day. He fully believes Applicant intends to use an accountant to file her tax returns in the future. She has made every commitment on the job. (Tr. 59-63.)

A retired Navy commander, who has a top secret clearance and has worked with Applicant for the past ten years, testified that Applicant puts in long hours at work and that her work is outstanding. He "absolutely" trusts Applicant and believes she is honest. Applicant informed him about a week before her hearing that she did not pay her taxes for three years. He does not know which years were involved but he got the impression that it was recent. He was surprised because she has always been so thorough at work. He would still trust her with a security clearance because she has not demonstrated any behavior on the job that would raise concerns. (Tr. 50-56.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or

mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that 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. Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are articulated in AG ¶ 18:

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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

Applicant was alleged to have failed to timely file her federal and state income tax returns for six consecutive tax years 2010 through 2016 and to owe, as of October 17, 2017, \$27,687 in delinquent federal income taxes and \$8,473 in delinquent state income taxes. When she answered the SOR allegations, Applicant admitted she failed to timely comply with her income tax filing obligations, but she was repaying her past-due federal income taxes under an installment plan and had fully satisfied her state tax debts. At her hearing, she testified discrepantly from her Answer about her tax filings for some tax years:

Q: Now, which tax years’ returns were not filed timely?

A: Timely with an extension. You mean timely with a granted extension. ’13, ’14, ’15, and ultimately ’16.

Q: Okay. Now what did you mean when you say with a granted extension? Were they filed within the agreed-to extension period?

A: Yes. And that's why I was asking for clarification. So, no, no, let me rephrase. If you were talking about 2010, I filed for an extension and filed within the extension period. If you are talking about – you then asked me a question which ones were not filed on time.

Q: Correct.

A: And I said without an extension period, 2013, 2014, '15 and '16.

Q: And these were the returns that were all filed in October 2017?

A: Correct.

(Tr. 29-30.) Tax returns filed within the extended deadline are not considered late if she requested an extension. Her testimony about her tax returns for tax year 2010 cannot be reconciled with her SOR response where she admitted that she failed to timely file her federal and state income tax returns for tax year 2010 unless she meant that she had not filed her tax returns by the initial tax deadline in April 2011. In her Answer, she similarly admitted that she had not timely filed her federal and state income tax returns for tax years 2011 and 2012. At her hearing, Applicant did not specifically indicate whether she had requested extensions for tax years 2011 and 2012, although given her response that her late tax filings without an extension involved tax years 2013 through 2016, it could reasonably be inferred that she filed her returns for tax years 2011 and 2012 within requested extended deadlines. Even assuming that she filed her income tax returns for tax years 2011 and 2012 late, there is no evidence that they were still unfiled as of the date she completed her SF 86 in April 2016. The evidence of late tax filing is undisputed with respect to tax years 2013 through 2016, however. On October 3, 2017, she met with an accountant to address her delinquent returns for tax years 2013 through 2016. She likely would have asked him to prepare her returns for tax years 2011 and 2012 if they were still an issue. Disqualifying condition AG ¶ 19(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,” is established because of her undisputedly late returns for tax years 2013 through 2016.

With regard to the tax delinquencies in the SOR, the government presented no documentation showing that Applicant ever owed the balances alleged. Applicant apparently repaid the IRS for tax years 2010, 2011, and 2012 under an installment plan. Her tax liability was apparently significant enough for her to adjust her tax withholding three years ago. When she responded to DOHA interrogatories in early October 2017, she checked “Yes” to whether she owed the federal government for unpaid taxes for any tax period between 2010 and 2016 while she denied owing any state taxes. In response to the SOR one month later, she indicated that with respect to her state taxes, she had satisfied the unpaid taxes due relative to her state income tax returns. She provided no evidence

showing the amount of state taxes repaid. To the extent that AG ¶ 19(c), “a history of not meeting financial obligations,” is triggered because of her history of delinquent federal and state tax liabilities, that concern is secondary in this case to her noncompliance with her income tax filing obligations, which is attributable to her failure to give priority to filing her returns and not because she lacked the funds to pay her tax liabilities.

