



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



Appearances

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

04/16/2025

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 March 9, 2023, Applicant completed an Electronic Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On October 2, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive 4, establishing in Appendix A, the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why DOHA did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine

whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F. (HE 2) On November 10, 2024, Applicant provided his response to the SOR. (HE 3) On December 23, 2024, Department Counsel was ready to proceed. On January 15, 2025, the case was assigned to me. On January 22, 2025, DOHA issued a notice setting the hearing for February 18, 2025. (HE 1) The hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits into evidence, and Applicant offered one exhibit into evidence. (Tr. 19-21; GE 1-GE 4; AE A) All proffered exhibits were admitted into evidence. (Tr. 21) On February 28, 2025, DOHA received a copy of the transcript. Applicant provided five exhibits after his hearing, which were admitted into evidence without objection. The record closed on March 20, 2025. (Tr. 54-55)

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 denied the SOR allegations in ¶¶ 1.a and 1.b, and he admitted the allegations in SOR ¶¶ 1.c and 1.d. (HE 3) He also provided mitigating information. His admissions are accepted as findings of fact.

Applicant is a 48-year-old security officer. (Tr. 7, 28) In 1996, he graduated from high school. (Tr. 7) He attended college for almost four years, and he does not have a degree. (Tr. 7) He served in the Marine Corps from 1996 to 2008, and he received an honorable discharge as a gunnery sergeant. (Tr. 7-8) He served a tour in Iraq as a Marine, and he worked in Afghanistan as a contractor. (Tr. 8) From 2008 to 2015, he worked as a government contractor. (Tr. 9) From 2015 to 2022, he worked in a variety of jobs, which did not involve working for government contractors. (Tr. 9-10) He was unemployed from March 2020 to October 2020. (GE 1 at 14) From 2022 to October 2024, he worked for a government contractor. (Tr. 10) He stopped working for the government contractor because of the security clearance issue. (Tr. 10) He moved five times in the previous 10 years. (GE 1)

Applicant was married from 1999 to 2004, and from 2007 to 2014. (Tr. 11) His second spouse had a gambling addiction, and around 2014, she was arrested for embezzlement. (Tr. 31)

Applicant's current marriage was in 2020. (Tr. 11) His two sons are ages 23 and 26. (Tr. 11-12) His current spouse does not work outside their home. (Tr. 54)

Financial Considerations

In October 2023, Applicant's submitted a personal financial statement. (Tr. 31) His monthly salary was \$6,284 and his monthly Department of Veterans Affairs (VA) disability payment was about \$3,900. (Tr. 32, 50; GE 2 at 12)

SOR ¶ 1.a alleges Applicant failed to file as required his federal income tax return for tax year (TY) 2016, and at the time the SOR was issued, the tax return was unfiled.

SOR ¶ 1.b alleges Applicant owes federal income taxes for TYs 2015, 2017, and 2020 totaling \$6,477.

SOR ¶ 1.c alleges Applicant owes state income taxes for TY 2020 of \$2,069.

SOR ¶ 1.d alleges Applicant has a debt in collections for \$4,803. He financed replacement of truck rims. (Tr. 45) He made the following \$100 payments to the creditor: December 2024; January 2025; February 2025; and March 2025. (Tr. 46; AE B) He plans to continue to make \$100 monthly payments to address this debt. (Tr. 47) This debt is mitigated because it is in an established payment plan.

Applicant said he filed his TY 2016 federal income tax return, and he provided a TY 2016 federal income tax return, which was signed on January 10, 2021. (Tr. 41; AE C at 2; SOR response) His July 31, 2024 IRS tax transcript indicated his TY 2016 federal income tax return was not received by the IRS. (Tr. 41; GE 3 at 16) A tax filing company prepared and filed his TY 2016 tax return on December 18, 2024. (Tr. 41; AE A at 7) A March 11, 2025 IRS tax transcript indicates his TY 2016 federal income tax return was filed December 18, 2024; the account balance is \$1,432; and as of March 3, 2025, the account is not collectible due to hardship. (AE E at 5)

Applicant's IRS tax transcripts provided the information shown in the table. Amounts of adjusted gross income are rounded to the nearest \$1,000, and taxes are rounded to the nearest \$100 for reasons of financial privacy.

Tax Year	Date Tax Return Filed	Adjusted Gross Income	Tax Refund + Tax Owed -	Exhibit
2015	Apr. 15, 2016	\$50,000	-\$950	AE A at 8
2016	Dec. 18, 2024	\$63,000	-\$1,400	AE A at 7; AE C; AE E at 5
2017	June 27, 2022	\$53,000	-\$300	AE A at 11; AE B at 5
2018	June 27, 2022	\$63,000	\$0	AE B at 5
2019			\$0	AE B at 5
2020	June 14, 2022	\$56,000	-\$8,800	AE A at 5; AE B at 4

On April 14, 2023, the IRS advised Applicant that he owed the IRS \$206,000 for TYs 2015, 2017, and 2020, and the case was closed because it was currently uncollectible. (Tr. 36-37; SOR response) Applicant's January 11, 2024 tax transcript for TY 2015 shows reductions in taxes of \$20,715, \$101,479, \$25,369, and \$35,634 with a current balance owed of \$2,840. (GE 2 at 13-15) His July 31, 2024 IRS Account Transcript for TY 2015 shows an account balance owed of \$950. (AE A at 8) Applicant said the \$206,000 bill was an error caused by the IRS's misinterpretation of information related to the sale of a house and his failure to file his TY 2015 tax return. (Tr. 37-38) Applicant estimated his profit on the sale of the house was about \$20,000. (Tr. 52)

Applicant's TYs 2015, 2017, and 2020 IRS tax transcripts said on April 5, 2023, "Balance due account currently not collectible - due to the hardship." (Tr. 36-37; GE 2 at 15, 17, 19, 20) When he responded to the SOR, he disagreed with the amount of federal income taxes owed because of the IRS's "not collectible" status for his tax debt. (Tr. 38) He promised to make payments to the IRS if the debt becomes collectible. (Tr. 39)

Applicant's July 31, 2024 IRS Account Transcript for TY 2020 said his account balance was \$8,271. (AE A at 4) Applicant said he believed the IRS debt for TY 2020 was less than the \$8,271. (Tr. 53)

An IRS listing provided after his hearing indicates a total federal income tax debt of \$11,533 as follows: 2015 (\$993); 2016 (\$1,429); 2017 (\$297); and 2020 (\$8,814). (AE B at 4-5) All of his tax returns are filed, except for his state tax return for TY 2020. (Tr. 42) His TY 2020 state income tax return was delayed because he had difficulty acquiring a form which would show his unemployment income. (Tr. 43) The needed form was archived, and he was attempting to obtain the form at the time of his hearing. (Tr. 43) Applicant owes state income taxes for TY 2014 and 2015. (Tr. 44-45; GE 3 at 23) He said his current state income tax debt might be less than \$2,000. (Tr. 54; GE 3 at 22)

Character Evidence

Applicant's program manager has known Applicant for at least two years. (Tr. 23-34) He described Applicant as an outstanding employee who was rapidly promoted. (Tr. 25) He was placed on unpaid leave because of a security clearance issue. (Tr. 26) The company is eager to have him return to work. (Tr. 26) Applicant said his former spouse had a gambling addiction and lied about finances. (Tr. 27) His taxes were "messed up." (Tr. 27) He described Applicant as reliable and trustworthy, and he recommended reinstatement of Applicant's security clearance. (Tr. 27-28)

Applicant received the following awards, badges, and decorations: Marine Corps Good Conduct Medal (3rd Award); Combat Action Ribbon; Navy and Marine Corps Achievement Medal; Humanitarian Service Medal; Sea Service Deployment Ribbon (2nd Award); Global War on Terrorism Service Medal; Global War on Terrorism Expeditionary Medal (Iraq); Marine Corps Drill Instructor Ribbon; National Defense Service Medal; Navy Unit Commendation (2nd Award); Rifle Expert Badges (4th Award); Pistol Expert Badge (2nd Award); Navy Meritorious Unit Commendation (3rd Award); Letter of Appreciation (6th Award); Certificate of Commendation (3rd Award); Meritorious Mast (6th Award); and Certificate of Appreciation (3rd Award). (AE F) He successfully completed numerous Navy and Marine Corps training courses. (AE F)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual

is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes one disqualifying condition that could raise a security concern and may be disqualifying in this case: "(f) failure to file 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 condition in AG ¶ 19(f), requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying condition is contained in the mitigation section, *infra*.

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

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn,

unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The Appeal Board in ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013) explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

Applicant provided some important mitigating information. He transitioned through several jobs after leaving his government contracting job. He was unemployed from March 2020 to October 2020. He moved several times. These changes made it more difficult for him to maintain his finances. However, "[e]ven if [an applicant's] financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the [administrative judge] could still consider whether [the applicant] has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)).

Applicant failed to file as required his federal income tax return for TY 2016. He believed that he filed his TY 2016 federal income tax return in 2021; however, it was not actually filed until December 2024. He should have filed his TY 2016 federal income tax return in 2017.

Applicant owes federal income taxes for TYs 2015, 2016, 2017, and 2020 totaling about \$8,000. He owes state income taxes for TY 2014 and 2015 of about \$2,000.

Applicant's SOR does not allege: (1) he failed to timely file his federal income tax returns for TYs 2015 and 2017; and (2) he has not filed his TY 2020 state income tax return. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered, stating:

- (a) to assess an applicant's credibility;
- (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances;
- (c) to consider whether an applicant has demonstrated successful rehabilitation;
- (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or
- (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014)); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). The non-SOR information discussed above will not be considered except for the five purposes listed above.

A willful failure to timely make (means complete and file with the IRS) a federal income tax return is a misdemeanor-level federal criminal offense. Title 26 U.S.C. § 7203, willful failure to file return or supply information, reads:

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

A willful failure to make return, keep records, or supply information when required, is a misdemeanor without regard to the existence of any tax liability. *Spies v. United States*, 317 U.S. 492 (1943); *United States v. Walker*, 479 F.2d 407 (9th Cir. 1973); *United States v. McCabe*, 416 F.2d 957 (7th Cir. 1969); *O'Brien v. United States*, 51 F.2d 193 (7th Cir. 1931). For purposes of this decision, I am not weighing Applicant's failure to timely file his federal income tax returns against him as a crime. In regard to the failure to timely file 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) (emphasis in original). See ISCR Case No. 15-01031 at 4 (App. Bd. June 15, 2016) (citations omitted); ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015). The Appeal Board clarified that even in instances where an “[a]pplicant has purportedly corrected [his or her] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant’s security worthiness in light of [his or her] longstanding prior behavior evidencing irresponsibility,” including a failure to timely file federal income tax returns. See ISCR Case No. 15-01031 at 3 & n.3 (App. Bd. June 15, 2016) (characterizing “no harm, no foul” approach to an applicant’s course of conduct and employing an “all’s well that ends well” analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR).

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

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

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

In this instance, Applicant failed to timely file as required his federal income tax returns for TYs 2015, 2016, and 2017. He owes about \$10,000 in state and federal income taxes. In 2023, the IRS decided his federal income tax debt is currently not collectible due to hardship, and that circumstances continues to the present. However, if his federal income tax returns had been timely filed in 2015, 2016, and 2017, he would have had several years in which he could have paid his taxes for those tax years. Under all the circumstances, none of the mitigating conditions fully apply, and financial considerations security concerns are not mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall common-sense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 48-year-old security officer. He attended college for almost four years. From 2008 to 2015, he worked as a government contractor. From 2015 to 2022, he worked in a variety of jobs that did not involve working for government contractors. From 2022 to October 2024, he worked for a government contractor.

Applicant's program manager described Applicant as an outstanding employee who was rapidly promoted. The company is eager to have him return to work. He described Applicant as reliable and trustworthy, and he recommended reinstatement of Applicant's security clearance.

Applicant served in the Marine Corps from 1996 to 2008, and he received an honorable discharge as a gunnery sergeant. He served a tour in Iraq as a Marine, and he worked in Afghanistan as a contractor. He received a combat action badge and numerous awards and badges from the Marine Corps. He receives \$3,900 monthly in VA disability benefits due to service-connected disabilities. He was a credible witness at his hearing.

The evidence against grant of a security clearance is detailed in the financial considerations section, *supra*, and this evidence against mitigation is more persuasive at this time. Applicant did not establish that he was unable to timely file his federal income tax returns for TY 2015, 2016, and 2017. His TY 2020 state income tax return was not filed at the time of his hearing. His failure to take timely, prudent, responsible, and good-faith actions in regard to his taxes raise 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.c: Against Applicant
Subparagraph 1.d: For Applicant

Conclusion

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge