



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



In the matter of:)
)
) ISCR Case No. 18-00428
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

12/14/2018

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s federal income tax returns were not timely filed for tax years 2011 and 2014, and his state tax return for tax year 2011 was not filed at the time of his hearing. He did not disclose his failure to timely file his federal and state income tax returns for tax year 2011 on his October 4, 2016 Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). Financial considerations and personal conduct security concerns are not mitigated. Access to classified information is denied.

History of the Case

On October 4, 2016, Applicant completed and signed his SCA. (Government Exhibit (GE) 1) On April 19, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a

clearance should be granted, continued, denied, or revoked. (HE 2) Specifically, the SOR set forth security concerns arising under the financial considerations guideline.

On April 27, 2018, Applicant provided his first response to the SOR, and he requested a hearing. (HE 3) On June 1, 2018, the SOR was amended adding and clarifying allegations under the financial considerations guideline and adding an allegation under the personal conduct guideline. (HE 2) On June 11, 2018, Applicant provided his response to the amended SOR. (HE 3) On June 11, 2018, Department Counsel was ready to proceed. On July 30, 2018, the case was assigned to me. On August 15, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for September 6, 2018, using video teleconference. (HE 1) The hearing was held as scheduled.

Department Counsel offered four exhibits; there were no objections to the documents; and they were admitted into evidence. (Tr. 10-15, 19-21; Government Exhibit (GE) 1-4) Applicant did not offer any exhibits into evidence. (Tr. 16) On September 12, 2018, DOHA received a copy of the transcript of the hearing.

Findings of Fact

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

Applicant is 32 years old, and he has been employed by a defense contractor in weapons installation since October 2016. (Tr. 6; GE 1) In 2003, he received a General Educational Development (GED) diploma. (Tr. 6) He is currently seeking an associate's degree in firearms technology. (Tr. 6-7) He served in the Navy from 2004 to 2013. (Tr. 7) His Navy specialty was aviation ordnanceman, and his rank when he was discharged was petty officer second class (E-5). (Tr. 8) He received an honorable discharge. (Tr. 8)

Financial Considerations

Applicant had variations in his income, and a period of unemployment after leaving the Navy. These circumstances adversely affected his finances. Applicant's SOR alleges the following financial issues:

SOR ¶¶ 1.a, 1.b, 1.d, and 1.h allege Applicant failed to timely file his federal income tax returns for tax years 2009, 2011, and 2014. SOR ¶ 1.c alleges he failed to pay his federal income taxes as required for tax year 2013. SOR ¶ 1.g alleges Applicant failed to timely file his state income tax return for tax year 2011.

¹ As part of this SOR response, Applicant provided a copy of a federal tax lien filed against his father to establish that it was not Applicant's tax lien. (Tr. 17-18) No adverse inference is made because of this tax lien.

Applicant filed his federal income tax returns for each of these tax years as follows: 2009 filed on January 27, 2011 (Tr. 22-23, 27-28; SOR response); 2011 filed in September 2018; 2013 timely filed in April 2014 (Tr. 48; GE 2); and 2014 filed on July 21, 2017 (Tr. 33).

Applicant's March 22, 2018 IRS tax transcript for tax year 2013 indicates in February 2016 he had additional taxes assessed of \$5,007. (Tr. 34; GE 2) He explained that he failed to include a withdrawal from his Thrift Savings Program account on his income tax return resulting in additional taxes for "unreported income." (Tr. 33; GE 2) His federal income tax refund for tax year 2015 (\$1,271) and 2016 (\$1,593) were used to address his delinquent taxes for tax year 2013. (Tr. 34; SOR response) The IRS apparently waived some fees and charges because his 2018 IRS tax transcript for tax year 2013 shows a zero pay off amount. (GE 2) A February 27, 2017 IRS letter also indicates his tax debt for tax year 2013 has a zero balance. (GE 2) His federal income tax debt for tax year 2013 is resolved.

Applicant was deployed as part of his Navy duties for most of 2010 and the first few months of 2011. (Tr. 24, 26-27, 29; SOR response) He was waiting for the state to provide a copy of his W-2 so he could file his state tax return for tax year 2011. (Tr. 25, 30, 45) He was unable to get a W-2 from the Defense Finance and Accounting Service (DFAS). (Tr. 46) Applicant's state tax return has not been filed as of the date of his hearing. (Tr. 25, 45-46)

Applicant timely filed his federal income tax returns for tax years 2007, 2008, 2010, 2012, 2014, 2015, 2016, and 2017. (SOR response; GE 2) He received a refund for all of these tax years. (SOR response; GE 2)

SOR ¶ 1.e alleges Applicant has a charged-off debt owed to a credit union for \$22,983. In 2012, Applicant borrowed funds to purchase a vehicle. (Tr. 35) The vehicle was not repossessed. (Tr. 38) He stopped making payments for a time, and then in September 2017, he resumed making \$200 monthly payments. (Tr. 35, 37) The account is in current status.

SOR ¶ 1.f alleges a charged-off debt for \$7,245. From May 2017 to April 2018, Applicant paid the creditor \$200 monthly, and then in April 2018, the creditor offered to settle the remaining debt for \$3,000. (Tr. 40-41) In April 2018, Applicant paid \$3,000 and settled the debt. (Tr. 41)

Personal Conduct

When Applicant completed his October 4, 2016 SCA, he failed to disclose that he did not timely file his federal or state tax returns in 2011. Applicant said at the time he completed his SCA, he had forgotten that he did not timely file his tax returns. (Tr. 42-43)

On November 16, 2017, an Office of Personnel Management (OPM) investigator asked him during his personal subject interview (PSI) whether he failed to file or pay his federal or state taxes. (Tr. 47; GE 2) Applicant disclosed that he did not timely file his

federal income taxes for tax year 2013, and he said he paid his tax debt for that year in February 2017. (Tr. 47; GE 2) He did not disclose that at the time of his PSI he failed to file his federal and state income tax returns for tax year 2011. At his hearing, he said he could not remember why he did not disclose to the OPM investigator that he had not filed his federal income tax return for tax year 2011. (Tr. 47; GE 2)²

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 revised 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

² Applicant’s SOR does not allege that Applicant failed to disclose that he failed to timely file his federal and state income tax returns for tax year 2011 to the Office of Personnel Management (OPM) investigator. 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. April 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)). This allegation will not be considered except for the five purposes listed above.

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 should be construed to suggest that I have based this decision, 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 and the Secretary of Defense 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 relating to financial problems:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts”; “(c) a history of not meeting financial obligations”; and “(g) failure to file annual Federal, state, or local income tax returns as required” Applicant admitted that he failed to timely file his federal tax returns for tax years 2009, 2011, and 2014 and state tax return for 2011. His federal income taxes for tax year 2013 were not paid until 2017. He was late paying or making payment arrangements for two debts as alleged in SOR ¶¶ 1.e and 1.f.

The Government established the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(g) requiring additional inquiry about the possible applicability of mitigating conditions.

Seven mitigating conditions under AG ¶ 20 are potentially applicable:

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

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

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;³

(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

(f) the affluence resulted from a legal source of income; 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 concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

³The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

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).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

No mitigating conditions apply; however, Applicant presented some mitigating information. He had variations in his income, and a period of unemployment after leaving the Navy. These unusual circumstances were beyond Applicant's control and caused or contributed to Applicant's financial problems. He established a payment plan to address the debt in SOR ¶ 1.e, and he paid the debt in SOR ¶ 1.f. He was deployed for most of 2010, which delayed filing his tax return for tax year 2009. His federal income tax debt for tax year 2013 is paid. Applicant is credited with mitigating the financial allegations in SOR ¶ 1.a, 1.c, 1.e, and 1.f.

Applicant failed to timely file his federal income tax returns for tax years 2011 and 2014. He failed to file his state income tax return for tax year 2011. The DOHA Appeal Board has observed:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). See ISCR Case No. 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 [the applicant's] 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 [applicant's] longstanding prior behavior evidencing irresponsibility" including a failure to timely file federal income tax returns. See ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. June 15, 2016) (characterizing "no harm, no foul" approach to an Applicant's course of conduct and employed 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).

Applicant repeatedly failed to timely file his tax returns. Financial considerations security concerns are not mitigated.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern:

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 one condition that could raise a security concern and may be disqualifying in this case: "(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . used to conduct investigations, . . . determine security clearance eligibility or trustworthiness. . . ."

When Applicant completed his October 4, 2016 SCA, he failed to disclose that he failed to timely file his federal or state tax returns in the previous seven years. At his hearing, Applicant said at the time he completed his SCA, he had forgotten that he did not timely file his tax returns. This explanation is not credible. AG ¶ 16(a) is established for his failure to disclose accurate information about filing his tax returns on his SCA.

AG ¶ 17 provides five conditions that could mitigate personal conduct security concerns in this case:

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

(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 it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy,

unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

When Applicant completed his October 4, 2016 SCA, he failed to disclose that he failed to timely file his federal or state tax returns for tax year 2011 and his federal income tax return for tax year 2014. During his OPM PSI, he disclosed that he did not timely file or pay his federal income tax return for tax year 2013; however, he brought proof to the interview that his federal tax debt for tax year 2013 was paid. At his hearing, he said he did not remember that he failed to timely file tax returns for tax year 2011, and he said he could not remember why he did not disclose to the OPM investigator that he had not filed his federal income tax return for tax year 2011. None of the mitigating conditions apply. 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), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 32 years old, and he has been employed by a defense contractor in weapons installation since October 2016. He is currently seeking an associate's degree in firearms technology. He served in the Navy from 2004 to 2013. His Navy specialty was aviation ordnanceman, and his rank when he was discharged was petty officer second class. He received an honorable discharge.

Applicant's history of failing to timely file his federal income tax returns for 2011 and 2014, and his state tax return for 2011, raises unresolved financial considerations security concerns. He may owe state income taxes for tax year 2011.⁴ When an issue of delinquent taxes is involved, an administrative judge is required to consider how long an applicant waits to file their tax returns, whether the IRS or a state generates the tax returns, and how long the applicant waits after a tax debt arises to begin and complete making payments.⁵ The primary problem here is that Applicant has repeatedly been late filing his tax returns. He did not provide a good reasons for not timely filing his federal income tax returns for tax years 2011 and 2014 and his state income tax return for tax year 2011.

Applicant's intentional falsification of his SCA was in a security context, and that falsification raises a serious security concern. The protection of national security relies on Applicants to self-report conduct that jeopardizes security, even when that disclosure might damage the Applicant's career. AG ¶ 15 emphasizes, "Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes." Applicant cannot be trusted to disclose potentially derogatory information. He did not establish his reliability, trustworthiness, and ability to protect classified information.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations and personal conduct security concerns are not mitigated.

⁴See ISCR Case No. 14-03358 at 3, 5 (App. Bd. Oct. 9, 2015) (reversing grant of a security clearance, noting \$150,000 owed to the federal government, 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.").

⁵See ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016) (reversing grant of 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 himself and does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation's secrets."); ISCR Case No. 14-01894 at 2-6 (App. Bd. Aug. 18, 2015) (reversing grant of a security clearance, discussing lack of detailed corroboration of circumstances beyond applicant's control adversely affecting finances, noting two tax liens totaling \$175,000 and garnishment of Applicant's wages, and emphasizing the applicant's failure to timely file and pay taxes); ISCR Case No. 12-05053 at 4 (App. Bd. Oct. 30, 2014) (reversing grant of a security clearance, noting not all tax returns filed, and insufficient discussion of Applicant's efforts to resolve tax liens). More recently, in ISCR Case No. 14-05476 (App. Bd. Mar. 25, 2016) the Appeal Board reversed a grant of a security clearance for a retired E-9 and cited applicant's failure to timely file state tax returns for tax years 2010 through 2013 and federal returns for tax years 2010 through 2012. Before his hearing, he filed his tax returns and paid his tax debts except for \$13,000, which was in an established payment plan. The Appeal Board highlighted his annual income of over \$200,000 and discounted his non-tax expenses, contributions to DOD, and spouse's medical problems. The Appeal Board emphasized "the allegations regarding his failure to file tax returns in the first place stating, it is well settled that failure to file tax returns suggest that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information." *Id.* at 5 (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002) (internal quotation marks and brackets omitted).

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraphs 1.e and 1.f:	For Applicant
Subparagraphs 1.g and 1.h:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

MARK HARVEY
Administrative Judge