



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



In the matter of:)	
)	
XXXXXXXXXXXXXXXXXXXXX)	ISCR Case No. 18-02471
)	
Applicant for Security Clearance)	

Appearances

For Government: Michelle P. Tilford, Esquire, Department Counsel
For Applicant: *Pro Se*

05/09/2019

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 18 December 2018, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline F, Financial Considerations.² 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 23 April 2019, when Department Counsel stated no objection to Applicant's Response. DOHA assigned the case to me 29 April 2019.

¹Consisting of the File of Relevant Material (FORM), Items 1-6, and Applicant's Response to the FORM (Response).

²DoD 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 Security Executive Agent Directive 4, effective 8 June 2017.

Findings of Fact

Applicant admitted failing to timely file his 2012-2017 Federal income tax returns,³ and accumulating almost \$8,900 delinquent debt.⁴ He is a 47-year-old program manager employed by a U.S. defense contractor since November 2012. He has been continuously employed since January 2001. He served honorably in the U.S. military in the 1990s, during which time he held a clearance. He has not previously held an industrial clearance (Item 3).

Applicant married his first wife in June 1996, and they divorced in August 2010; he remarried in October 2011 and divorced in August 2012. He has three adult children from his first marriage.

Applicant disclosed his failure to file his 2015 Federal income tax return on his May 2017 clearance application (Item 3), and discussed that return, as well as his 2012 and 2016 returns, and SOR debt 1.i, during his September 2017 interview with a Government investigator (Item 6), based on his June 2017 credit report (Item 5).⁵ He claimed to have placed SOR debt 1.i in a debt consolidation program in July 2017, and to be working with a tax accountant. In his November 2018 answer to DOHA interrogatories (Item 6), he documented entering a commercial tax resolution program in September 2018, covering his 2012-2017 Federal income taxes, and making the first program payment in October 2018. He later documented \$900 monthly payments for April and May 2019, with payments scheduled for June-October 2019.⁶ Applicant claimed, but did not document, having difficulty dealing with the IRS. Thus, he turned to the tax resolution program to resolve his taxes, which remain unfiled.

Applicant's March 2019 Answer (Item 2) contained an email, later confirmed by a more legible document from the debt resolution program (Response), reflecting that he enrolled seven debts totaling \$13,685.37 in the program, and settled them for \$7,086.54, an approximate discount of 48%.⁷ The settled debts include a debt not alleged in the SOR, SOR debts 1.c-1.e, SOR debts 1.h and 1.i, and a debt purporting to be SOR debt 1.i. However, Applicant's credit reports and Response show that the debt paid is not the debt alleged in the SOR.

Applicant's June 2017 credit report (Item 5), reflects that Applicant had two accounts with the SOR 1.i creditor, one opened in August 2015, one opened in

³The Government withdrew SOR 1.b, regarding Applicant's state income tax returns (FORM, p.2).

⁴He denied three debts totaling about \$3,000, pending verification, which he apparently obtained later.

⁵The remaining SOR debts were taken from Applicant's September 2018 credit report, which was never discussed with an investigator.

⁶It is unclear whether any portion of these payments is sent to the Internal Revenue Service (IRS).

⁷However, the documents do not indicate when each debt was satisfied.

November 2016. Each account is identified by its full 16-digit account number in Item 5. At the time, both accounts were current. Applicant's September 2018 credit report (Item 4) also lists both accounts. The August 2015 account is listed by the first four digits, four x's, and the third four digits. The November 2016 account is listed by the first 12 digits. This account also shows that it was closed at consumer's request after having been paid for less than full balance in November 2017. The first 12 digits under which the account is listed in Item 4 match the first 12 digits under which the account is listed in Item 5. The last four digits listed for this creditor in Applicant's Response match the last four digits in Item 5. Consequently, the debt Applicant paid on this creditor is not the debt alleged at SOR 1.i, which remains unaddressed.

In addition, although Applicant's June 2017 credit report (Item 5) lists only one delinquent SOR debt (SOR 1.l),⁸ it lists several debts which later became SOR debts, some with full account numbers, that were current at the time, but which were delinquent on the September 2018 credit report (Item 4), whether still held by the original creditor or by a collection agent. First, SOR debt 1.c was current in June 2016, listed under the original creditor, with a complete account number, but was delinquent in September 2018 under the collection agent.⁹ The last four digits listed for the original creditor in Applicant's response matches the last four digits of the original creditor in Item 5. Second, SOR 1.e appears under the original creditor, with full account number, as current in Item 5, but then tracks to Item 4 with the first 12 digits as delinquent but transferred; it then appears under the SOR 1.e collection agent, with the first eight digits. Again, the last four digits listed for the original creditor in Applicant's Response matches the last four digits of the original creditor in Item 5. Third, SOR debt 1.h, with full account number, was current on Item 5, but was delinquent under the same creditor with a 12-digit account number, and settled under the last four digits in Applicant's Response. Finally, SOR debt 1.k was current, with full account number, on Item 5, but was delinquent on Item 4 under the first four digits. Applicant claimed that he paid this creditor directly, but too recently for it to be reflected on a credit report (Response). He provided no confirmation of his claim to have paid SOR debt 1.g online.

Applicant's Response contains an April 2019 email from the collection agent for SOR debt 1.f, acknowledging Applicant's acceptance of the collection agent's settlement offer, but not containing any actual indication that the settlement amount was paid. Similarly, Applicant provided an April 2019 letter from the collection agent for SOR debt 1.j asserting the SOR amount alleged; Applicant annotated the letter that the debt was paid the same day, but did not otherwise document payment.

⁸SOR debt 1.l alleged an original creditor with an eight digit account number, being held by a collection agent. Applicant's Response lists only the original creditor, under a last four digits that does not match Item 5. Only the original creditor and original debt alleged connects the settlement payment to Item 5.

⁹Applicant gets some credit for connecting the creditor in Item 5 with the creditor in Item 4, given no obvious connection in the credit reports.

Applicant attributes his financial problems to his divorce, but the record evidence does not support that claim. He provided no evidence showing that his August 2012 divorce caused him to not file his 2012-2017 Federal income tax returns none of which had been filed over six years after the divorce. He failed to show that the ten delinquent debts—all of which were listed as being opened 2015-2018—were caused by the 2012 divorce.¹⁰ He specifically stated that SOR debt 1.I was caused by his children going over their minutes' limits on their cell phones.

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. He submitted no current credit reports which might have corroborated his claimed payments.

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 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.¹¹

¹⁰Two of the debts held by collection agents are listed as opened in 2018, presumably when they received the accounts from the original creditors. The accounts with the original creditors were opened in 2015 or 2016.

¹¹See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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 between 2012 and 2017. He has stated no credible reason for his failure, and did not corroborate any claimed contacts with the IRS. Applicant engaged professional tax help in September 2018, but these efforts have yet to result in filed income tax returns or documented payments to the IRS. Regarding the ten delinquent debts, Applicant claimed to have engaged a debt resolution program to resolve seven SOR debts in July 2017, but provided no documentation of when he engaged the program. The program settled six of the SOR debts, with no indication when the debts were settled or paid. Applicant claimed, without documentation to show actual payments, to have personally paid four SOR debts. Even accepting Applicant's proffers as true, the claimed payments were made after he received the FORM. SOR debt 1.i remains unpaid.¹²

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 have demonstrated the high degree of judgment and reliability required for access to classified information."¹³

This is true whether the failure to file is willful¹⁴ or attributed to the press of other circumstances.¹⁵ 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

¹²¶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 or failure to pay annual Federal, state, or local income tax as required;

¹³ISCR 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).

¹⁴See, ISCR Case No. 98-0801 (App. Bd. Jun. 8, 2000)(tax protester).

¹⁵See, ISCR Case No. 98-0761 (App. Bd. Dec. 27, 1999)(routine failure to file).

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 unlikely to recur.¹⁶ Moreover, he has not demonstrated that his 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.¹⁷ Similarly, his delinquent debts all occurred several years after his most recent divorce, and all involved accounts opened several years after his divorce. He did not show how his divorce could have influenced these accounts, and while he has documented five settled SOR accounts, his documents do not show when the debts were paid, precluding a judgment on the reasonableness of his actions. His four SOR debts purportedly paid after he received the FORM, were not responsibly dealt with on their faces, as was the omitted debt.

Applicant has not had any credit or financial counseling, although five of the debts were settled, however untimely.¹⁸ The absence of payment on one account, late

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

¹⁷ ¶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;

¹⁸ ¶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;

payment on four other accounts, and the absence of dates on the six settled accounts means Applicant cannot demonstrate that he has made a good-faith effort to resolve his debts. The missing details of his tax resolution program requires the same conclusion regarding his taxes.¹⁹ 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
Subparagraph a:	Against Applicant
Subparagraph b:	Withdrawn
Subparagraphs c-l :	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.

JOHN GRATTAN METZ, JR
Administrative Judge

¹⁹ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.