



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
XXXXXXXXXXXXXXXXXXXX ) ISCR Case No. 19-01251  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Rhett E. Petcher, Esquire, Department Counsel  
For Applicant: *Pro Se*

09/27/2019

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case [The File of Relevant Material (FORM), Items 1-5)], I deny Applicant's clearance.

On 9 May 2019, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline F, Financial Considerations.<sup>1</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 22 August 2019, when Applicant's response to the FORM was due. Applicant submitted no additional documents. DOHA assigned the case to me 26 September 2019.

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<sup>1</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 Security Executive Agent Directive 4, effective 8 June 2017.

## **Findings of Fact**

Applicant admitted failing to timely file his 2011-2018 state and Federal income tax returns, and accumulating over \$4,000 delinquent debt (SOR 1.a-1.i). Record evidence shows that SOR 1.a and 1.e are the same debt. He is a 52-year-old principal service technician employed by a U.S. defense contractor since May 2018. He has been continuously employed in similar (non defense) positions since at least November 2004. He served honorably in the U.S. military from February 1987 to December 1997. He has twice married and divorced, and has two adult sons with his first wife, and a minor daughter with his second wife. He held a clearance when he was in the military, but has never held an industrial clearance.

Applicant disclosed failing to file his 2011-2018 state and Federal income tax returns, and SOR debts 1.c., 1.d, and 1.g, on his June 2018 clearance application (Item 2) He attributed them to his July 2011 divorce, and stated his intent to hire professional help to resolve his financial issues Applicant discussed his failures to file, and all the SOR debts except SOR 1.c, during his November 2018 interview with a Government investigator (Item 3), based on his July 2018 credit report (Item 4). He attributed his failure to timely file his state and Federal income tax returns for the years at issue to his 2011 divorce, the death of both parents, his being overwhelmed at work, and his child support issues. He had taken no action to resolve his tax issues or debts, but still intended to get professional help. His March 2019 credit (Item 5) report shows SOR debts 1.a-1.f still unresolved; SOR debt 1.g did not appear on Item 5 because it was reported by a different credit agency.

Applicant has no idea how much he owes in delinquent taxes, fees, and penalties. No one knows about his financial issues except his children, but they are not aware of the extent of the problem.

Applicant's Answer (Item 1) admitted the SOR allegations, but did not otherwise illuminate his financial situation. 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 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>2</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 2011-2018 state and Federal income tax returns. His stated reasons for his failures do not justify seven years of complete inaction on his tax returns. Also, He documented no efforts to address his \$4,000 delinquent debt.<sup>3</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 have demonstrated the high degree of judgment and reliability required for access to classified information."<sup>4</sup>

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<sup>2</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>3</sup>119(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;

<sup>4</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).

This is true whether the failure to file is willful<sup>5</sup> or attributed to the press of other circumstances.<sup>6</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 two years leaves potentially unresolved tax debt, along with the consumer debt.

Applicant meets none of the mitigating conditions for financial considerations. His indebtedness and his failures to timely file his Federal returns are multiple, recent, and ongoing.<sup>7</sup> Moreover, he has not demonstrated that his indebtedness and failures to timely file over seven years were due to circumstances beyond his control, but even if I could conclude that the stated reasons justified the delay, it is clear that he has not been

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<sup>5</sup>See, ISCR Case No. 98-0801 (App. Bd. Jun. 8, 2000)(tax protester).

<sup>6</sup>See, ISCR Case No. 98-0761 (App. Bd. Dec. 27, 1999)(routine failure to file).

<sup>7</sup>¶20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

responsible in addressing his debts or his taxes.<sup>8</sup> Free, or low cost, tax return help is readily available every tax year.

Applicant has not had any credit or financial counseling, and he has not documented that the debts are being resolved.<sup>9</sup> The absence of documentation means Applicant cannot demonstrate that he has made a good-faith effort to resolve his debts.<sup>10</sup> The missing details of his current tax status requires the same conclusion regarding his taxes.<sup>11</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-d, f-i:	Against Applicant
Subparagraph e:	For Applicant (Duplicate)

### **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>8</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>9</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>10</sup>¶20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

<sup>11</sup>¶20(x) the individual did something or other with the tax authorities and is complying with those arrangements: