



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



In the matter of:

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ISCR Case No. 23-01614

Applicant for Security Clearance

**Appearances**

For Government: Lauren Ann Shure, Esq., Department Counsel

For Applicant: Todd A. Hull, Esq.

05/05/2025

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**Remand Decision**

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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 July 22, 2022, Applicant completed an Electronic Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1). On November 9, 2023, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (financial considerations) and E (personal conduct). The action was taken 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.

On December 21, 2023, Applicant provided a response to the SOR, and he requested a hearing before an administrative judge. On May 8, 2024, the case was assigned to another administrative judge.

On June 28, 2024, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for July 16, 2024. Department Counsel offered six exhibits and Applicant provided 12 documents (Tr1. 18-22, GE 1-6; Applicant Exhibits (AE) A-AE L). All proffered documents were entered into evidence without objection. On July 25, 2024, DOHA received the hearing transcript (Tr.) No documents were offered after the hearing, and the record closed on July 30, 2024. The administrative judge issued a decision on September 24, 2024.

On December 18, 2024, the DOHA Appeal Board issued a decision remanding Applicant's case to the hearing office for a new decision. The Appeal Board said, "pursuant to Directive ¶ E3.1.33.2, the Board remands the case to the Judge with instruction to issue a new decision, consistent with the requirements of Directive ¶ E3.1.35, after correction of the identified errors and reconsideration of the record as a whole." ISCR Case No. 23-01614 at 7 (App. Bd. Dec. 18, 2024). The case was transferred from the original administrative judge to me because at that time she intended to retire from DOHA. On February 4, 2025, DOHA issued an amended notice of hearing scheduling the hearing on March 6, 2025. The hearing was held as scheduled. The documents admitted in the first hearing were offered as exhibits in the second hearing. (GE 1-6; AE A-L) The transcript of the hearing was received on March 17, 2025. On March 18, 2025, Applicant provided two exhibits, which were admitted into evidence without objection. (Tr2. 49-50; AE M; AE N) The record closed on March 18, 2025. (Tr2. 50)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

## **Legal Issue**

Department Counsel moved at the first hearing to amend the SOR by deleting the word "delinquent" from SOR ¶¶ 1.a through 1.l, and the words, "You failed to timely file federal taxes," from SOR ¶¶ 1.d and 1.k. (Tr2. 39) Department Counsel also asked that the second paragraph of the SOR (Guideline E) and SOR allegations 2.a and 2.b, be withdrawn from the SOR. (Tr2. 39) There were no objections, and the requested changes were made to the original SOR. (Tr1. 7-9)

## **Findings of Fact**

Applicant admitted in his response to the SOR that he failed to pay his federal income taxes for tax years (TY) 2010, 2011, 2013, and 2015. (SOR ¶¶ 1.a-1.c, and 1.e) He was indebted for federal taxes for TYs 2014 through 2020. (SOR ¶¶ 1.d through 1.k.) He denied that he was indebted to his state for unpaid taxes for TY 2018 (SOR ¶ 1.i), and he denied that he was indebted to the federal government for unpaid taxes for TY 2022. (SOR ¶ 1.l.) He said the SOR allegations were covered under the Combat Zone Extension

Provision of Internal Revenue Code (IRC) 26 U.S.C. § 7508(a), and his not paying his federal and state taxes is permissible under law.

Applicant is a 64-year-old security officer. (Tr2. 88-90) In 1993, he married, and his three children are ages 26, 28, and 30. (Tr2. 52-53, 89) His spouse manages properties and communities. (Tr2. 52) He has a bachelor's degree in business administration and management. (Tr2. 89) He served in the Marine Corps from 1985 to 1990, and he received an honorable discharge as a sergeant. (AE A) He was meritoriously promoted to sergeant. (Tr2. 91) He received multiple awards while serving in the Marine Corps. (Tr2. 91-92) He served overseas from about 2004 to July 2024 as a government contractor. He would like to return to his overseas assignment once his security clearance is approved or reinstated. (Tr2. 78)

## **Financial Considerations**

Applicant and his spouse file joint federal income tax returns. (Tr2. 54, 96) Applicant's spouse files their tax returns, and she uses a power of attorney to sign for her husband. (Tr2. 54, 96-97)

Applicant has been employed as a government contractor in a designated combat zone for 20 years, and he relied on Combat Zone Extension Provision of IRC 26 U.S.C. § 7508(a). (Tr2. 54-55) Under this provision, Applicant and his spouse are not required to file tax returns, and penalties and interest do not accrue while Applicant was working in a combat zone and for 180 days after leaving the combat zone. (Tr2. 55-56) Applicant estimated that he owed about \$150,000 in federal income taxes. (Tr2. 129-131) Department Counsel estimated that if the IRS did not charge interest on the debt, it would take about 25 years to pay the tax debt with payments of \$500 monthly. (Tr2. 131) In July 2024, Applicant left the combat zone because of security clearance issues. (Tr2. 56)

## **Combat Zone Extension Provision of IRC**

Title 26 U.S.C § 7508 - Time for performing certain acts postponed by reason of service in combat zone or contingency operation states:

### **(a) Time to be disregarded**

In the case of an individual . . . serving in support of such Armed Forces, in an area designated by the President of the United States by Executive order as a "combat zone" for purposes of section 112, . . . the period of service in such area or operation, . . . and the next 180 days thereafter, shall be disregarded in determining, under the internal revenue laws, in respect of any tax liability (including any interest, penalty, additional amount, or addition to the tax) of such individual—

### **(1) Whether any of the following acts was performed within the time prescribed therefor:**

(A) Filing any return of income, estate, gift, employment, or excise tax; and

(B) Payment of any income, estate, gift, employment, or excise tax or any installment thereof or of any other liability to the United States in respect thereof[.] (AE K)

Applicant and his spouse received advice from a certified public accountant (CPA) and an attorney who specializes in tax issues (TI) that they did not need to file their tax returns or pay their taxes while Applicant was deployed to a combat zone. (Tr2. 60-61) Their CPA advised the IRS that Applicant was deployed to a combat zone and should be exempted from interest and penalties while he is deployed. (Tr2. 60-61) His spouse believed they did not "owe" taxes for the income received while he was deployed. (Tr2. 61) She admitted that he owed taxes on the income he received once he was out of the combat zone for more than 180 days. (Tr2. 62) The state tax authority advised that a payment plan could not be established because the IRS had deferred payment due to Applicant's deployment to a combat zone. (Tr2. 63)

On July 9, 2014, January 19, 2016, and May 21, 2016, Applicant's CPA advised the IRS that Applicant was deployed to a presidentially designated combat zone where he serves in direct support of U.S. armed forces from 2013 to 2016. (GE 2 at 7-11; AE D) He said in 2013 that Applicant "intends to pay his 2013 balance due when he returns from the combat zone." (AE D at 1) He did not say anything about paying the balance due in his 2016 letter. (AE D at 3-5)

TI said he did not believe there was a Treasury regulation defining the term "serving in support of such Armed Forces." He believes that this provision broadly applies, and it had been interpreted to include Red Cross workers in a combat zone. (Tr2. 22-23) The IRS manual says it applies to "[c]ivilian personnel acting under the direction of the armed forces in support of those forces." (Tr2. 33) Applicant was acting under the direction of another federal agency, and it was unclear how he could have been in support of the armed forces rather than the federal agency. (Tr2. 33) TI said he believed Applicant met the criteria under 26 U.S.C § 7508(a) to receive the combat-zone extension because he was working for a military contractor in a combat zone. (Tr2. 10; AE B; AE C) TI said that there is no statutory obligation to set money aside to pay the taxes accruing while serving in a combat zone. (Tr2. 12) His IRS tax transcripts erroneously coded Applicant with penalties for not timely filing his tax returns and interest for taxes and penalties owed. (Tr2. 13-15) The 10-year IRS statute of limitations is tolled while the taxpayer is serving in support of the U.S. armed forces in a combat zone. (Tr2. 16) Once the taxpayer starts making payments to the IRS under an installment plan or the debt is "currently not collectible," the statute of limitations clock on collections keeps ticking. (Tr2. 16-17)

Applicant has sought the assistance of a taxpayer advocate, which is part of the IRS. (Tr2. 17-18) The taxpayer advocate should be able to assist with correction of the coding on Applicant's IRS tax transcripts to remove the interest and penalties. (Tr2. 18) The taxpayer advocate should also be able to help establish an appropriate method of payment of the tax debt. (Tr2. 18) The taxpayer advocate has opened a case; however,

they are extremely busy, and it may be a while before the coding is corrected. (Tr2. 19) Once the coding is corrected the next step will be to arrange a payment plan. (Tr2. 20) TI believed Applicant had acted reasonably and responsibly by obtaining the assistance of a taxpayer advocate to assist in resolution of his federal income tax debt and that he would comply with the IRS payment plan once it was established. (Tr2. 20)

In 2023, Applicant was outside of the combat zone for 188 days, and then he returned to the combat zone. (Tr2. 84) There is no evidence that he paid his IRS debt in 2023.

On July 19, 2024, TI wrote the IRS on Applicant's behalf and advised the IRS that he had been out of the combat zone for more than 180 days. (AE C at 1) He cited and quoted IRC Section 7508(a) and said Applicant complied with tax law because interest and penalties on his IRS debt should not be applied while he was in a combat zone. (AE C) TI's letter did not say anything about paying the tax debt.

On December 9, 2024, the taxpayer advocate wrote TI and provided a timeline for assistance. (AE M) The taxpayer advocate needed to obtain additional facts to correct the coding issue and suggested the following timeline:

I'll contact you again by January 17, 2025, to update you on your clients' case. On average, it takes four (4) months to reach a final resolution on this type of problem. I expect your clients' problem to be resolved by April 2, 2025, and will provide a revised date if additional time is needed. In the meantime, please let me know if someone at the IRS contacts you about this problem. (AE M at 2)

Applicant's spouse's most recent communication with the taxpayer advocate was on February 2, 2025, and the taxpayer advocate is working on correction of the coding issue to remove the penalties and interest charges on the IRS tax transcripts. (Tr2. 59) Applicant and his spouse intend to wait for the IRS to resolve the issues of the interest and penalties and then they will set up a payment plan. (Tr2. 60, 99) They promised to arrange a payment plan to address their state and federal income taxes once the amount of the debt is accurately assessed. (Tr. 99-102)

Several tax transcripts show "suspension of tax collection military deferment." For example, the tax transcript for TY 2014 shows accrued interest of \$3,200, penalty for late payment of \$2,100, and then "suspension of tax collection military deferment." (GE 3 at 25-26) The tax transcript for TY 2015 shows \$1,700 for accrued interest and then "suspension of tax collection military deferment." (GE 3 at 27-28) It is unclear why the IRS did not remove all charges for late payment and interest.

On October 11, 2023, Applicant said his federal income tax liability was \$145,700. (GE 3 at 3) His spouse was unsure of the amount of their tax debt. (Tr2. 77) Applicant and more than 1,000 employees left the combat zone in October of 2023 due to dangerous conditions in the combat zone, and he did not return to the combat zone until April of 2024. (Tr2. 94) During this six-month period outside the combat zone, he was not

paid, which resulted in a financial hardship. (Tr2. 94) At the time of Applicant's March 6, 2025 hearing, he had been out of the combat zone for more than 180 days. (Tr2. 19) TI recommended that Applicant make payments to the IRS once the 180-day extension had expired. (Tr2. 21) The federal income tax system has been characterized in general as a pay-as-you-go system; however, 26 U.S.C § 7508 provides an exception and it would be permissible or lawful for a taxpayer in a combat zone not to withhold funds for taxes while in the combat zone. (Tr2. 31, 35, 38)

Federal income tax information for the TYs 2010, 2011, and 2013 through 2023 are shown in the following table. Amounts are rounded to the nearest \$100. IRS tax transcripts are dated in March and September 2023. (GE 3; AE E)

Tax Year	SOR ¶	Taxes Owed From SOR	Taxes Owed from Tax Transcripts or Responses to DOHA Interrogatories	Exhibit
2010	1.a	\$6,300	\$7,400	GE 3 at 25; AE E at 1
2011	1.b	\$800	\$1,000	AE E at 4
2013	1.c	\$60,000	\$70,000	Tr2. 124; AE E at 7
2014	1.d	\$17,800	\$16,500	GE 3 at 2; AE E at 9
2015	1.e	\$12,600	\$8,500	GE 3 at 27; AE E at 11
2016	1.f	\$17,900	\$13,200	GE 3 at 2; AE E at 13
2017	1.g	\$15,800	\$16,800	GE 3 at 2; AE E at 15
2018	1.h	\$63,600	\$62,400	GE 3 at 2; AE E at 17
2019	1.j	\$5,200	\$5,700	GE 3 at 2; AE E at 19
2020	1.k	\$11,500	\$12,000	GE 2 at 12; AE E at 21
2021	Not alleged	n/a	\$0	GE 2 at 21; AE E at 23
2022	1.l	\$1,200	\$1,200	GE 3 at 2; AE E at 25
2023	Not alleged	n/a	\$900	AE E at 27
Total		\$212,700	\$215,600	

Applicant and his spouse's adjusted gross incomes rounded to the nearest \$1,000 are as follows: 2010 (\$148,000); 2011 (\$133,000); 2013 (\$342,000); 2014 (\$207,000); 2015 (\$185,000); 2016 (\$199,000); 2017 (\$207,000); 2018 (\$348,000); 2019 (\$163,000); 2020 (\$184,000); 2021 (\$151,000); and 2022 (\$121,000). (GE 3 at 11-19; AE E)

In 2013, Applicant and his spouse received a settlement for \$130,000, and \$30,000 went for attorney's fees. (Tr2. 76-77, 124; AE E at 17) The unpaid taxes for TY 2013 were about \$51,000. (Tr2. 124-125; AE E at 17) They did not use any of the \$100,000 remainder from the settlement to pay their tax debt. (Tr2. 77) Applicant filed his TY 2013 federal income tax return on April 15, 2014. (AE E at 17) He paid \$19,000 using a W-2 or 1099 withholding. *Id.* According to his July 18, 2024 IRS tax transcript for TY 2013, his unpaid tax was \$51,000; his account balance owed was \$70,000; his accrued interest portion of the \$70,000 was \$19,000; and his accrued penalty was \$0. *Id.* As of April 15, 2014, he had notice that he would have to pay a substantial amount to the IRS 180 days after his deployment to a combat zone ended.

Applicant filed his TY 2018 federal income tax return on January 28, 2020. (GE 3 at 33) He paid \$16,000 using a W-2 or 1099 withholding. *Id.* According to his September 2, 2023 IRS tax transcript, his unpaid tax per return for TY 2018 was \$56,000; his account balance was \$40,000; his accrued interest portion of the \$56,000 was \$9,000; and his accrued penalty was \$10,000. *Id.* According to his July 18, 2024 IRS tax transcript his unpaid tax per return was \$62,000 for TY 2018; his account balance was \$40,000; his accrued interest was \$12,000; and his accrued penalty was \$10,000. AE E at 17. In sum, the IRS charged \$3,000 in interest for a tax debt of about \$60,000 for 10 months.

A September 21, 2023 statement from his state tax office indicates he owes \$8,100 for TY 2018. (GE 3 at 15) The state tax authority said Applicant could pay \$260 monthly to address the state tax debt, and Applicant said he and his spouse could manage that payment. (Tr2. 72; AE F)

Applicant and his spouse paid for the educations of their children while he was deployed. (Tr2. 72-74) Applicant's spouse said their college costs were about \$6,000 per year for each of their three children or about \$72,000 (\$6,000 X 4 years X 3 children = \$72,000). (Tr2. 75) Later she said it cost "\$65,000 for each child for four years," which would be a total of \$195,000 (3 children X \$65,000 each = \$195,000). (Tr1. 64-65; Tr2. 76) Applicant also purchased vehicles for each of his children for their 16<sup>th</sup> birthday. (Tr1. 103-104) Their youngest child graduated from college in 2021. (Tr1. 103) Their children are now financially independent. (Tr2. 53)

On October 1, 2024, Applicant paid the IRS \$800, and on March 6, 2025, he paid the IRS \$1,000. (Tr2. 60, 63; AE N) Applicant's spouse indicated that after Applicant returned from deployment, and after paying their expenses, they only have a few hundred dollars available to pay their tax debt. (Tr2. 65-66) They intend to make payments to the IRS under a payment plan. (Tr2. 71, 98) Applicant's mother is 89 years old, and he anticipates an inheritance, which will suffice to pay most or all of whatever is still owed to the IRS. (Tr2. 71-72, 105-107)

If Applicant's security clearance is reinstated, he expects to re-deploy to the combat zone, and his and his spouse's monthly income will be about \$8,000. (Tr2. 81, 104) If he remains in the United States, their monthly income will be about \$4,000. (Tr2. 104) Applicant said their payments to the IRS will be a high priority, and payments for non-essential items will be "cut." (Tr2. 105) They intend to continue to make payments to the IRS under the payment plan even though their payments are not required once they return to the combat zone. (Tr2. 81-83)

## **Character Evidence**

Applicant provided multiple statements of support from character references, including his spouse, son, friends for more than a decade, security manager, and coworkers. (Tr2. 111-112; AE G-AE J) The general sense of their statements is that he is dedicated, professional, reliable, conscientious, and trustworthy. He has an excellent reputation. Their statements support approval or reinstatement of his security clearance. He has not received any adverse counseling statements from his government contractor

employers. (Tr2. 90) He has held a security clearance since 1985, and he has not had any issues with his security clearance until the issues outlined in the November 9, 2023 SOR. (Tr1. 24-35; Tr2. 93) His wife stated:

My husband has dedicated the last 20 years of his life to provide for his family. He has missed so many family times, you know, special moments, holidays, birthdays, watching his children grow up. And this is a sacrifice that he has done for his family, but also for his country. If his clearance were to be taken, he would be devastated not only personally, but also career-wise. (Tr1. 88)

Applicant received the following awards, badges, and decorations: Marine Corps Good Conduct Medal (2nd Award); Overseas Service Ribbon w/ 1 Oak Leaf Cluster; Meritorious Mast (2); Rifle Marksmanship Badge; Pistol Sharpshooter Badge. (AE A)

## 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 five disqualifying condition that could raise a security concern and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators; 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 the decision remanding this case, the DOHA Appeal Board addressed the applicable disqualifying conditions as follows:

[T]he federal income tax system is a “pay-as-you-go” tax system, which means that taxpayers must pay income tax as they earn or receive income during the year. This can be accomplished either through withholding or by making estimated tax payments. Taxpayers must generally pay at least 90% of their taxes due during the previous year to avoid an underpayment penalty. *E.g., IRS Tax Tip 2021-81, June 8, 2021, <https://www.irs.gov/newsroom/heres-how-taxpayers-can-pay-the-right-amount-of-tax-throughout-the-year>; Penalty for underpayment of estimated tax, <https://www.irs.gov/taxtopics/tc306>.* Section 7508 does not provide an exemption from complying with standard withholding and estimated tax payment requirements. Applicant's withholdings averaged approximately 50% of his obligation from taxable wage income. When he received a \$130,000 settlement of a lawsuit, Applicant did not pay the related taxes. Had he been in compliance with those payment and withholding requirements, the amount due at the point when Applicant ultimately exits the combat zone would be significantly smaller. . . . there is substantial evidence that Applicant is unwilling to pay taxes when owed under the federal pay-as-you-go system. As such, the Judge erred in finding that AG ¶ 19(b) and AG ¶ 19(c) were inapplicable.

\* \* \*

The reasonableness of Applicant's conduct and the likelihood of actually paying the deferred tax debt raise disqualifying conduct under AG ¶¶ 19(a) and (e), and it was error for the Judge to have concluded that the Government had not met its burden of proof under those paragraphs. AG ¶ 19(a) is not limited to debts currently due. It equally applies in a situation such as this, in which existing debt will become due in the future. Similarly, AG ¶ 19(e) is established when there is consistent spending beyond one's means or frivolous or irresponsible spending. Applicant has deferred taxes over a long period of time to the extent that they exceed \$150,000. He spent the proceeds gleaned from deferring tax payments without setting aside funds to pay the taxes, he intends to continue to grow his tax debt, and he presented a tenuous repayment plan. It was error for the Judge not to have found AG ¶ 19(e) applicable in light of substantial evidence that Applicant will be unable to meet his tax obligations regardless of his assertions that he intends to do so.

There is substantial evidence of AG ¶¶ 19(a), 19(c), 19(e), and 19(f), requiring additional inquiry about the possible applicability of mitigating conditions. AG ¶ 19(b) is not established. Applicant credibly stated he is willing to pay his taxes once he has the means to do so. 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. He has an established payment plan to address his state income tax debt of about \$8,300, and the debt in SOR ¶ 1.i is mitigated under AG ¶ 20(g).

Applicant failed to pay as required his federal income taxes for TYs 2010, 2011, 2013-2020, and 2022. He owes about \$150,000 to the IRS, and the \$150,000 became due after he was out of the combat zone for 180 days. In 2023, he left the combat zone for 188 days, and he did not pay the IRS. He left the combat zone in July of 2024 and in January or February 2025, the \$150,000 again became due. On October 1, 2024, Applicant paid the IRS \$800, and on March 6, 2025, he paid the IRS \$1,000. These two payments were not made based on an IRS payment agreement.

In 2013, Applicant and his spouse received a settlement for \$130,000 and \$30,000 of the settlement went for attorney's fees. On April 15, 2014, they filed their tax return, and they were on notice that they owed taxes for TY 2013 of about \$51,000. The reasonable, prudent, good-faith response was to either pay the IRS the \$51,000 or put the \$51,000 aside until the Applicant left the combat zone for 180 days. Applicant elected to spend about \$200,000 to fund his children's college educations and buy them vehicles. See ISCR Case No. 16-01726 at 4 (App. Bd. Feb. 28, 2018) (indicating payments for tuition in lieu of federal income taxes suggested "misplaced priorities"). There was no evidence that Applicant's children could not fund their educations with student loans. As the years passed, Applicant accumulated additional federal income tax debt for most years, and he did not set aside sufficient funds to pay his taxes when due in 2023 or 2024.

Applicant disputed the amounts the IRS was seeking for payment of his taxes listed on his IRS tax transcripts. He has been disputing interest and penalty charges for about 10 years. He recently received the assistance of a taxpayer advocate to assist in removing the interest and penalty charges. He advises that once the improper charges are removed, he will act in good faith to establish a payment plan with the IRS and pay his tax debt.

Once Applicant has established a payment plan with the IRS and has made a reasonable number of payments to the IRS under that plan, AG ¶ 20(g) can be applied, and the financial considerations security concern may be mitigated. Under all the circumstances, none of the mitigating conditions fully apply, and financial considerations security concerns are not mitigated at this time.

### **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 64-year-old security officer. He has a bachelor's degree in business administration and management. Applicant served in the Marine Corps from 1985 to 1990, and he received an honorable discharge as a sergeant. He was meritiously promoted to sergeant. He received multiple awards while serving in the Marine Corps. He served overseas as a government contractor from about 2004 to July 2024. He would like to return to his overseas assignment once his security clearance is approved or reinstated.

Applicant provided multiple statements of support from character references, including his spouse, son, friends for more than a decade, security manager, and coworkers. The general sense of their statements is that he is dedicated, professional,

reliable, conscientious, and trustworthy. He has an excellent reputation. Their statements support approval or reinstatement of his security clearance.

The evidence against grant of a security clearance is detailed in the financial considerations section, *supra*, and the evidence against mitigation is more persuasive at this time. Applicant did not establish that he was unable to save the funds necessary to timely pay his federal income taxes after he left a combat zone for more than 180 days. His failure to take timely, prudent, responsible, and good-faith actions in regard to his taxes 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 through 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j through 1.l:	Against Applicant

## **Conclusion**

Considering 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