



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



In the matter of:)	
)	
XXXXXXXXXXXXXXXXXXXXX)	ISCR Case No. 18-02684
)	
Applicant for Security Clearance)	

Appearances

For Government: Brittany M. White, Esquire, Department Counsel
For Applicant: *Pro Se*

07/09/2019

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 11 January 2019, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline F, Financial Considerations, and Guideline H, Drug Involvement.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 1 May 2019, when Applicant's Response to the FORM was due. DOHA assigned the case to me 3 June 2019.

¹Consisting of the File of Relevant Material (FORM), Items 1-4.

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 state and Federal income tax returns, as alleged, and using illegal drugs between 1985 and October 2017, as alleged. He is a 49-year-old maintenance technician employed by a U.S. defense contractor since September 2014. He has never been married and has no children. He has no prior Federal or military service. He has not previously held an industrial clearance (Item 3).

Applicant disclosed his failure to file his 2009 Federal income tax return on his November 2017 clearance application (Item 3). He also disclosed the drug use alleged in the SOR. Applicant's sworn, but undated, Response to DOHA interrogatories (Item 4) disclosed that Applicant untimely filed his 2010, 2012, 2013 Federal income tax returns, and had not filed his 2015 Federal income tax returns as of the time of the interrogatories. He also had not filed his 2014 and 2015 state income tax returns. He provided some evidence of working with a commercial tax preparation firm, and some evidence of payment plans with the state and Federal governments, but did not provide a comprehensive view of his tax situation. He did not further illuminate his drug use.

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 guidelines are Guideline F (Financial Considerations) and Guideline H (Drug Involvement and Substance Misuse).

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.³

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 state and Federal income tax returns for different years between 2010 and 2015. He has stated no credible reason for his failure, and his documented contacts with the tax preparation firm and the state and Federal tax authorities do not present a comprehensive view of his current tax status.⁴

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.”⁵

This is true whether the failure to file is willful⁶ or attributed to the press of other circumstances.⁷ 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

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴¶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;

⁵ISCR 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).

⁶See, ISCR Case No. 98-0801 (App. Bd. Jun. 8, 2000)(tax protester).

⁷See, 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.⁸ 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.⁹

Applicant has not had any credit or financial counseling, although five of the debts were settled, however untimely.¹⁰ The absence of payment on one account, late 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

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

⁹¶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;

¹⁰¶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;

his taxes.¹¹ 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.

The Government established a case for disqualification under Guideline H, by demonstrating Applicant's illegal drug abuse between 1985 and October 2017. He used hallucinogens and cocaine (albeit allegedly only until July 2012). Applicant did not mitigate the security concerns.¹² While Applicant self-reported his drug use on his clearance application, he never provided a comprehensive explanation of the circumstances of his drug use, and cessation of that drug use.¹³

Drug involvement mitigating conditions give little support to Applicant. His illegal drug abuse was recent, the frequency unclear, and the circumstances unexplained.¹⁴ The record contains no evidence of what steps Applicant has taken to dissociate himself from illegal drug use. Finally, he has not disavowed future use, either within the old guidelines or the new guidelines.¹⁵ Under the circumstances, I cannot conclude Applicant is unlikely to abuse illegal drugs in the future. Accordingly, I resolve Guideline H against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-b:	Against Applicant
Paragraph 2. Guideline H:	Against Applicant
Subparagraphs a-b:	Against Applicant

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

¹²¶25(a) any substance misuse; (c) illegal possession of a controlled substance,

¹³If, indeed, he fully ceased using hallucinogens. His clearance application brings his use up to the month before his clearance application, and there is no clear statement that the use ceased.

¹⁴¶26(a) the behavior happened so long ago, was so infrequent, **or** happened under such circumstances that it is unlikely to recur **or** does not cast doubt on the individual's current reliability, trustworthiness, or good judgment [Emphasis supplied];

¹⁵¶26(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and (3) a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility;

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