



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



In the matter of:)
)
) ISCR Case No. 23-02412
)
Applicant for Security Clearance)

Appearances

For Government: Troy L. Nussbaum, Esq., Department Counsel
For Applicant: *Pro se*

07/22/2025

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 August 25, 2022, Applicant completed an Electronic Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On September 19, 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 the DCSA 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) Applicant provided an undated response to the SOR, and he requested a hearing before an administrative judge. (Tr. 43-44) On February 26, 2025, Department Counsel was ready to proceed. On March 10, 2025, the case was assigned to me.

On March 11, 2025, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing on May 5, 2025. The hearing was held as scheduled using the Microsoft Teams video teleconference system.

During the hearing, Department Counsel offered four exhibits into evidence, and Applicant offered one exhibit into evidence. (Tr. 16-22; GE 1-GE 4; Applicant Exhibit (AE) A) Applicant objected to admissibility of GE 2 and GE 3, credit bureau reports (CBRs) dated May 11, 2023, and February 22, 2024 because they are not current. I overruled his objections, which go to the weight and not the admissibility of the CBRs. (Tr. 17-20) There were no other objections, and all proffered exhibits were admitted into evidence. (Tr. 17-22) On May 19, 2025, DOHA received a copy of the transcript. The record was held open after the hearing until June 10, 2025. (Tr. 55, 58) Applicant had an option to have more time after June 10, 2025, to submit evidence. (Tr. 55, 58) I did not receive any requests for additional time or post-hearing documents from Applicant.

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

Findings of Fact

In Applicant's SOR response, he admitted the SOR allegations in ¶¶ 1.a through 1.d, and he denied the allegations in SOR ¶¶ 1.e through 1.g. He also provided mitigating information. His admissions are accepted as findings of fact.

Applicant is a 39-year-old firefighter who has worked for a government contractor for about 13 years. (Tr. 7-8, 25) In 2004, he graduated from high school. (Tr. 8) He has taken about three college classes. (Tr. 8) In 2011, he married, and in 2013, he divorced. His children are ages 4 and 12. (Tr. 9) He has shared custody and is not required to pay child support. (Tr. 9) In late January of 2024, Applicant was injured. (Tr. 23, 34) He received workers' compensation until November 2024. (Tr. 35) He received 60 percent of his pay from workers' compensation. (Tr. 35) He was out of work until the end of 2024. (Tr. 23, 36) He did not receive any pay for six weeks. (Tr. 36) He said he took care of all of his delinquent debts and filed his tax returns. (Tr. 24)

Financial Considerations

Applicant's after tax monthly income is about \$4,500. (Tr. 26) His monthly rent is \$2,200. (Tr. 26) He has some funds remaining after he pays his monthly expenses. (Tr. 28) He has total savings of about \$20,000. (Tr. 28) He has about \$120,000 in his retirement account. (Tr. 29) Most of the debts listed on his CBRs are in paid or paid as agreed status. (GE 2; GE 3)

Applicant's March 25, 2024 SOR states he has the following tax issues:

SOR ¶ 1.a alleges Applicant failed to timely file, as required, his federal income tax returns for tax years (TYs) 2018 through 2022. SOR ¶ 1.b alleges he failed to timely file, as required, his state income tax returns for TYs 2018 through 2022.

Applicant's August 25, 2022 SCA asks "In the last seven (7) years have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?" (GE 1 at 37) In response to this question, Applicant disclosed that he failed to file a federal income tax return for tax year 2020 "estimated" due to identity theft. *Id.* He said the identity theft occurred before he could get his tax return filed. *Id.* He estimated he owed \$1,500 in delinquent taxes. *Id.*

In Applicant's January 30, 2023 Office of Personnel Management (OPM) interview, he said he filed his 2020 and 2021 federal income tax returns by hand because his tax program would not allow him to file online. (GE 4 at 7) He also said he was the victim of identity theft. *Id.* He did not disclose any other TYs in which he failed to file his federal or state income tax returns to the OPM investigator.

In Applicant's response to DOHA interrogatories, he said he filed his federal and state income tax returns for TYs 2018 to 2022 on January 25, 2024. (GE 4 at 13, 15) He said all of his tax returns were filed. (GE 4 at 14, 16) He said he did not know his current state tax liability. (GE 4 at 16) His response to DOHA interrogatories was signed on January 25, 2024. (GE 4 at 16) In his response to DOHA interrogatories, Applicant provided IRS wage and earnings transcripts. (Tr. 33) Applicant seemed to be unaware that these documents did not show that he filed his federal income tax returns. (Tr. 33) IRS tax transcripts show when tax returns are filed and provide the amounts owed, if any, for each TY. He said he did not have IRS tax transcripts for TYs 2018 to 2022. (Tr. 34)

Applicant said he filed his overdue tax returns in January or February 2024, and he owed \$2,000 to \$4,000 in taxes. (Tr. 31, 33) He filed his TY 2023 federal income tax return before April 15, 2024. (Tr. 39) He is using a debit card to pay \$200 monthly to address his tax debt. (Tr. 31) He was unsure whether the \$4,000 tax debt is owed to the IRS or the state tax authority. (Tr. 32)

Applicant said he did not timely file his tax returns was because his identity was stolen. (Tr. 37) This theft included his bank account information on multiple occasions, and his Social Security number. (Tr. 37) He explained the situation as follows:

[W]hen I tried to file in 2018, they said my identity was stolen. In 2019 it was stolen, and it was reported to the Government. I went online and did the little questionnaire thing and clicked. Never received any information back. The next year the same thing. My thing was already filed. But then last year, 2023 -- or not last year, yeah, it was 2024, I was able to file all of them.

At his hearing, Applicant said he reported the identity theft to the IRS, and the IRS informed him his tax returns for 2018 and 2019 were already filed. (Tr. 38-39) He did not

attempt to file his tax returns for TYs 2020, 2021, and 2022. (Tr. 39) He submitted a police report in 2022. (Tr. 39) He intends to pay his tax debt in full after the hearing. (Tr. 51)

Applicant's March 25, 2024 SOR states he has five delinquent debts as follows:

SOR ¶ 1.c alleges Applicant has a charged-off debt for \$2,032. Applicant's February 22, 2024 CBR indicates: the account was opened in January of 2017; last payment was in May of 2021; and the status was charged off. (GE 2 at 3) Applicant said he delayed paying the debt because he thought it was inaccurate. (Tr. 41) Then he did some research and learned "don't pay old debt or something like that." (Tr. 41) Around May of 2024, he responded to the SOR and said, "arrangements have been made to correct or pay the debt." (HE 3) At his hearing, he said he did not pay the debt around May of 2024 because he "didn't have the money to pay it until a week ago," and he was hoping it would fall off of [his] credit report." (Tr. 45) He provided proof that he paid the debt the week before his hearing. (Tr. 41, 50; AE A)

SOR ¶ 1.d alleges Applicant has a past-due account for \$870. Applicant's February 22, 2024 CBR indicates: the account was opened in June of 2021; first delinquency was reported in October of 2021; and the status was collection account. (GE 2 at 3)

SOR ¶ 1.e alleges Applicant has an account placed for collection for \$619. Applicant's February 22, 2024 CBR does not list this account. (GE 2) His May 11, 2023 CBR lists the account in the collections section, and the last activity date is February of 2021. (GE 3 at 3)

SOR ¶ 1.f alleges Applicant has an account placed for collection for \$402. Applicant's February 22, 2024 CBR does not list this account. (GE 2) His May 11, 2023 CBR lists the account in the collections section, and the last activity date is June of 2021. (GE 3 at 3)

SOR ¶ 1.g alleges Applicant has an account placed for collection for \$104. Applicant's February 22, 2024 CBR does not list this account. (GE 2) His May 11, 2023 CBR lists the account in the collections section, and the last activity date is November of 2020. (GE 3 at 3)

Applicant said in his SOR response for SOR ¶¶ 1.d through 1.g, "Since reappearing on my credit report, arrangements have been made to correct and pay the debt." (Tr. 46; HE 3) He said he paid the debts when he had the funds to do so. (Tr. 46) He said he could provide proof of payment for these four debts in SOR ¶¶ 1.d through 1.g after his hearing. (Tr. 51-54)

Applicant said he would provide IRS tax transcripts for the previous five years, and documentation showing any state tax debt. (Tr. 53) He said he would also provide any correspondence received from the IRS and a recent credit report. (Tr. 54-55)

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.

“[A] single debt can be sufficient to raise Guideline F security concerns.” ISCR Case No. 19-02667 at 3 (App. Bd. Nov. 3, 2021) (citing ISCR Case No. 14-05366 at 3 (App. Bd. Feb. 5, 2016)). “Additionally, a single debt that remains unpaid over a period of years can properly be characterized as a history of not meeting financial obligations.” *Id.*

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.

(internal citation omitted).

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying in this case:

- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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.

The record establishes the disqualifying conditions in AG ¶¶ 19(b), 19(c), and 19(f), requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions 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).

Five delinquent SOR debts

Applicant is credited with mitigating the debt in SOR ¶ 1.c because he provided proof that he paid the debt. He is also credited with resolving the debts in SOR ¶¶ 1.e, 1.f, and 1.g. He said he paid them, and they do not appear on his most recent credit report of record. Although he did not provide proof of resolution of the debt in SOR ¶ 1.d, he is credited with mitigation because of his overall track record of debt payments indicated in his CBRs.

Failure to prove that he filed federal and state income tax returns

In Applicant's response to DOHA interrogatories, he said he filed his federal and state income tax returns for TYs 2018 to 2022 on January 25, 2024. He also said all of his tax returns were filed. However, I cannot credit him with filing those five years of tax returns without receipt of readily available corroboration to prove those tax returns were actually filed.

Recently, in ISCR Case No. 23-00254 at 3 (App. Bd. Sept. 9, 2024), the Appeal Board said:

A security clearance adjudication is not a proceeding aimed at inducing an applicant to meet his or her duty to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness. E.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). Accordingly, even though Applicant eventually filed his tax returns [in the case under

appeal], the Judge was obligated to consider the facts and circumstances surrounding the failure to timely meet tax obligations. *Id.*

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. Regarding the failure to timely file a federal income tax return, 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). 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 income tax returns are not timely filed, it is inappropriate to grant access to classified information. In that case, the applicant filed his 2011 federal income tax return in December 2013, his 2012 federal income tax return in September 2014, and his 2013 federal income tax return in October 2015. He received federal income 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. *Id.*

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 [f]ederal 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.

Applicant cited only one untimely filing of a tax return on his SCA, and that was for TY 2020. In his OPM interview, he said he filed paper copies of his TY 2020 and TY 2021 tax returns after he had difficulties using the computer tax filing programs. In Applicant's response to DOHA interrogatories, he said he filed his federal and state income tax returns for TYs 2018 to 2022 on January 25, 2024. His failure to provide complete and accurate information on his SCA and to the OPM investigator about filing his tax returns will not be considered for disqualification purposes; however, it will be considered: "(a) in assessing [his] credibility; (b) in evaluating [his] evidence of extenuation, mitigation, or changed circumstances; (c) in considering whether [he] has demonstrated successful rehabilitation; and (d) in applying the whole-person concept." ISCR Case No. 20-02787 at 4 (App. Bd. Mar. 9, 2022) (citing ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017)).

In this case, Applicant said he filed all required tax returns. He was given time after his hearing to provide IRS tax transcripts or copies of his tax returns or other evidence to show that he had filed all tax returns. In this regard, the Appeal Board has previously stated that it is reasonable for a Judge to expect an applicant to present documentation corroborating actions taken to resolve debts. ISCR Case No. 19-03757 at 3 (App. Bd. Aug. 18, 2021) (citing ISCR Case No. 19-01599 at 3 (App. Bd. Jan. 15, 2020)). Applicant did not corroborate his claims that he filed all required tax returns, and AG ¶ 20(g) does not apply under the circumstances of this case. None of the mitigating conditions fully

apply to the SOR allegations relating to filing his tax returns for TYs 2018 to 2022. 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 39-year-old firefighter who has worked for the government contractor for about 13 years. In 2004, he graduated from high school. He has taken about three college classes.

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. He failed to prove that he timely filed or filed his federal and state income tax returns for TYs 2018 through 2022. This failure to prove that he took timely, prudent, responsible, and good-faith actions regarding 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 maintenance of his financial responsibility, and an established

history of timely filing his income tax returns and paying his taxes, 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
Subparagraphs 1.c through 1.g: For 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.

Mark Harvey
Administrative Judge