The burden is on Applicant to mitigate the judgment concerns raised by her noncompliance with her income tax filing obligation for four consecutive years. One or more of the following conditions under AG ¶ 20 may apply:

- (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 person has received or is receiving 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; 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.

Applicant’s noncompliance with her income tax filing obligation for four consecutive years is considered a course of conduct that persisted until she filed her delinquent returns. AG ¶ 20(a) cannot reasonably apply because the tax years involved are relatively recent, and she failed to give priority to her tax filings before October 2017. AG ¶ 20(b) also has not been shown to apply. Whatever her work demands, they cannot justify her inattention to her income tax filing obligation. Applicant knew or should have known as of April 2016 that her delinquent income tax returns were an issue. She indicated on her SF 86 that she had not yet filed her federal and state income tax returns for tax years 2013 and 2014, but she intended to complete all filings by July 2016. As of her January 2017 OPM interview,

Applicant had not only made no effort to file her tax returns for tax years 2013 and 2014, but she had also not filed her federal and state income tax returns for tax year 2015. Moreover, she allowed the April 18, 2017, tax deadline for filing her 2016 tax returns to pass without requesting an extension of the filing deadline to October 2017.⁶ Applicant did not act responsibly within AG ¶ 20(b) by delaying her tax compliance until it became in her self-interest to file her delinquent returns.

Applicant's accountant corroborates her assertions that all of her delinquent tax returns have been filed. While there is no substantiating evidence for her claimed satisfaction of her past-due taxes, it is doubtful that Applicant would reference an IRS installment plan and claim satisfaction if not true, given tax payments are easily verifiable. Applicant's belated filing in October 2017 of her delinquent federal and state income tax returns for tax years 2013 through 2016 warrant consideration of AG ¶ 20(c) and ¶ 20(g). Her tax payments under an installment plan before the SOR was issued are mitigated under AG ¶ 20(c) and ¶ 20(d). At the same time, the timing of her tax filings tends to indicate that the issuance of DOHA interrogatories were the impetus for her to resolve her overdue tax returns.

Even where tax problems have been corrected and an applicant is motivated to present such problems in the future, the administrative judge is not precluded from considering an applicant's trustworthiness in light of longstanding prior behavior evidencing irresponsibility. See e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 2015). The Appeal Board has long held that the failure to file tax returns suggests a problem with complying with well-established government rules and systems. See e.g., ISCR Case No. 14-04437 (App. Bd. Apr. 15, 2016.) Moreover, the Appeal Board recently reaffirmed that the timing of corrective action is an appropriate factor to consider in applying AG ¶ 20(g). See e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018) (citing ISCR Case No. 17-01807 at 3-4 (App. Bd. Mar. 7, 2018)). In reversing favorable clearance grants to applicants with tax issues by DOHA judges in ISCR Case No. 17-01382 (App. Bd. May 16, 2018) and ISCR Case No. 16-01211 (App. Bd. May 30, 2018), the Appeal Board noted that applicants who only begin to address their delinquent tax returns after having been placed on notice that their clearance might be in jeopardy may not comply with laws, rules, and regulations when their immediate interests are not imperiled.

Applicant's handling of her tax matters is particularly troubling in light of her education level and her well-earned reputation at work for following through on her commitments. Applicant indicated in April 2016 that she would file her delinquent income tax returns by late July 2016. Not only were her returns for 2013 through 2015 unfiled as of her subject interview in January 2017, but she then allowed the tax deadline for her 2016 income tax returns to pass without filing her returns or requesting an extension of the deadline for her 2016 taxes. She was on notice that her tax filing issues were of concern to the DOD, and she had apparently received inquiries from the IRS about her missing tax returns. Her belated filing of her tax returns for tax years 2013 through 2016 in October 2017 is not entitled to controlling weight in mitigation under the circumstances. Her belief

⁶ Personal income tax returns were due for tax year 2016 on April 18, 2017, or with an extension on October 16, 2017. See www.tax.ri.gov.

that she would not owe any taxes for tax years 2013 through 2016 does not justify her years of disregard of her tax-filing obligation.

Guideline E: Personal Conduct

The security concerns about personal conduct are articulated in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The SOR alleges that Applicant deliberately falsified her April 2016 SF 86 by indicating that she failed to comply with her income tax filing obligation for only tax years 2013 and 2014 when she had also not filed her income tax return for 2015 and owed delinquent federal and state income taxes for some previous tax years. The evidence failed to establish that her returns for 2010 through 2012 were filed late. She indicated in response to DOHA interrogatories on October 3, 2017, that she owed federal income taxes for one or more of the tax years between 2010 and 2016. She completed her SF 86 on April 21, 2016, after the deadline passed for timely submission of her 2015 tax returns, and she admits she did not file for an extension. A reasonable inference of deliberate omission could be drawn because she knew that she had yet to file her 2015 tax returns and had not requested an extension of the filing deadline. Moreover, she indicated in response to the SOR that she had repaid federal taxes due for 2010, 2011, and 2012 under an installment agreement. Delinquent income taxes for those tax years should have been reported on her SF 86. Applicant testified discrepantly at her hearing that the taxes repaid under the installment plan were for 2008, 2009, and 2010. If those taxes were still unpaid as of the SF 86, they should have been reported.

Applicant denies that she falsified or deliberately answered the tax question on the SF 86 incorrectly. She acknowledges that her response was "inadvertently mistaken," and explained at her hearing that she was "trying to explain it and offer some information that [she] obviously did not state correctly." AG ¶ 16(a) does not apply when omissions are inadvertent or due to mistaken understanding or other cause that negates willful intent. AG ¶ 16(a) provides:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

The Appeal Board has explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). Applicant listed only two tax years, but they were recent tax years with respect to her noncompliance with her tax filing obligation. Her optional comment on the SF 86, "I have not filed my income tax returns on time," would suggest that she did not intend to conceal her failure to comply with her tax filings. When asked about her failure to file her income tax returns during her January 2017, Applicant explained that she had yet to file her tax returns for tax years 2013, 2014, and 2015. To the extent that her failure to list her 2015 tax return on her SF 86 raises personal conduct concerns under AG ¶ 16(a), it is mitigated by AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." With so little information in the record about her tax debts, I cannot conclude that she intentionally falsified her SF 86 by failing to report known tax debts. The Government presented no documentation to substantiate the debt balances alleged in the SOR.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). The analysis under Guidelines F and E is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

The security clearance adjudication involves an evaluation of an applicant's judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). Applicant was fully capable of compiling the documentation needed to prepare her income tax returns herself or provide the documentation to a tax professional. She asserts that she has learned her lesson, and intends to comply with her tax obligations on time in the future. Her dedication to her work with a defense contractor is unassailable, and there is no indication that she has exercised poor judgment on the job. At the same time, the Appeal Board has repeatedly held that the government need not wait until an applicant mishandles or fails to safeguard classified information before denying or revoking security clearance eligibility. See, e.g., ISCR Case No. 08-09918 (App. Bd. Oct. 29, 2009) (citing *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969)). 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 v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Under Appeal Board precedent, an applicant who waits to address tax issues until his or her immediate interests are at stake does not show sound judgment and reliability. Her eleventh-hour rectification of her tax filings is too recent to create a track record of reasonable assurances that she can be counted on to comply with tax filing deadlines in the future. Her failure to give priority to such an important obligation as filing tax returns required by law causes lingering doubt about her security worthiness that has not been fully mitigated.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.f:	For Applicant
Subparagraphs 1.g-1.n:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge