



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01931

**Appearances**

For Government: Brittany Muetzel, Esq., Department Counsel  
For Applicant: *Pro se*

07/06/2018

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant did not timely file her federal income tax returns for tax years 2015 and 2016. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 4, 2016, Applicant completed and signed a Questionnaire for National Security Position (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On August 18, 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), and Security Executive Agent Directive 4, establishing in Appendix A new adjudicative guidelines (AGs), effective June 8, 2017.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F (financial considerations). (Hearing Exhibit (HE) 2)

On October 19, 2017, Applicant requested a hearing, and on November 30, 2017, Applicant provided a response to the SOR. (HE 3) On January 11, 2018, Department Counsel was ready to proceed. On February 23, 2018, the case was assigned to me, and the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for March 1, 2018. (HE 1) Applicant waived her right to 15 days of notice of the date, time, and location of her hearing. (Transcript (Tr.) 14) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits; Applicant did not offer any exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 11, 16-18; GE 1-4) On March 8, 2018, DOHA received the hearing transcript. Applicant provided 14 exhibits after her hearing, which were admitted without objection. (Applicant Exhibit (AE) A-AE N) The record closed on April 27, 2018. (AE O)

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

In Applicant's SOR response, she admitted the allegations in SOR ¶¶ 1.a through 1.g. (HE 3) She also provided mitigating information. Her admissions are accepted as findings of fact.

Applicant is a 40-year-old truck driver, and a DOD contractor has employed her for 42 months. (Tr. 6, 8, 23) In 1996, she graduated from high school. (Tr. 6) She has about two years of college, and she stopped attending college in 2010. (Tr. 7) She has never served in the military. (Tr. 6) In 1998, she married, and in 2011, she divorced. (Tr. 8) She has no children. (Tr. 8)

### **Financial Considerations**

In 2005, Applicant was injured in a vehicle accident, and she was unable to work for two years. (Tr. 22, 25) She was also in a subsequent accident, which aggravated her injury from the previous accident. (Tr. 25) She was making minimum wage from 2007 to 2011. (Tr. 38) In 2012, she began to get on track, and she was earning more money. (Tr. 38) Her primary expense last year was the \$15,000 she gave her parents to enable them to retain their home. (Tr. 45) The status of the financial issues alleged in the SOR is as follows:

SOR ¶¶ 1.a through 1.d allege four student loans placed for collection for \$11,136, \$7,188, \$5,759, and \$5,633. Applicant took college classes from 2006 to 2012. (Tr. 21) In 2012, Applicant was 10 months into her loan rehabilitation plan; however, the payments stopped when she filed for bankruptcy in December 2012. (Tr. 20, 38) In 2014, her gross income was about \$110,000, and her student loan payments were supposed to be based on her income. (Tr. 39) The student loan creditor wanted monthly payments of about \$1,000. (Tr. 39) In the determination of her income, the creditor would not allow her to

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<sup>1</sup> Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

deduct fuel payments, which were about \$35,000, and truck payments, which were about \$30,000, from her gross-income calculation. (Tr. 39-40) Before she had her hearing, she asked the creditor if she could resume or restart her rehabilitation program. (Tr. 21) On March 8, 2018, Applicant paid \$12,000 to address her student loans. (Tr. 41-42; AE G; AE H) She had been saving for months to gather the \$12,000. (Tr. 42) She intends to continue making monthly payments to the student loan creditor. (Tr. 41) On March 30, 2018, the creditor wrote that Applicant had eight student loans totaling \$38,007, and she was authorized to start a new rehabilitation program by paying \$5 monthly for nine months. (AE K) She intends to pay \$380 monthly until her student loans are paid. (AE G)

SOR ¶ 1.e alleges Applicant failed to file her federal income tax returns as required for tax years 2015 and 2016. Applicant has been working since she was 14 years old, and she knew she was supposed to file her tax returns by April 15 unless she requested an extension. (Tr. 36) On January 10, 2017, an Office of Personnel Management (OPM) investigator interviewed Applicant. (GE 4) She discussed her failure to file her federal income tax returns for tax years 2014, 2015, and 2016 with the OPM investigator. (GE 4) In May 2017, Applicant filed her tax return for tax year 2014.<sup>2</sup> She explained that the reasons she did not timely file her 2014 federal income tax return was because in 2014, Applicant quit one trucking company job because she had a job offer from her current employer. (Tr. 29) The former employer was very slow in providing IRS Form 1099s and “profit-loss sheets.” (Tr. 29, 36) She requested an extension from the IRS; however, she was unable to file her tax returns because she lacked documentation. (Tr. 29) She was also away from home three-to-four months at a time on the road, and she was unfamiliar with how to process the documentation she received. (Tr. 31) In March 2017, she filed her federal income tax return for 2014. (AE B) She planned to refile her tax return for tax year 2014 because she believed the certified public accountant she used did not do a very good job. (Tr. 27) She resides in a state that does not have state income taxes.

A commercial tax preparing business told Applicant that she had to file her 2014 tax return before she could file her 2015 and 2016 tax returns. (Tr. 32-33) She realizes now that this was bad advice. (Tr. 33) In February 2018, Applicant completed her federal income tax returns for tax years 2015 and 2016. (Tr. 34; AE C; AE D) For tax year 2015, her adjusted gross income was \$7,577, and she owed \$649. (AE C) For tax year 2016,

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<sup>2</sup> Applicant's SOR does not allege Applicant failed to timely file her 2014 federal income tax return. 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 Applicant failed to timely file her 2014 federal income tax return will not be considered except for the five purposes listed above.

her adjusted gross income was \$1,546, and she owed \$118. (AE D) On March 9, 2017, she made a \$500 quarterly payment to the IRS and requested an extension to file her tax return. (AE E; AE N) Applicant's tax returns include Schedule C, Profit or Loss From Business and she may not have included all of her expenses. (AE C; AE D)<sup>3</sup>

SOR ¶ 1.f alleges Applicant owes the IRS for past-due taxes in the amount of \$8,324. In July 2017, Applicant paid the IRS \$8,500, and she paid her federal income tax debt for 2014. (GE 4) In February 2018, she paid the IRS \$117 and \$997 for tax years 2015, and 2016. (Tr. 34-35; AE B). She resolved her federal income tax debts, and all of her federal income taxes are paid. (Tr. 34-35; AE B)

SOR ¶ 1.g alleges Applicant's nonpriority unsecured debts were discharged under Chapter 7 of the Bankruptcy Code in April 2013. She filed bankruptcy to resolve her delinquent debts from her divorce, underemployment, and unemployment-related debts after two vehicle accidents. (Tr. 25) The most important cause of her bankruptcy was her desire to avoid responsibility for the debts her former husband had generated. (Tr. 26) The bankruptcy discharged \$42,603 of debt. (Tr. 26)

Applicant uses a budget, and she is able to save money every month. (Tr. 46) She intends to continue making payments on her student loans. (Tr. 46) She received financial counseling as part of her bankruptcy. (Tr. 47)

## **Policies**

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

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

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<sup>3</sup> Applicant was filing under "self-employed" status in 2015 and 2016. The minimum income for filing for self-employed in 2015 and 2016 was \$400. Internal Revenue Service website, <https://www.efile.com/2015-do-i-need-to-file-a-tax-return/>; Publication 17, Your Federal Income Tax, Table 1-3, <https://www.irs.gov/pub/irs-prior/p17--2016.pdf>.

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 three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; "(c) a history of not meeting financial obligations"; and "(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

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 was injured in two vehicle accidents, and she was unable to work for two years. She had medical debts. She was underemployed, making minimum wage from 2007 to 2011. Her primary expense last year was the \$15,000 she gave her parents to enable them to retain their home. These circumstances were beyond her control and adversely affected her finances. AG ¶ 20(b) does not fully apply because she did not act responsibly under the circumstances when she failed to timely file her 2014 through 2016 federal income 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>4</sup> For purposes of this

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<sup>4</sup> Title 26 U.S.C. § 7203, willful failure to file return, supply information, or pay tax, reads:

Any person . . . required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to . . . make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor . . . .

A willful failure to make tax return, keep records, or supply information when required, is a misdemeanor without regard to existence of any tax liability. *Spies v. United States*, 317 U.S. 492 (1943); *United States*

decision, I am not weighing Applicant's failure to timely file her federal income tax returns against her 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. *Id.*, see ISCR Case No. 17-01842 at 2-4 (App. Bd. June 29, 2018) (affirming denial of security clearance for applicant who filed overdue tax returns shortly before hearing); 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 timely file federal tax returns for tax years 2014 through 2016. She said she had bad advice from a commercial tax return preparer about the requirement to file her 2014 federal income tax return before she could file her 2015 and 2016 federal income tax returns. The problem here is that she knew she needed to timely file her 2014, 2015, and 2016 federal income tax returns. She did not show the requisite diligence in filing her 2014 federal income tax return, and this led to further untimely filings of tax returns. There is insufficient assurance that similar problems will not recur in the future. Under all the circumstances, she failed to establish mitigation of financial considerations security concerns.

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*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 40-year-old truck driver, and a DOD contractor has employed her for 42 months. She has about two years of college. Her accidents, unemployment, underemployment and divorce caused her financial problems. These are circumstances beyond her control. She is making excellent progress on her student loans and has filed and paid her delinquent taxes. She received financial counseling and has a budget.

Based on the decisions of the DOHA Appeal Board, the evidence against grant of a security clearance outweighs the positive evidence of her 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>5</sup> In this case, the IRS did not generate her tax returns, and she has paid all of

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<sup>5</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

tax debt. The primary problem here is that Applicant has known that she needed to file federal income tax returns for several years. She had a legal requirement to timely file her tax returns. She may not have fully understood or appreciated the importance of timely filing of tax returns. Her actions in March 2017 (filing her 2014 federal income tax return after her OPM interview) and in February 2018 (filing her 2015 and 2016 federal income tax returns shortly before her hearing) are too little, too late to fully mitigate security concerns arising from her failure to timely file federal tax returns for tax years 2014 through 2016. Her 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 her obligations, she may well be able to demonstrate persuasive evidence of her 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. It is not clearly consistent with the interests of national security to grant Applicant security clearance eligibility at this time.

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was in an established payment plan. The Appeal Board highlighted his annual income of over \$200,000 and discounted his non-tax expenses, contributions to DOD, expenditures for his children's college tuition and expenses, and spouse's medical problems. The Appeal Board emphasized "the allegations regarding his failure to file tax returns in the first place stating, it is well settled that failure to file tax returns suggest that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information." *Id.* at 5 (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002) (internal quotation marks and brackets omitted). See also ISCR Case No. 14-03358 at 3, 5 (App. Bd. Oct. 9, 2015) (reversing grant of a security clearance, noting \$150,000 owed to the federal government, and stating "A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information."). Applicant's uncorroborated statements that all tax returns were filed is insufficient to prove tax returns were filed. See ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017) (citing e.g., ISCR Case No. 96-0897 at 2-3 (App. Bd. Dec. 9, 1997) and reversing grant of security clearance).

## **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f and 1.g:	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