



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



ISCR Case No. 24-01767

## **Appearances**

For Government: Cassie L. Ford, Esq., Department Counsel  
For Applicant: *Pro Se*

07/10/2025

## Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

## **Statement of the Case**

Applicant submitted a security clearance application on January 24, 2024. The Department of Defense (DoD) sent her a Statement of Reasons (SOR) on November 26, 2024, alleging security concerns under Guideline F. The DoD acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant answered the SOR on December 31, 2024, the Government amended the SOR on February 26, 2025, and Applicant answered the amended SOR on March 28, 2025. Applicant requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 28, 2025, and the case was assigned to me on May 6, 2025. On May 9, 2025, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 17, 2025. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified, presented witness testimony, and offered Applicant Exhibits

(AE) A through B, which were admitted without objection. The documents submitted with her Answer will be referenced as AE C. DOHA received the transcript (Tr.) on July 1, 2025. The record remained open until July 8, 2025, and Applicant timely submitted AE D through AE I.

### **Findings of Fact**

In Applicant's Answer she admitted she failed to timely file her Federal and state tax returns for the tax years 2021, 2022, and 2023 and that she has delinquent Federal taxes in the amount of \$12,991 for those tax years. Her admissions are accepted as findings of fact.

Applicant is a 39-year-old executive assistant for a laboratory. She has worked for her sponsor since late 2023. She has never held a security clearance. She has taken some college courses but holds no degree. She married in 2022 and has no children. (GE 1; Tr. 19-20.)

Applicant admits she failed to timely file Federal and state income tax returns for tax years 2021 through 2023, as required (SOR ¶¶ 1.a and 1.b). In her Answer, she emphasizes she disclosed this information to the DoD investigator who conducted her security clearance interview on March 11, 2024. She told the investigator that her accountant was located in another city, and she had not gotten around to going down there to meet with the accountant to do the 2021 and 2022 tax returns. She kept putting off the trip and she acknowledged to the investigator that her conduct was an issue. (GE 4; AE A, AE C.)

Applicant in her testimony and Answer cited that during the years 2021 and 2022 she and her parents contracted COVID 19 and experienced long COVID symptoms. Her parents moved in with her from January 2022 until May 2022. She used the same tax preparer as her parents. Her parents and the tax preparer reside approximately four hours away. She stated, "because of the distance and because I just didn't get the time to get down there and to -- and to connect with him." She had dealt with this preparer for years and he was her parents' tax preparer. In her Answer for tax year 2023 she cited as reasons for her untimely filing that she had been in the process of looking for a new career and ultimately changing jobs. She offered as mitigation that she completed her filing on September 7, 2024, before the tax year 2023 extension period would have expired on October 15, 2024. She added she had never had a tax delinquency prior to 2021. (Answer; AE C; GE 1-4; Tr. 13-16, 20-27, 42-44, 50-55.)

Applicant admitted SOR ¶ 1.c. In her March 28, 2025 Answer to the Amended SOR she stated she would set up a payment plan to "resolve/satisfy this debt" for delinquent Federal taxes in the amount of \$12,991.76 for tax years 2021, 2022, and 2023. At the hearing she submitted her Direct Debit Payment Plan with the IRS from her checking account, which showed a first payment date of June 28, 2025. After the hearing she

submitted the May 9, 2025 correspondence with the IRS showing that she had made arrangements to resolve tax years 2021, 2022, and 2023 with monthly installment payments. The first payment would apply \$228 to the balance and \$22 for the setup fee. Her monthly payments thereafter would be \$250, due on the 28<sup>th</sup> of each month. In post-hearing submissions, she provided the IRS letter confirming its acceptance of her payment plan (installment agreement) and she submitted her bank statement that she has made the June 28, 2025 payment as agreed, which was processed from her account on June 30, 2025. (Tr. 42-45; AE A, AE C, AE F, AE I.)

Applicant in previous tax years typically owed some amount for her Federal taxes. She estimated in tax years 2019 and 2020 she owed \$1,500 to \$2,000. She stated she was setting aside money for any taxes she would owe for the years in question. She did expect to owe taxes for tax year 2021. She acknowledged she was not expecting to owe \$12,000. (Tr. 48-49, 55-56, 62.)

After Applicant met with her preparer, it took a month for the tax returns to file. The process took two meetings costing her two days from work. During the period in question, while Applicant's taxes remained unfiled because of the distance to her tax preparer, she took multiple vacations abroad. Applicant took a vacation to Spain for 6-10 days in September 2022 costing approximately \$4,000. She took another vacation to Mexico for approximately 5 days in May 2023 costing \$2,500 . In July 2023 she took two more foreign vacations costing approximately \$2,500 and \$1,500 respectively. (Tr. 56-59; GE 1.) When asked why she did not use any of her vacation time to go down and take care of her taxes she responded, "that's a good question. I do not know." (Tr. 59.)

Applicant testified she has about \$4,000 in savings, approximately \$1,500 in her checking account, and around \$10,000 in her 401(k). She has never had any financial counseling. (Tr. 35, 56-60; GE 1.)

Although not alleged, Applicant has \$2,541 in delinquent state taxes. She submitted her state payment agreement dated May 5, 2025, which I considered as mitigating whole-person evidence. She provided a letter from her state's comptroller dated May 8, 2025, confirming the establishment of her payment plan, where the parties agreed to payments of \$69.09 per month, for 36 months. She confirmed the first payment was due on June 15, 2025, and was processed by her bank on June 23, 2025. She also submitted her recent cash award from her sponsor for her excellent performance. (Tr. 59-60; AE B, AE D, AE G, AE H, AE I.)

## 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, a decision to deny a security clearance should not be construed to suggest that it is based, in whole or in part, on any express or implied determination about the 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 disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(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(c), and 19(f).

The financial considerations mitigating conditions under AG ¶ 20 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; 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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sep. 24, 2013), the DOHA Appeal Board 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 documented that she had filed her outstanding Federal and state income tax returns in September 2024, about two months before receiving the initial SOR and eight months after she disclosed on her SCA that she had not filed her tax returns. She told an investigator in March 2024 she had not filed her tax returns for tax years 2021 and 2022 and acknowledged it was an issue. She then failed to timely file her 2023 tax return. Her behavior was not infrequent, and she filed her Federal and state income tax returns only after her security clearance application was in jeopardy, which casts doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not established.

AG ¶ 20(g) is partially established. Applicant failed to timely file her Federal and state income tax returns for tax years 2021 through 2023. The first prong of AG ¶ 20(g) is met. She filed her tax returns and has made arrangements with the appropriate tax authorities to pay the amount owed. However, insufficient time has passed to establish that she is in compliance with the arrangements with the IRS. She has made one payment on the alleged Federal tax delinquency, and she offered as further mitigation that she was

in compliance with her recently established state arrangement. While her tax returns remained unfiled, and she accumulated a Federal tax debt of over \$12,000, she had time to take multiple vacations prior to finally meeting with her tax preparer. Her vacations cost \$10,000. Her failure to timely file Federal and state income tax returns, while taking numerous trips abroad, suggests she 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). The Appeal Board has noted that 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). Her explanation blaming COVID might be mitigating until May 2022 but her inaction thereafter and her multiple vacations eviscerate any potential mitigation under either AG ¶¶ 20(b) or 20(g). Her claim of the distance to her tax preparer preventing her filing is not supported by any legal authority. Her failure to ensure she was compliant with tax laws demonstrates poor judgment and lack of reliability required to be granted access to classified information. See ISCR Case No. 17-03049 (App. Bd. May 15, 2018) (citing ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016)); 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).

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 filed her overdue Federal and state income tax returns when she realized her security clearance application was in jeopardy. She entered into her payment plan with the IRS days before the hearing and her first payment was due 10 days after the hearing. The Appeal Board has clarified that even in instances where an “[a]pplicant has purportedly corrected [his or her] Federal [or state] tax problem, and the

fact that [a]pplicant 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 pay Federal income taxes when due. 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).

Under all the circumstances, Applicant's failures to timely file her Federal and state income tax returns for tax years 2021 through 2023 and pay her Federal taxes 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.

I have considered Applicant's state payment plan as whole person evidence. She admitted that she made errors; she relies on her past timely filings; and she promised not to repeat them as evidence of her rehabilitative potential. I also considered her recent award from her employer. The evidence against grant of a security clearance is detailed in the financial considerations section, *supra*, and this evidence is more substantial at this time than the evidence of mitigation. Applicant's failure to take timely, prudent, responsible, good-faith actions from 2022 to 2024 (when those tax returns were due) to timely file her tax returns raises unmitigated questions about her 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 establishment of a track record of timely filing her tax returns and further compliance with her payment agreement, she may well be able to demonstrate persuasive evidence of her 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 - 1.c:** **Against Applicant**

## Conclusion

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

Charles C. Hale  
Administrative Judge