



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



In the matter of:	)	
	)	
XXXXXXXXXXXXXXXXXXXXX	)	ISCR Case No. 18-00284
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara R. Karoian, Esquire, Department Counsel  
For Applicant: *Pro Se*

03/08/2019

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,<sup>1</sup> I deny Applicant's clearance.

On 25 June 2018, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct.<sup>2</sup> Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 3 February 2019, when Applicant's response to the FORM was due. Applicant provided no additional documents. DOHA assigned the case to me 1 March 2019.

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<sup>1</sup>Consisting of the File of Relevant Material (FORM), Items 1-4.

<sup>2</sup>DoD acted under Executive Order 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) of Security Executive Agent Directive 4, implementing new AG, effective with any decision issued on or after 8 June 2017.

## Findings of Fact

Applicant denied failing to timely file his state and Federal income tax returns as alleged in the SOR, but admitted owing the Internal Revenue Service over \$58,000 for eight delinquent tax years. He is a 50-year-old senior administrative associate employed by a U.S. defense contractor since January 2007. He has been employed in related positions with two other defense contractors since October 1993. He has previously had favorable background investigations in September 1998 and April 2006. This appears to be a periodic reinvestigation of that clearance (Item 1).

Applicant disclosed his IRS tax debt for tax years 2006-2007 and 2009-2013 on his January 2016 clearance application (Item 3), and discussed them at length during his June 2017 interview with a Government investigator (Item 4). He stated that he received a notice(s) in January 2016 about the delinquent tax years, made one telephone call to the IRS that went unanswered, and thereafter made no effort to contact the IRS to arrange a payment schedule. He attributed his tax debt to his not adjusting his income tax withholding to reflect his income. However, he offered no explanation for his failure to file his Federal tax returns on time. Applicant's IRS tax transcripts for the years in question show that the IRS filed tax liens against Applicant in July 2017. Applicant's Answer admits the tax debt and states only, without corroboration, that he was working with the IRS and his bank to pay the debt off.

Applicant denied failing to timely file his 2005-2007, 2010-2013, and 2016-2017 state and Federal income tax returns (SOR 1.a-1.r). He admits owing the Internal Revenue Service (IRS) over \$58,000 (SOR 1.s-1.aa, exclusive of 1.w—not used). Applicant denied failing to timely file his state and federal income tax returns for nine years. However, Applicant's IRS tax transcripts for 2005-2016 (Item 4) show that Applicant failed to timely file his Federal income tax returns for 2005-2006, 2010-2013, and 2016.<sup>3</sup> Record evidence does not confirm that Applicant failed to file his 2017 Federal income tax return (SOR 1.i) or his 2005-2007, 2010-2013, 2016-2017 state income tax returns (SOR 1.j-1.r). Accordingly, I find those allegations for Applicant.

Applicant documented no credit or financial counseling, and did not submit a budget. He provided no work or character references, or evidence of community involvement.

## Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the

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<sup>3</sup>In fairness to Applicant, he filed for extensions for several years, and missed the extended filing deadlines by only days or weeks—compared to some years where he missed the filing deadlines by months or years. Nevertheless, Applicant was assessed late filing fees and late payment fees.

factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.<sup>4</sup>

### **Analysis**

The Government established a case for disqualification under Guideline F, and Applicant failed to mitigate the security concerns. Applicant failed to timely file his Federal income tax returns for eight of twelve years between 2005 and 2016. The IRS notified Applicant that he had delinquent taxes in January 2016, but Applicant took no meaningful action to address his taxes. The IRS filed tax liens for these tax years in July 2017. Furthermore, Applicant documented no efforts to contact the IRS since his June 2017 interview<sup>5</sup>

The Appeal Board has long held that failure to timely file required tax returns may demonstrate a lack of judgment inconsistent with access to classified information.

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 persons granted access to classified information. Indeed, the Board has previously noted that a person who has a history of not fulfilling their legal obligation to file income tax returns may be said not to

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<sup>4</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>5</sup>¶19(a) inability to satisfy debts; (b) unwillingness to satisfy debts regardless of the ability to do so;(c) a history of not meeting financial obligations; (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns of failure to pay annual Federal, state, or local income tax as required;

have demonstrated the high degree of judgment and reliability required for access to classified information.”<sup>6</sup>

This is true whether the failure to file is willful<sup>7</sup> or attributed to the press of other circumstances.<sup>8</sup> As recently as December 2015, the Appeal Board upheld a denial of clearance, in a case notably similar to this, of an applicant who had failed to file Federal or state income tax returns for 10 years.

The filing of tax returns is both a financial and a legal obligation. Applicant’s . . . failure to have done so for many years is sufficient to raise a concern that he may be unwilling to follow other rules and regulations, such as those that govern the handling of classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015) (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 also *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff’d*, 367 U.S. 886 (1961). Indeed, as the Judge noted, Directive, Enclosure 2 ¶ 19(g) explicitly provides that failure to file tax returns is a circumstance that can raise a security concern. Moreover, the Directive presumes a nexus between admitted or proven conduct under any of the Guidelines and an applicant’s eligibility for a clearance. See, e.g., ISCR Case No. 14-04648 at 3 (App. Bd. Sep. 9, 2015). ISCR Case No. 14-02930 at 3 (App. Bd. Dec. 9, 2015).

Security concerns under Guideline F are not limited to cases in which an Applicant is financially insolvent or is experiencing difficulty in paying debts. In this case his failure to timely file his Federal returns for at least eight years has created significant tax debt that he has not addressed.

Applicant meets none of the mitigating conditions for financial considerations. His failures to timely file his Federal returns are multiple, recent, and the circumstances are not demonstrated to be likely to recur.<sup>9</sup> Moreover, he has not demonstrated that his

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<sup>6</sup>ISCR Case No. 12-05053 at 4 (App. Bd. Oct. 30, 2014), reversing Administrative Judge’s favorable decision. See, e.g., ISCR Case No. 98-0608 at 2 (App. Bd. Jun. 27, 2000)(failure to file for five years).

<sup>7</sup>See, ISCR Case No. 98-0801 (App. Bd. Jun. 8, 2000)(tax protester).

<sup>8</sup>See, ISCR Case No. 98-0761 (App. Bd. Dec. 27, 1999)(routine failure to file).

<sup>9</sup>¶20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

failures to timely file and his subsequent failures to timely pay or make pay arrangements were due to circumstances beyond his control, and it is clear that he has not been responsible in addressing his taxes.<sup>10</sup>

Applicant has not had any credit or financial counseling, and there are no clear indications that his tax debt is being resolved.<sup>11</sup> He has documented no contacts with the IRS, and consequently cannot demonstrate that he has made a good-faith effort to resolve his taxes.<sup>12</sup> Moreover, he submitted no work or character evidence which might support a whole-person assessment to overcome the security concerns raised by his conduct. I conclude Guideline F against Applicant.

### **Formal Findings**

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-h:	Against Applicant
Subparagraphs i-r:	For Applicant
Subparagraphs s-aa:	Against Applicant

### **Conclusion**

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

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JOHN GRATTAN METZ, JR  
Administrative Judge

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<sup>10</sup>¶20(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

<sup>11</sup>¶20(c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

<sup>12</sup>¶20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.