



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



In the matter of:)
)
[Name Redacted]) ISCR Case No. 23-01591
)
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelly, Esq., Department Counsel
For Applicant: *Pro se*

01/08/2025

Decision

HOGAN, Erin C., Administrative Judge:

Applicant failed to mitigate the security concerns raised under Guideline F, Financial Considerations; and Guideline E, Personal Conduct. Eligibility for access to classified information is denied.

Statement of the Case

On September 29, 2023, the Department of Defense Counterintelligence and Security Agency, (DCSA) Consolidated Adjudication Services (CAS) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); 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.

The SOR detailed reasons why the DCSA CAS 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 Guidelines F and E. On November 30, 2023, Applicant responded to the SOR and requested a hearing before an administrative judge.

On May 3, 2024, the case was assigned to me. On August 13, 2024, DOHA issued a notice of hearing, setting the hearing for October 10, 2024. The hearing was held as scheduled using a video-teleconference system.

During the hearing, Department Counsel offered six exhibits, Government Exhibits (GE) 1 - 6, which were admitted without objection. Applicant offered ten exhibits which were admitted as Applicant Exhibits (AE) A - J, without objection. The record was held open until October 24, 2024, to allow Applicant to submit additional exhibits. He timely submitted three documents which were admitted as AE K (5 pages), AE L (6 pages), and AE M (11 pages), without objection. On October 25, 2024, DOHA received a transcript of the hearing. The record closed on that date.

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 admits the allegations in SOR ¶¶ 1.a - 1.c and denies the allegation in SOR ¶ 2.a. His admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 60-year-old employee and sole owner of a defense contracting company seeking to maintain a security clearance. He has held a security clearance for over 34 years. He served in the Army National Guard between December 1989 to October 2000. He has owned his own defense contracting business since 2002. His highest level of education is a Master in Business Administration (MBA). He recently received a Master in Biblical Studies and was ordained as a minister in his church. He has two adult daughters from his first marriage. He separated from his wife in 2018. They divorced in 2021. He is remarried. (Tr. 25; GE 1; GE 2 at 7; Response to SOR; AE A; AE B; AE F)

Financial Considerations

The SOR alleges Applicant is indebted to the Federal Government for delinquent taxes in the approximate total amount of \$544,595 for tax years 2014, 2015, 2016, 2018 and 2019. In August 2023, the Federal Government filed a tax lien against him in the amount of \$10,690. The delinquent taxes remain unpaid (SOR ¶ 1.a: GE 2 at 29-31, 37, 41-59; GE 3) Applicant is also alleged to owe delinquent taxes in the approximate amount of \$107,600 to the state government where he resides for tax years 2014, 2015, 2016, 2018, and 2019. In September 2016 and February 2018, the state placed tax liens against him in the respective amounts of \$70,267 and \$34,537. The delinquent state tax debts remain unpaid. (SOR ¶ 1.b: GE 2 at 31, 60-113; GE 3 at 4, 6, 7) Finally, a judgment was entered against him in 2019 in the approximate amount of \$92,242 related to second mortgage on a home that he and his first wife purchased. The judgment remains unpaid. (SOR ¶ 1.c: GE 2 at 8; GE 4; GE 5 at 2)

Applicant's contracting business had its ups and downs. In 2007, he had 30 employees working for him. In 2008, there was a business downturn and there were only

three employees including Applicant. At present, he is the only employee of his company. He claims that the contracts slowed down, and it was difficult to keep up with obligations. In 2018, he got a job with another company for extra income. He continues to struggle to pay his debt obligations. (Tr. 24-26)

As of September 2023, Applicant owed the IRS approximately \$544,595 for delinquent federal taxes for tax years 2014, 2015, 2016, 2018, and 2019. The primary cause of Applicant's tax problems is that he failed to withhold sufficient income to pay the IRS for taxes owed. His IRS tax transcripts for the alleged tax years indicate the following:

Tax Year 2014 – Adjusted Gross Income: \$836,664; Taxable Income: \$755,207; Taxes Owed: \$252,709; Amount Taxes Withheld: \$26,372; Balance owed as of September 11, 2023: \$332,248.24. (GE 2 at 41-43)

Tax Year 2015 – Adjusted Gross Income: \$480,234; Taxable Income: \$430,247; Taxes Owed: \$108,803; Amount Taxes Withheld: \$24,790; Balance owed as of September 11, 2023: \$141,626.03. (GE 2 at 44-45)

Tax Year 2016 – Adjusted Gross Income: \$228,385; Taxable Income: \$162,501; Taxes Owed: \$38,835; Amount Taxes Withheld: \$11,956; Balance owed as of September 11, 2023: \$43,946.75. (GE 2 at 46-47)

Tax Year 2017 – Adjusted Gross Income: \$96,800; Taxable Income: \$38,584; Taxes Owed: \$4,662; Amount Taxes Withheld: \$3,998; tax payments were made on October 15, 2015, for \$664 and December 3, 2018, for \$36.83. The balance is zero. (GE 2 at 48-49)

Tax Year 2018 – Adjusted Gross Income: \$213,686; Taxable Income: \$184,027; Taxes Owed: \$32,745; Amount Taxes Withheld: \$23,877; Balance owed as of September 11, 2023: \$13,129.28. (GE 2 at 50-51)

Tax Year 2019 – Adjusted Gross Income: \$173,079; Taxable Income: \$160,879; Taxes Owed: \$33,561; Amount Taxes Withheld: \$23,016; Balance owed as of September 11, 2023: \$13,646.17. (GE 2 at 52-53)

Applicant began to use an accountant around 2003 to 2004 to assist with his taxes. The accountant advised him to pay his taxes upfront throughout the year. He did not follow his accountant's advice. (Tr. 59, 64)

Though not alleged in the SOR, Applicant owed taxes to the IRS for tax years 2020, 2021, and 2022 because he failed to withhold sufficient taxes during each year. His current wife sold her home in 2023. Applicant was able to use approximately \$93,000 from the sale of the home towards paying the balances owed for tax years 2020, 2021, 2022 and 2017 and 2019. He testified that he got an extension to file his federal income tax returns for tax year 2023. The return is filed. He earned \$230,000. He owes approximately \$40,000. He failed to withhold enough income to pay his taxes. He intends

to take out a loan to pay off the tax debt. He indicates that in late 2023, he contracted with a company who assist him with preparing quarterly taxes. (Tr. 63-69; GE 2 at 40)

Because Applicant's federal tax debts for tax years 2020 – 2023 are not alleged in the SOR they will not be considered as matters of disqualification, but will be considered as matters of extenuation and mitigation. Conduct not alleged in the SOR may be considered to assess Applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether Applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)

In June 2023, Applicant hired a tax firm to assist him with working out a payment plan with the IRS. He testified that he could afford to pay \$2,000 a month towards his delinquent taxes. The IRS is conducting an investigation before they offer a payment plan. The possible payment plan is pending. (Tr. 60-61, 71-72; AE E; AE M at 11)

State Tax Debt

Applicant owes delinquent taxes to his state of residence in the approximate amount of \$107,600 for tax years 2014, 2015, 2016, 2018, and 2019. Specifically, he owes delinquent state income taxes for 2014: \$70,000; 2015: \$25,000; 2016: \$6,000; 2018: \$4,500 and 2019: \$2,500. (GE 2 at 31; 64-113)

Applicant testified that he made \$2,300 monthly payments towards the state tax debt from 2020 to 2023, with the exception of payments being deferred during the COVID-19 pandemic. He made various payments to the state to apply towards his delinquent tax debt between July 2020 and October 2020. (AE L) On May 15, 2023, the state cancelled the payment plan for failure to make the agreed upon payments. He now makes a monthly payment of \$542 a month. He provided proof of payments for the month of December 2023, February 2024, and April 2024. (Tr. 72-75; GE 2 at 37)

Applicant testified that he owes \$23,000 in state taxes for tax year 2022. This was combined with the additional taxes owed to the state in the amount of \$107,000 for a total of \$130,000. (Tr. 74-75) The record is unclear as to the current balance of the delinquent state tax debt. The same tax lawyer who is helping arrange a payment plan for the federal tax debt is arranging a payment plan regarding his delinquent state tax debt. (Tr. 77)

SOR ¶ 1c: \$92,242 Judgement – Delinquent Second Mortgage

In 2014, Applicant and his first wife purchased a home for \$690,000. The bank required them to borrow one mortgage in the amount of \$500,000 as a 30-year fixed mortgage and second mortgage in the amount of \$104,000 as a line of credit. (Tr. 27) During an October 2020 interview with an investigator conducting his background investigation, Applicant indicated he stopped making payments in November 2018 to May 2019, because he could not afford to pay the mortgage while paying rent. He told

the investigator that he requested a loan modification, but his request was denied. He arranged to make \$400 monthly payments in April 2020. (GE 2 at 8)

When he separated from his wife in 2018, he agreed to pay the larger mortgage and he claims his wife agreed to pay the second mortgage. His wife did not make the payments on the second mortgage. The loan became delinquent. The bank offered to settle the amount for \$25,000. Applicant could not afford to make the payments at the time of the offer. He did pay the original creditor \$400 in October 2020, November 2020, March 2020, and March 2021. (Tr. 27-28; AE M at 10)

At present, a law firm specializing in debt collection purchased the debt. The law firm offered to settle the debt for \$100,000. In October 2023, Applicant sent a letter to the law firm with a counteroffer to pay the debt for \$5,000. The law firm did not accept this offer. He is still attempting to negotiate a settlement for this debt. (Tr. 54-56; AE H; AE J; AE I)

During the period of time that Applicant has encountered significant delinquent federal and state tax debt, he has traveled abroad on numerous occasions every year. One of his daughters lives in Europe and he has family in Haiti and Canada. Some of these trips were made to visit family members and some were vacations. In 2023, Applicant and his current wife purchased a house, using some of the proceeds from the sale of her home and his Veterans Affairs (VA) loan. The purchase price was \$1.1 million. (Tr. 64-66,70; GE 1 at 39-63, 72; GE 2 at 11-12, 15)

Personal Conduct

Under the Personal Conduct Concern, Applicant is alleged to have deliberately falsified material facts on his January 23, 2018, e-QIP application in response Section 26-Financial Record Taxes. "In the last seven (7) years have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?" when he answered, "No". He deliberately failed to list his delinquent taxes owed for Federal income taxes for tax years 2014, 2015, 2016, 2018, and 2019 and his delinquent taxes owed for state income taxes for tax years 2014, 2015, 2016, 2018, and 2019. (SOR ¶ 2.a: GE 1 at 69)

Applicant contends that he did not deliberately omit his delinquent federal and state income tax debts on his 2018 e-QIP. He states he answered, "no" because he filed his federal and state income tax returns. He believed there was no place to add additional information about his delinquent tax debts. He said the question was confusing. When the investigators interviewed him during his background investigation interview, he was truthful about his delinquent debts and cooperated with them throughout the process. (Tr. 24-26)

Under cross examination, Applicant admits that not listing that he owed over \$600,000 to the federal and state government for delinquent taxes was a false answer. He said that he felt he could not make comments that would add context to answering "yes" to the question. Department Counsel addressed his attention to page 72 on his

January 2018 e-QIP application. The last section was titled “Additional Comments.” It read:

Use space below to continue answers to all other items and to provide any information you would like to add. Before each answer, identify the number on the item.

Applicant wrote:

I have done more foreign travel than what is listed but I don't have my older passport to list those dates. Generally, I travel to Haiti and Europe for pleasure. I also have traveled to Canada the last couple of years for pleasure as well.

Applicant responded that he believed the Additional Comments were related to his travel. He claims it was not intuitive for him to add additional information about his delinquent tax debts. (Tr. 78-80; GE 1 at 72)

Character Evidence

Mr. C, Applicant's friend and former neighbor testified on his behalf. He has PhD in mechanical engineering and has done work for the U.S. Navy. He held a security clearance for about 10 years. He is currently on sabbatical due to health reasons. They met around 2002-2003 when they both were building homes in the same development. They became good friends. He served as Applicant's best man in his second wedding. He describes Applicant as reliable and trustworthy. He borrowed \$5,000 from him during a period where he was having financial issues. Applicant paid him back after a couple years. Applicant is reliable and trustworthy. (Tr. 36-43)

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 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

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern for financial considerations:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following apply:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of 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.

Applicant failed to pay his federal and state income taxes for tax years 2014, 2015, 2016, 2018, and 2019. He owes the IRS approximately \$544,595 in delinquent taxes. He owes over \$130,000 in delinquent taxes to his state. AG ¶ 19(f) applies. His tax problems were an issue of his own making. He had the income, but chose to not withhold sufficient income to apply towards his taxes each year, which created the tax debt. AG ¶ 19(b) applies.

Applicant owes a \$92,242 judgment related to a second mortgage. While he blames his ex-wife for not making the monthly payments, he was obligated to pay the mortgage company if his wife was unable to make payments. Private businesses are not parties to a couple's property settlement agreements in a divorce. AG ¶ 19(a) and AG ¶ 19(c) apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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 under control;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

None of the mitigating conditions fully apply. AG ¶ 20(a) does not apply because Applicant's issues with delinquent state and federal tax debts and his delinquent second mortgage debt are ongoing. AG ¶ 20(b) partially applies because Applicant's separation and divorce was a circumstance beyond his control. However, it is given less weight because I cannot conclude Applicant acted responsibly under the circumstances. He neglected to timely pay his federal and state income taxes for more than three years before his marital separation. He failed to withhold sufficient funds to pay his federal and state income taxes for tax years 2014, 2015, 2016, 2018 and 2019. As a result, he incurred a \$544,595 delinquent federal tax debt and delinquent state taxes of over \$104,000. Rather than dealing with the issue as soon as it was discovered, he continues to withhold insufficient funds to pay his federal and state income taxes even though his accountant advised him to do this years ago.

AG ¶ 20(d) does not apply because Applicant ignored attempts to resolve and pay his federal and state income tax debts for years. While he made some occasional payments, he did not hire a tax attorney until June 2023 and did not have a payment plan in place as of the close of the record. It is too soon to conclude he will be capable of meeting the terms of his payment plans. He has also not resolved the debt owed towards the second mortgage. His counter-offer of \$5,000 to settle a \$100,000 debt is not a good-faith effort to resolve the debt.

AG ¶ 20(g) does not apply. While Applicant is in the process of making payment arrangements to resolve his federal and state tax debts, no payment arrangements are in effect. He ignored his tax problems for years which further aggravated his tax situation. He also ignored resolving the second mortgage debt. Given his past record, it is too soon to conclude he will follow through on his payment agreements.

Applicant receives some credit for filing his federal and state tax returns, however, any credit is minimized by his extended delay in paying his delinquent taxes. The DOHA Appeal Board has held that failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See,

e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, 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. 17-01382 at 4 (App. Bd. May 16, 2018).

In this case, Applicant's attempt to resolve his federal and state tax issues, after years of ignoring the tax debts, occurred too late. So too, his failure to resolve his second mortgage debt occurred too late. It is noted that during the years Applicant incurred these debts, he traveled extensively out of the country to Europe, Haiti, and Canada. He and his current wife purchased a new home for \$1.1 million in 2023. He is not taking his tax issues seriously. The security concerns raised under Financial Considerations are not mitigated.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

Applicant deliberately failed to disclose his delinquent federal and state tax debts on his January 2018 e-QIP application in response to "Section 26 – Financial Record Taxes – In the last seven (7) years have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?" He claims that he was confused about the question because it required a two-part answer. I do not find his explanations credible. He has held a security clearance for over 34 years. He is a highly educated man who owns his own defense contracting business. AG ¶ 16(a) applies.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. The following mitigating conditions potentially apply in Applicant's case:

(a) the individual made prompt, good faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Neither mitigating condition applies. There is no evidence that Applicant made a prompt good-faith effort to correct the omission of his delinquent federal tax debts before being confronted with the facts. AG ¶ 17(c) does not apply to Applicant's intentional omissions of his federal and state income tax debts in response to Section 26 on his January 2018 security clearance application. Falsification of a security clearance application is not "minor" because it "strikes at the heart of the security clearance process." ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011). Applicant's behavior raises serious concerns about his reliability, trustworthiness, or good judgment. Personal conduct 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 commonsense 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 those guidelines but some warrant additional comment.

Applicant did not proactively begin to resolve his delinquent state and federal income tax issues for years. In June 2023, he hired a tax firm to assist with a payment plan with the IRS for his federal tax debts and with the state department of revenue for his state tax debts. At the close of the record, no formal repayment agreement was agreed upon by either the IRS or the state tax authorities.

The Appeal Board's emphasis on security concerns arising from tax cases is instructive and binding on administrative judges. See ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016) (reversing grant of a security clearance and stating, "His delay in taking action to resolve his tax deficiency for years and then taking action only after his security

clearance was in jeopardy undercuts a determination that Applicant has rehabilitated"). See also ISCR Case No. 14-03358 at 3, 5 (App. Bd. Oct. 9, 2015) (reversing grant of a security clearance and stating "A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly, failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information.").

In addition to the delinquent tax debts, the second mortgage debt also remained unresolved at the close of the record. He also deliberately omitted the fact that he owed over \$544,595 delinquent federal tax debts for tax years 2014-2016 and 2018-2019 and over \$107,000 in delinquent state income taxes for the same tax years on his January 2018 security clearance application. His failure to disclose his delinquent tax debts on his security clearance application raises questions about his trustworthiness and reliability.

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. Security concerns under Financial Considerations and Personal Conduct are not mitigated.

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

Paragraph 2, Guideline E: **AGAINST APPLICANT**

Subparagraph 2.a: Against 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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Erin C. Hogan
Administrative Judge