



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-01185

Appearances

For Government:
Tovah Minster, Esq., Department Counsel

For Applicant:
Richard J. R. Raleigh, Jr., Esq.
Ginny Gibson, Esq.

07/28/2025

Corrected Decision¹

MURPHY, Braden M., Administrative Judge:

Applicant mitigated financial considerations security concerns over his late Federal and state income tax filings. Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 28, 2023, in connection with his employment in the defense industry. On September 13, 2024, the Department of Defense (DOD) issued a Statement of Reasons to Applicant detailing security concerns under Guideline F (financial considerations), concerning certain Federal and state income tax returns. The DOD issued the SOR under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as

¹ The original decision in this case, issued July 23, 2025, contained a typographical error regarding Applicant's eligibility in the opening paragraph on page 1. That decision is hereby VACATED, and this corrected decision, issued July 28, 2025, is intended to replace it in all respects.

amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the National Security Adjudicative Guidelines (AG), which became effective within the DOD on June 8, 2017.

Through counsel, Applicant answered the SOR on October 2, 2024, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). He also submitted documentation regarding the status of his Federal and state income tax returns. The case was assigned to me on May 29, 2025. The hearing was held as scheduled on July 9, 2025, by video teleconference. The parties submitted Government's Exhibits (GE) 1-3 and Applicant's Exhibits (AE) A-G. All exhibits were admitted without objection. Applicant and two character witnesses testified. After the hearing, Applicant submitted one document, marked and admitted as AE H (payment of 2019 federal tax owed). Department Counsel submitted various webpages from the state tax authority from Applicant's home state (State 1) regarding certain filing deadlines for the tax years at issue. These materials are marked as Administrative Notice (AN) I and admitted. The record closed on the day of the hearing, after these materials were submitted. DOHA received the electronic transcript of the hearing (Tr.) on July 15, 2025.

Findings of Fact

The two allegations in the SOR concern Applicant's Federal income tax returns for Tax Years (TY) 2017-2021 (SOR ¶ 1.a) and State 1 income tax returns for TY 2017-2022 (SOR ¶ 1.b), all of which Applicant allegedly "failed to file, as required." He denied both allegations, on the grounds that all the tax returns at issue had been filed by the date of the SOR. He did not dispute, however, that several of the returns had been filed late. He provided copies of all of the tax returns at issue, as well as a letter from the law firm that had been appointed as the administrator of the estate of Applicant's long-time tax preparer, Mr. R, who had died in July 2018. (SOR Response and attachments; AE A, AE B, AE E)

Applicant is 62 years old. He and his wife have three grown children, and one adult daughter who is disabled and lives with them. He earned a bachelor's degree in 1990 and earned a master's degree in business administration (MBA) with concentrations in accounting and management in 1997. He worked as a systems engineer for a federal contractor from 2004 until September 2023, when he began working as a senior systems engineer for his current employer and clearance sponsor. He earns an annual salary of just below \$160,000. He previously held a clearance from about 2002 to 2012, without incident. He also spent about 20 years serving his community as a volunteer firefighter and EMT. (GE 1; AE D; Tr. 41-46, 59-60, 77-81, 90)

Applicant disclosed on his September 2023 SCA that he had several years of unfiled Federal and state income tax returns, noting that his accountant had died and had kept poor records. He discussed the status of his tax filings in a January 2024 background interview that he authenticated in an August 2024 Interrogatory Response. In May 2024, he also provided updated financial information and tax returns. (GE 1, GE 2, GE 3)

Applicant testified that Mr. R had been his accountant and tax preparer for many years, having been referred to him by his father. In spring of 2018, he spoke to Mr. R and gave him documentation for preparation of his TY 2017 returns, due in April 2018. Applicant noted that Mr. R was in poor health at the time. He heard nothing further for some time. In spring of 2019, he visited Mr. R's office to drop off documentation for preparation of his TY 2018 returns. He testified he put the documentation in a drop box at Mr. R's office. No one came to the door, though the lights were on and he could see other envelopes on the office floor that had been dropped off by others in a similar fashion. Applicant heard nothing further until the fall of 2019, when his father told him that Mr. R had died in July 2018. (Tr. 46-54, 61-71; AE F)

Applicant then began the task of attempting to compile appropriate documentation so he could prepare and file his tax returns himself. He had some confidence that he would be able to do this based on his own accounting and business background. However, gathering the materials proved more difficult than he had expected. He learned from the law firm that was the court appointed administrator of Mr. R's estate that Mr. R was poorly organized, and often kept client papers in his home, in a disorganized fashion. The law firm's delivery of Applicant's tax documentation was sporadic and depended on when they found the materials in Mr. R's files. Applicant filed his Federal returns once he had received appropriate documentation from the law firm. (Tr. 46-54; AE E, AE F)

Eventually, Applicant was able to prepare and file his various past-due tax returns himself. This included the following Federal returns (AE A):

- TY 2017 – filed Aug 2022 (\$1,211 refund)
- TY 2018 – filed December 2020 (\$1,405 refund)
- TY 2019 – filed April 2024 but incomplete (see below)
- TY 2020 – filed April 2024 but incomplete (see below)
- TY 2021 – filed October 2023 (\$2,603 refund)
- TY 2022 – filed June 2023 (\$3,645 refund)
- TY 2023 – filed April 2024 (\$3,073 refund)
- TY 2024 – filed April 2025 (paid \$1,416)

In October 2024, Applicant received an invoice for about \$2,294 from the IRS for past-due Federal taxes for TY 2019. In April 2015, he wrote back, asserting that he was due a \$1,290 refund, though he agreed with, and paid, the \$435 late fee. After the hearing, he documented that he paid the remaining \$1,888 in July 2025, after receiving legal advice. (AE A, AE H; Tr. 88-90) In October 2024, Applicant received an invoice for about \$8,550 from the IRS for past-due taxes for TY 2020. He paid the amount owed in full in November 2024. (AE A)

Applicant documented that he filed his past-due State 1 income tax returns in May 2024. (AE B) This included:

- TY 2017 – filed May 2024 (\$275 refund)
- TY 2018 – filed May 2024 (\$1,242 refund)
- TY 2019 – filed May 2024 (\$1,085 refund)

TY 2020 – filed May 2024 (\$939 refund)
TY 2021 – filed May 2024 (\$152 refund)
TY 2022 – filed May 2024 (\$70 refund)
TY 2023 – filed April 2024 (on time)

Applicant acknowledged that he prioritized his past-due Federal filings and did not prioritize the filings of these past-due State 1 returns until going through the security clearance process. He said he did not receive state tax refunds for any return filed more than three years late. (GE 2; Tr 86-88)

The Government's post-hearing documents show that generally, the annual income tax filing deadline for State 1 is April 15 of the following year, the same as the Federal deadline. When a State 1 resident files a Federal filing extension, a State 1 filing extension is triggered automatically. Several of the tax filing deadlines during the years at issue here were extended due to the COVID-19 pandemic. However, Applicant acknowledged that he did not meet these deadlines, for the reasons stated. (AN I; Tr. 94-96)

Applicant also acknowledged that he should have been more responsible and proactive about his tax filings after he learned that Mr. R had died. He said he felt "overwhelmed and intimidated" by the task of sorting out several years of past-due returns, particularly during the COVID-19 pandemic, when he began teleworking (like many others) and it became harder to track down appropriate documentation. However, he called the IRS to keep them informed of his status and progress. (Tr. 71-76)

Applicant owes no delinquent debt. He pays his monthly bills without incident. He has an excellent credit score (AE C) and no criminal record. He never had late tax filings or tax debt when he used Mr. R to prepare and file his tax returns. He regards himself as having confidence in his own abilities and his professional and educational background to do his own taxes but he said that in the future, if he were to hire a tax preparer, he would use an established firm and not a sole proprietor. He now keeps excellent tax records himself, at home, in a year-by-year filing system and keeps copies of all his returns and documentation. (Tr. 50-59, 65-66, 71-76, 85-86, 90-94)

Dr. R knows Applicant from work and from church. He has known Applicant for about two and a half years. He is a program manager at Applicant's company and he holds a clearance. He is Applicant's direct supervisor. Dr. R attested that Applicant is trustworthy and reliable and has upstanding character. He is aware of the origins of Applicant's tax issues and he has no concerns about Applicant's eligibility for a clearance. (Tr. 20-27) Another reference provided similar evidence by letter. (AE G)

Mr. O owns a small aerospace business. He has held a clearance for many years. He is also a neighbor and close friend of Applicant's. Mr. O testified that they socialize often. He would trust Applicant with his children's lives and has used Applicant as an "emergency contact" in the past. He regards Applicant as "a very trustworthy and sincere person, and a good friend." Applicant does not live a lavish lifestyle and spends time with his grandchildren. He works hard and is very industrious. Mr. O is aware of the origins of

Applicant's tax issues. He considers Applicant a patriot and recommends him for a clearance. (Tr. 27-38)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2I, the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

The financial considerations security concern is detailed in AG ¶ 18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The guideline sets forth several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (c) a history of not meeting financial obligations; and
- (f) failure to file . . . annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant had a duty to file his annual state and Federal income tax returns in a timely manner, and the fact that he did not do so for several years is a security concern. As the Appeal Board has held, in ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016):

Failure to file tax returns suggests that an applicant has a problem 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 towards 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.

Applicant failed to timely file his Federal income tax returns for TY 2017-2021 (SOR ¶ 1.a) and his State 1 income tax returns for TY 2017-2022 (SOR ¶ 1.b), as alleged. He denied the allegations on the grounds that the returns at issue had been filed by the

date of the SOR but does not dispute that he did not file the returns “as required” (i.e., “on time”) for each year alleged. This establishes AG ¶ 19(f) specifically, and, more generally, AG ¶ 19(c).

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant’s tax filing problems unquestionably began when his long-time tax preparer and accountant, Mr. R, died in July 2018. Applicant did not learn this until well over a year later, at which point he began attempting to address his tax filings himself, for the first time. During this process, he learned that Mr. R had been disorganized and kept poor records. This hampered Applicant’s ability to address his past-due returns in a complete and prompt manner, with appropriate documentation, for each past due year. Curing his past-due Federal filings therefore took some time. Applicant admittedly addressed his late State 1 tax filings in about May 2024, spurred, in no small part, by the security clearance process. But his late filings are limited to the years alleged. More recent filings have been on time. There is no issue as to past-due tax payments. (Applicant initially disputed what he owed for TY 2019 but has now paid that tax owed. He paid what he owed for TY 2020 in full, once he received an invoice.)

In weighing Applicant’s responsibility under the circumstances, I must consider the timing of his actions. The Appeal Board has consistently held that timing of an applicant’s resolution of his tax-filing problems is relevant in evaluating mitigation. An applicant who resolves financial or tax problems only when his clearance might be imperiled raises questions about his willingness to follow the sometimes complex rules governing classified information when his personal interests are not at stake. See ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017). The Appeal Board has also held that an applicant cannot simply adopt a position of “no harm, no foul” or “all’s well that ends well.” See ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

Department Counsel noted that the timing of Applicant's tax filings lessens the mitigating impact of the death of his accountant, at least for those after TYs 2017 and 2018. Applicant also acknowledges that he was spurred to finalize the resolution of his past-due tax filings by the security clearance process. I gave these factors appropriate consideration in weighing the record as a whole.

Applicant disclosed his tax issues voluntarily during the security clearance process. Once he learned of Mr. R's death, he began addressing his Federal tax filings as best he could under the circumstances. By the time he submitted his SCA, in September 2023, he had filed his Federal returns for TYs 2017, 2018 and 2022, and he filed TY 2021 in October 2024. The returns for TYs 2019 and 2020 took longer, though once he received invoices from the IRS, he acted in good faith to address them. To be sure, he should have handled his State 1 filings more promptly, instead of addressing them in May 2024, all at once. However, this action was still before he received the SOR in this case. Under the circumstances, Applicant acted reasonably and in good faith. AG ¶¶ 20(b) and 20(d) both apply.

All the past-due tax returns at issue have been filed and Applicant has paid what he owes. As the parties acknowledged (Tr. 107), AG ¶ 20(g) applies. His tax issues began due to circumstances that were unusual and beyond his control. While it took some time to sort out, Applicant's tax filing issues are resolved, unlikely to recur, and no longer cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) fully applies.

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 relevant 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), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

I had ample opportunity to evaluate Applicant's demeanor at the hearing and to form an opinion of his credibility. I found him to be a credible witness on his own behalf, and his credibility was bolstered by his character witnesses. I also credit his long career as a government contractor and first responder. When balanced against that long and honorable record of service, his tax issues are more of an anomaly than an ongoing risk. I also believe that Applicant is unlikely to find himself in this position again. He mitigated the financial considerations security concerns arising from his past tax filing issues. In reaching this conclusion, I considered not only Applicant's credibility, but the record evidence as a whole. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility for access to classified information.

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: **FOR APPLICANT**

Subparagraphs 1.a-1.b: **For Applicant**

Conclusion

Considering all the circumstances presented by the record, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Braden M. Murphy
Administrative Judge