



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



In the matter of:)
)
) ISCR Case No. 24-01029
)
Applicant for Security Clearance)

Appearances

For Government: Allison P. O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

09/05/2025

Decision

HARVEY, Mark, Administrative Judge:

Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On September 21, 2023, Applicant completed an Electronic Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On August 20, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and 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), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why DOHA 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. (HE 2) On October 28, 2024, Applicant responded to the SOR, and he requested a hearing. On January 17, 2025, Department Counsel was ready to proceed. On May 27, 2025, the case was assigned to me. On June 2, 2025, DOHA issued a notice setting the hearing for July 15, 2025. (HE 1) The hearing was held as scheduled, using the Microsoft Teams video teleconference system. (HE 1)

During the hearing, Department Counsel offered four exhibits; Applicant offered one exhibit; and all proffered exhibits were admitted into evidence without objection. (Tr. 15-18; GEs 1-GE 4; Applicant Exhibit (AE) A) On July 25, 2025, DOHA received a copy of the transcript. No exhibits were submitted after the hearing. (Tr. 49)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript. Unless stated otherwise the source for the information in the findings of fact is Applicant response to the SOR.

Findings of Fact

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 1.a and 1.b. (HE 3) He also provided mitigating information. His admissions are accepted as findings of fact.

Applicant is a 61-year-old lead software engineer. (Tr. 6, 9, 47) He has been employed by the government contractor for two years. (Tr. 9) In 1982, he graduated from high school. (Tr. 6) In 1997, he received an associate degree in computer science and information systems, and in 2007, he received a bachelor's degree in computer science. (Tr. 7) He did not serve in the military. (Tr. 7-8) In 1998, he married, and in 2000, he divorced. (Tr. 8) In 2004, he married his current spouse. (Tr. 8-9) He has two adopted daughters, who are ages 27 and 31, and a son who is age 17. (Tr. 9) His spouse is self-employed and is starting her own business. (Tr. 9) A friend who is a DOD employee described Applicant as honest, forthright, and dedicated. (AE A) He recommended approval of Applicant's security clearance. (AE A)

Financial Considerations

SOR ¶¶ 1.a and 1.b allege Applicant failed to timely file as required his federal and state income tax returns for tax years (TY) 2016 through 2023.

In August of 2017, Applicant was diagnosed with an aggressive cancer. He filed an extension to complete his TY 2016 tax returns by mid-October of 2017. (Tr. 22) In mid-October of 2017, he had surgery, and he was medically unable to complete his TY 2016 tax returns. (Tr. 22) Between late 2017 and early 2018, he was advised that the cancer was metastatic and had spread. He received radiation therapy and chemotherapy. (Tr. 22-23) He had to travel four hours for some of the treatments. (Tr. 19) He was able to continue working remotely during 2017 and 2018, except for eight weeks when he went to a medical-center location for treatments in 2018. (Tr. 23-24) He focused on the cancer

treatments, and he did not file his overdue tax returns. The tax preparation computer program he used required information from his TY 2016 federal income tax return to prepare and electronically file his TY 2017 federal income tax return. (Tr. 25) He believed that he had to file his federal income tax returns sequentially. (Tr. 41) In other words, he believed he was required to file the previous TY's tax return before he could file the next TY's tax return. (Tr. 41-42) He understands now that he can prepare a paper tax return and file his tax returns without them being in sequence. (Tr. 25, 41)

In 2020 or 2021, Applicant lost some documentation when a pipe broke in his home and some papers in his basement were ruined. (Tr. 44, 46) In 2022, Applicant's son had serious behavior issues; his son was hospitalized for one month; and this occurrence distracted him from filing his tax returns. (Tr. 25, 40, 45-46) He admitted that he should have been able to file his tax returns. (Tr. 25)

Applicant was having funds withheld from his salary for his taxes, and he did not have any malicious or criminal intent when he failed to timely file his tax returns. (Tr. 19) He did not receive stimulus payments during the COVID 19 pandemic. (Tr. 20) He has been a W-2 employee since 2016. (Tr. 27) He owns a home and a rental property. (Tr. 27) His spouse is receiving funds from an inheritance, and he wanted to carry forward his father-in-law's stock market losses in 2008 to reduce the income from his estate. (Tr. 42-43) He believed the stock market loss from the previous year needed to be known before the next year's loss could be determined and deducted. (Tr. 44) He did not provide documentation or an expert opinion showing why the losses being carried forward prevented him from his filing tax returns. Applicant believes that he has the expertise to prepare his own tax returns. (Tr. 28)

In the previous eight years, Applicant was unemployed for one month in 2019 and for three months in 2023. (Tr. 32-33) His spouse inherited an IRA, and she receives taxable income from minimum distributions. (Tr. 38) His adjusted gross income for TYs 2016 to 2024 has been between about \$150,000 to \$200,000. (Tr. 38) He and his spouse had sufficient income to exceed the IRS filing thresholds, and they were required to file tax returns for TYs 2016 through 2023. (Tr. 33) Around August or September 2024, he received the SOR. (Tr. 30) In April 2025, he mailed his federal and state income tax returns for TY 2016 to tax authorities. (Tr. 29) He has not filed his other overdue tax returns. (Tr. 30, 37) He did not have any information that the IRS or state filed a substitute tax return for him. (Tr. 34)

Applicant expects to receive a tax refund when all of his tax returns are eventually filed. (Tr. 20, 28) He is open about his tax issues to coworkers and supervisors. (Tr. 20) He and his spouse file their federal income tax returns as "married filing jointly." (Tr. 36) Around 2020, he contacted the IRS and the state tax authority about filing his overdue tax returns. (Tr. 25, 35) He has gathered the necessary documents to complete filing of the overdue tax returns. (Tr. 36-37) He was not aware that a federal income tax return, which is more than three years overdue generally will not result in a tax refund. (Tr. 39) He conceded his failure to file his tax returns showed disorganization; however, he does not believe revocation of his security clearance is warranted based on the facts and circumstances. (Tr. 21, 48)

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.

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. 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.

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 one disqualifying condition that could raise a security concern and may be disqualifying in this case: “(f) failure to file . . . annual Federal, state, or local income tax returns . . . as required.” The record establishes the disqualifying condition in AG ¶ 19(f), requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying condition is contained in the mitigation section, *infra*.

The financial considerations mitigating conditions under AG ¶ 20 which may be applicable in this case are as follows:

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

Applicant provided some important mitigating information. Several circumstances beyond his control affected his ability to timely file his federal and state income tax returns for TYs 2016 through 2023: (1) a pipe broke, his basement was flooded, and necessary documentation was destroyed; (2) Applicant was diagnosed with cancer, and he received radiation therapy and chemotherapy; (3) Applicant's son was hospitalized; (4) his taxes

were somewhat complicated by calculating capital gains deductions from his father-in-law's estate and calculation of income and expenses from rental property; and (5) he believed he was unable to file subsequent federal and state income tax returns until he had filed the previous TY's tax returns. However, “[e]ven if [an applicant's] financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the [administrative judge] could still consider whether [the applicant] has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)). He did not establish that he acted responsibly under the circumstances. He should have sought advice or assistance from someone with more expertise in tax matters. He did not prove he was unable to file paper tax returns sooner. AG ¶ 20(b) is partially established.

Applicant failed to timely file as required his federal and state income tax returns for TYs 2016 through 2023. He gave a lower priority to completion of his tax returns than he did for his work for the defense contractor or other issues in his life. His federal and state income tax returns for TYs 2016 were filed in April 2025. His federal and state income tax returns for TYs 2017 through 2023 were not filed by the time of his hearing. The five issues listed in the previous paragraph warrant some delay in the filing of required tax returns; however, he did not provide sufficient justification for not filing tax returns through the date of his hearing.

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. Title 26 U.S.C. § 7203, willful failure to file return or supply information, reads:

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

A willful failure to make return, keep records, or supply information when required, is a misdemeanor without regard to the existence of any tax liability. *Spies v. United States*, 317 U.S. 492 (1943); *United States v. Walker*, 479 F.2d 407 (9th Cir. 1973); *United States v. McCabe*, 416 F.2d 957 (7th Cir. 1969); *O'Brien v. United States*, 51 F.2d 193 (7th Cir. 1931). For purposes of this decision, I am not weighing Applicant's failure to timely file his federal income tax returns against him as a crime. In regard to the failure to timely file his federal income tax returns, the Appeal Board has commented:

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. 15-01031 at 4 (App. Bd. June 15, 2016) (citations omitted); 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 & n.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).

The Appeal Board in ISCR Case No. 15-01031 (App. Bd. June 15, 2016) explained that in some situations, even if no taxes are owed when tax returns are not timely filed, grant of access to classified information is inappropriate. In ISCR Case No. 15-1031 (App. Bd. June 15, 2016), the applicant filed his 2011 federal income tax return in December 2013, his 2012 federal tax return in September 2014, and his 2013 federal tax return in October 2015. He received federal tax refunds of at least \$1,000 for each year. Nevertheless, the Appeal Board reversed the administrative judge’s decision to grant access to classified information.

In ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017) the Appeal Board reversed the grant of a security clearance, discussed how AG ¶ 20(g) applied, and noted:

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

In this instance, Applicant failed to timely file his federal and state income tax returns for TYs 2016 through 2023. Applying the Appeal Board’s jurisprudence, he did

not prove that he was unable to make greater progress sooner in the filing of tax returns. Under all the circumstances, Applicant's failures to timely file his federal and state income tax returns are not mitigated.

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 common-sense 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 61-year-old lead software engineer. He has been employed by a government contractor for two years. In 1997, he received an associate degree in computer science and information systems, and in 2007, he received a bachelor's degree in computer science. His spouse is self-employed and is starting her own business. Applicant's friend who is a DOD employee described Applicant as honest, forthright, and dedicated. He recommended approval of Applicant's security clearance.

The evidence against grant of a security clearance is detailed in the financial considerations section, *supra*, and this evidence is more substantial than the evidence of mitigation. Applicant did not establish that he was unable to file his federal and state income tax returns for TYs 2016 through 2023 sooner. His failure to take timely, prudent, responsible, good-faith actions from April 2017 (when his TY 2016 tax return was due) to the date of his hearing to get his income tax returns filed raises unmitigated questions about his 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 granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. “[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified

information.” ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards resolution of his tax issues, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate financial considerations security concerns.

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 and 1.b: **Against Applicant**

Conclusion

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's national security eligibility for access to classified information. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge