



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



In the matter of:)
)
) ISCR Case No. 12-11375
)
Applicant for Security Clearance)

Appearances

For Government: James B. Norman, Esquire, Chief Department Counsel
Tovah A. Minster, Esquire, Department Counsel
For Applicant: F. Whitten Peters, Esquire
John J. Murray, Esquire

04/21/2017

Remand Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 17 June 2016, the Appeal Board remanded this case to me for further proceedings in accordance with its decision and the Directive. On 12 July 2016, the Government moved to amend the Statement of Reasons (SOR) to conform to the evidence. On 15 July 2016, Applicant filed his opposition to the Government's motion. On 16 November 2016, I granted the Government's Motion to Amend to Conform to the

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-4, and Applicant exhibits (AE) A-S and U-AC. AE T was admitted for the sole purpose of identifying AE A-S for the record (Tr. 17-18).

Evidence,² and established a schedule for augmenting the record in view of my ruling (Order).

On 20 December 2016, Applicant timely filed additional exhibits and argument to augment the record.³ The Government did not respond to the order until 7 February 2017. On 17 February 2017, Applicant objected to the Government's response as untimely filed. I have not considered the Government's response except to the extent that it constitutes a statement of no objection to Applicant's response.

Findings of Fact

Applicant is a 55-year-old legislative affairs director employed by a U.S. defense contractor since April 2004. This is a periodic reinvestigation of clearances he has held since at least May 1982, when he graduated from a U.S. military academy. He has no history of security violations. Applicant served on active duty in the U.S. military until April 2004, when he retired in paygrade O-5. His exemplary military service included several combat tours in support of U.S. military operations in the Middle East in the 1990s.⁴ His last military tour was in his branch's headquarters in the Pentagon (GE 1). He excelled at this position (AE H), and at his retirement, received distinguished recognition (AE I). While serving on active duty, Applicant also earned a post-graduate degree in business administration in December 1996. When Applicant retired from the military, he immediately began his job with the defense contractor, doing essentially the same work he had done for the military (Tr. 58).

Applicant married his first wife in October 1989, and they divorced in October 2001. They had two sons together, born in December 1992 and November 1995. Applicant remarried in August 2003. He and his second wife have four children together:

²"As long as there is fair notice to the affected party and the affected party has a reasonable opportunity to respond, a case should be adjudicated on the merits of relevant issues and not concerned with pleading niceties. See, e.g., *Yellow Freight System, Inc. v. Martin*, 954 F.2d 353, 358 (6th Cir. 1992). The clear import of the precedents discussed in the preceding paragraph is that form should not be elevated over substance to the detriment of a full and fair adjudication of cases on their merits. The overall purposes of the industrial security program are not well-served by interpreting the Directive in a manner that emphasizes pleading formalities over a full and fair adjudication of cases on the merits. Cf. ISCR Case No. 98-0395 (June 24, 1999) at p. 4 n.2 (Directive should be construed broadly in order to effectuate the purposes of the industrial security program); ISCR Case No. 97-0783 (August 7, 1998) at p. 4 (Adjudicative Guideline should not be interpreted in a manner that would operate to detriment of industrial security program or national security). As long as an applicant receives adequate notice of the allegations against him or her and a reasonable opportunity to respond, an Administrative Judge should not take a restrictive approach to SOR amendments." See, ISCR Case No.99-0447 (App. Bd. Jul. 25, 2000, at 9-12).

³Applicant also renewed his objection to my amending the SOR to conform to the evidence.

⁴During his deployments, he experienced no problems with filing his taxes. Deployed military receive automatic extensions when deployed. Applicant was apparently able to meet the extension deadlines when he returned from deployment (Tr. 73). He thinks he might have been late with his tax filings after the September 2001 attack on the Pentagon, but that would be the only time his taxes were late while he was in the military.

a son born in March 2005, twins (a boy and a girl) born in December 2006, and a daughter born in January 2011. His current wife is mostly not employed outside the home (Tr. 78).

The SOR alleges that Applicant failed to file his Federal and state tax returns for tax years 2008-2010, and that the tax returns remained unfiled at the time of the SOR. As amended, the SOR covers tax years 2004-2016.

Applicant's September 2011 clearance application (GE 1) and his October 2011 subject interview with a Government investigator (GE 2) document that Applicant failed to timely file his Federal and state tax returns for the years alleged. Applicant's July 2012 Answer denied that his Federal taxes were unfiled, asserting, but not documenting, that he had filed his 2008 tax return in 2012, and had filed his 2009 and 2010 tax returns in 2013. Applicant admitted that his state taxes were unfiled at the time of the SOR, again asserting, but not documenting, that he had filed the state returns in July 2011.

Applicant's September 2011 clearance application (GE 3) reported no financial delinquencies, but noted that he had not yet filed his Federal and state taxes for 2008-2010. Applicant's October 2011 subject interview (GE 2) covered Applicant's taxes for the years he disclosed on his clearance application. Applicant's September 2011 (GE 4), November 2014 (GE 3), July 2015 (Answer) and October 2015 (AE P) credit reports reflect that Applicant has no reported financial problems and has excellent credit scores.

Applicant failed to timely file his Federal and state income taxes between 2004 and 2014 (Tr. 30-31, 66; AE A; AE G). Applicant always over-withholds for his Federal and state taxes, always applies for available extensions (although he misses the extended deadlines as well), and always maintains contact with the Internal Revenue Service (IRS) about his taxes.⁵ He also always files his Federal taxes by the deadline after which he would forfeit any Federal tax refund due. The IRS has taken neither civil nor criminal enforcement action against Applicant. The state involved does not impose any penalty for failure to file if there is a refund due.

Applicant filed his 2008 Federal taxes on 15 April 2012 (AE A); his 2009 Federal taxes were filed on 15 April 2013 (AE B); and his 2010 Federal taxes on 23 September 2013 (AE C). His 2011 Federal taxes were filed on 15 April 2015. After Applicant received the SOR in June 2015, he engaged the services of a tax firm to prepare the remaining tax returns. His 2012 Federal taxes were filed on 23 October 2015 (AE E); his 2013 Federal taxes on 27 October 2015 (AE F); and his 2014 Federal taxes on 29 October 2015 (AE G). His 2014 Federal tax return was due on 15 October 2015. Applicant's 2008-2011 state taxes were filed on 11 July 2015 (AE A-D). His 2012-2014 state taxes were filed the same October 2015 dates as his Federal returns (AE E-G).

⁵However, Applicant did not provide independent corroboration of the claimed extensions or communications.

Applicant traces his problems to a series of family circumstances beginning in 2004. In 2004, Applicant bought a new house. In March 2005, his son was born prematurely, and spent some time in the hospital, but with no apparent long-term medical issues. His ongoing visitation arrangement with his two oldest sons from his first marriage required him to drive several hours each way, every other weekend. In 2005-2006, he began having custody and child support issues with his ex-wife because his oldest son had become old enough to choose with which parent he wanted to live, and he wanted to live with Applicant. He moved in with Applicant some time in 2006. Applicant went through a similar situation with his second son around 2009.

In December 2006, Applicant's twins were born, without apparent medical issues, but he now had three children under two in the house, along with his teenage son. Applicant described it as a crazy but happy house (Tr. 32-33). In 2008, Applicant began what would become a two-year expansion of their four-bedroom house, which they were rapidly outgrowing. He also was having a second child support dispute with his ex-wife. Applicant addressed his taxes by filing extensions and making additional payments with the extension if he thought he might owe the IRS (Tr. 36-37). He took care to file by the three-year deadline for obtaining refunds (Tr. 38), because forfeiting the refunds would have cost him a lot of money (Tr. 67).

Applicant's job often requires him to work long days, which become longer during budget and appropriations season (Tr. 39, 60). As already noted, he reported his filing problems with his 2011 clearance application (Tr. 42; GE 1). He also kept his facility security officer (FSO) informed about the tax situation (Tr. 43, 47; AE L-M⁶), as well as other family issues.

Applicant's second son attempted suicide in early October 2012 (Tr. 44; AE M) after he took all the pain medication he had been given for dental surgery at once (Tr. 49). He spent some time in and out of the hospital. A week later, Applicant's wife had surgery related to a possible cancer diagnosis (Tr. 89; AE M). Fortunately, she is cancer free. In April 2013, Applicant's second son attempted suicide a second time (Tr. 45; AE N) after he took all the attention deficit disorder medications he had been given (Tr. 51).⁷ This time, he was hospitalized for a longer time. In August 2013, Applicant's second son attempted suicide a third time, when he climbed out on a very high ledge at a resort hotel where the family was staying (Tr. 46). Applicant described this incident as really more a suicidal ideation than an actual attempt. His son was upset because his mother had recently moved overseas to live with her new husband, and the son wanted his parents to share custody. This was Applicant's third custody battle with his ex-wife. Applicant's second son was coaxed off the ledge, and announced that he did not want

⁶Although it appears that the emails are in response to update requests from Applicant's security office regarding the status of his clearance application.

⁷Applicant's oldest son, who at this time was attending the same military academy Applicant graduated from, took a leave of absence from college to come home and help with his brother's recovery. However, the oldest son was himself having some academic problems at school, and after returning to college was unable to catch up. He was eventually dismissed from school in May 2014 for failing to maintain his grade average (AE R).

to hurt himself anymore. The son continued to receive counseling, which was ultimately unsuccessful, as the son committed suicide in September 2016.

In January 2014, Applicant's mother had a serious heart attack while vacationing in another state. Applicant had to spend significant time with her during her recovery, although he also had his sister and brother to help with her care (Tr. 89-91). Applicant's mother was recuperating out of state for about four months, but it is not clear that Applicant was with her all that time.

Applicant's FSO—who has been his FSO since Applicant came to work for the company in April 2004—considers him honest and trustworthy, and recommends him for his clearance (Tr. 97-106). He also confirms that Applicant informed him of his tax issues in October 2011, shortly after his interview with the Government investigator. He also confirmed that Applicant provided periodic updates on his situation, which the FSO forwarded to corporate security. He does not know what action, if any, corporate security took on those reports. Similarly, Applicant's co-worker since 2004 considers him honest and trustworthy, and recommends him for his clearance, notwithstanding Applicant's family circumstances (of which he is aware)(Tr. 108-126; AE J, Q). However, he is only generally aware that the SOR involves issues of late taxes. Applicant's current supervisor since June 2015 stated that Applicant told him about the tax issues as soon as Applicant became his subordinate in June 2015. He has no security concerns about Applicant's late filing of taxes (Tr. 125-137). Applicant's mother (AE S) and father (AE R) love their son and would not want anything bad to happen to him.⁸

Applicant augmented the record to show that he received refund checks for his 2012-2014 Federal income tax returns (AE U) and his 2012-2014 state income tax returns (AE V), as well as for his 2015 Federal income tax return (AE W) and 2015 state income tax return (AE X). Applicant would have faced no civil or criminal penalties for his failure to timely file his taxes (AE Y). He continues to have an exemplary credit record (AE AA). His facility security officer, who testified at hearing, continues to consider Applicant honest and trustworthy, and still recommends him for his clearance (AE Z). During the pendency of his clearance adjudication, Applicant experienced difficulties obtaining Transcripts of Tax Return from the Internal Revenue Service (AE AB, AC). However, I note that these records, among others, are available through the IRS website, www.irs.gov.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and

⁸Applicant's father recounts, in more linear form, Applicant's difficult family circumstances. Applicant's mother echoes those sentiments, albeit in a more folksy fashion. The essence of their input is that Applicant has always been focused on family, has had complicated family circumstances since he divorced his first wife in October 2001, and has had stressful jobs since 2000, first at the Pentagon and now at his defense contractor.

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.⁹

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 from 2004 to 2014, a period of 11 years.¹⁰

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."¹¹

⁹See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

¹⁰¶19(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

¹¹ISCR 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 willful¹² or attributed to the press of family circumstances.¹³ 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)¹⁴

Security concerns under Guideline F are not limited to cases in which an Applicant is financially insolvent or is experiencing difficulty in paying debts. Applicant's regular mortgage payments and his timeliness in paying other bills demonstrates his financial management skills, and shows that he is able to comply with rules and regulations when he perceives it to be in his interest to do so. Most of what Applicant cites as justification for his failure to timely file his Federal and state income taxes is simply described as the ebb and flow of life. Beginning in 2004, he retired from one job and started another, bought a house, had a child, sorted through child visitation and child custody issues, had more children, lived through an expansion and renovation of his home, and had another child. The 18 months between October 2012 and April 2014 were especially difficult for Applicant, with events that can reasonably be considered circumstances beyond his control: three suicide attempts by his second son, a cancer scare for his wife, and his mother's heart attack. But Applicant was already substantially behind filing his taxes when these events began. Moreover, Applicant's busy work schedule was at least as great a contributing factor to his untimely filings as his family circumstances, and that work schedule was a constant in his life. His tax filing issues were not largely due to circumstances beyond his control.

¹²See, ISCR Case No. 98-0801 (App. Bd. Jun. 8, 2000)(tax protester).

¹³See, ISCR Case No. 98-0761 (App. Bd. Dec. 27, 1999)(routine failure to file).

¹⁴The cases cited by Applicant's post-hearing brief all involve cases where the failures to timely file occurred over three-four years, and none of them has been identified as an Appeal Board case.

In augmenting the record, Applicant renews arguments which were made, and rejected, in the Appeal Board's 17 June 2016 decision. "The undisputed position of the IRS is that a delay in filing is excused for taxpayers who overpay their taxes when they act in good faith," and thus Applicant was not required within the meaning of the Directive to file his income tax returns (Response to Order). Applicant offers the statement of a former IRS employee, AE Y, for the proposition that Applicant was not required to file the tax returns at issue. The most that can be said from AE Y is that it is an opinion, of an individual now in private practice, and that the IRS would find Applicant not subject to civil or criminal penalties for the reasons recited in the statement. But that statement is not the statement of the IRS, and even if it was, that statement would not be binding on the DoD. Applicant correctly points out that the Directive does not specify when taxes are required to be filed, but the Appeal Board has made it abundantly clear that tax returns must be filed by the statutory filing date, including any extensions granted by the IRS, automatically or otherwise, regardless of any mitigation that the IRS might apply to the taxpayer when no taxes are owed. In this case, the Appeal Board stated:

Applicant contends the Judge erred in finding his tax returns were not filed "as required." In that context, he argues that the decision did not cite to any tax law, that he was not subject to certain tax statutes (26 U.S.C. §§ 6651 and 7203), and that he followed IRS guidance that he had three years to file a tax return. He pointed out that he did not owe the IRS any past-due taxes for any of the years in question, and the IRS did not impose any penalties on him. He did not raise these specific arguments at the hearing, and the Judge's decision did not address them.

Applicant's argument that his tax returns were filed "as required" as long as he filed them before the expiration of the three-year statute of limitation for claiming a tax refund is not persuasive and ignores the Internal Revenue Code's tax filing deadline and six-month automatic extension provision. The IRS form for applying for an automatic extension specifically notes that a late filing penalty is usually charged if the tax return is filed after the due date, including extensions. No evidence was presented that Applicant was granted any tax filing extensions other than the six-month automatic extension. The fact that the IRS may waive a late filing penalty does not constitute proof that tax returns were not filed late. Furthermore, his argument regarding the three-year statute of limitation for claiming a tax refund is unfounded. The three-year statute of limitation is not a grant of a filing extension, but only a limitation upon claiming a refund. (Citations omitted).

In his security clearance application dated September 9, 2011, Applicant answered "no" to the question that asked whether he failed to file a tax return when required by law or ordinance, but noted that he was in the process of "finalizing his 2008-2010 returns and seeking refunds for overpayment [in accordance with] Federal law allowing 3 years for a refund *after normal date of filing*." (Emphasis added.) In his background interview, he acknowledged that the IRS was aware he had not filed his 2008-2010 tax returns on time. In his Answer to the SOR, he admitted

the allegation in SOR ¶ 1.b that he failed to file his state tax returns for 2008-2010. While denying the allegation in SOR ¶ 1.a pertaining to his 2008-2010 Federal tax returns, he stated that he did not file those tax returns on time.” At the hearing, he testified that he filed his tax returns late. Tr. 23-24. Applicant’s admissions throughout the security clearance process were sufficient to establish that he did not file his 2008-2010 Federal and state income tax returns in a timely manner. The Judge’s material findings that Applicant’s 2008-2010 tax returns were not filed “as required” was based on substantial evidence, or constitute reasonable characterizations or inferences that could be drawn from the record. See, e.g., ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Consequently, the Appeal Board has already found that Applicant failed to file his 2008-2010 state and Federal income tax returns as required within the meaning of the Directive. Applicant’s evidence at hearing established that he had similarly failed to file his 2004-2007 and 2011-2014 state and Federal income tax returns as required within the meaning of the Directive.¹⁵

None of Applicant’s post-Order exhibits establish that he was not also required to file these other tax returns. To the extent that they constitute further evidence in extenuation and mitigation, they add little to the order of magnitude represented by his hearing witnesses and exhibits. The overall outline of his situation remains unchanged.

Applicant reported his 2008-2010 tax filing issues on his September 2011 clearance application. He did not disclose that he had been late filing his 2004-2007 taxes. Subsequently, he was interviewed about his 2008-2010 tax filing issues during his October 2011 subject interview, but did not discuss his 2004-2007 tax issues. Presumably, the investigator did not ask, and Applicant did not bring the subject up.¹⁶ Nevertheless, despite the prodding by the investigator, Applicant continued to delay filing the taxes discussed with the investigator. He took no action to address his taxes until he received the SOR in late June 2015. Once he knew that his clearance was at issue, he hired a tax accountant and took sweeping action to address his remaining delinquent Federal taxes, each of which was nevertheless filed after the extension deadline, but before he would lose any refund due.¹⁷

Finally, the fact that Applicant over-withheld on his taxes, or otherwise made extra payments with his extension requests to ensure that he would not owe taxes once they were filed, and the fact that he did not owe any taxes for the tax years in question, and received refunds for those years, does not mitigate the judgment

¹⁵¶19(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

¹⁶I have not considered these omission for disqualifying purposes, but only in assessing Applicant’s mitigation case, credibility, and whole-person factors.

¹⁷The Appeal Board recently reversed a decision in a tax case where the Administrative Judge considered only the fact that the Applicant’s taxes were all resolved, and gave insufficient weight to the fact that the Applicant did not take comprehensive action until after he received the SOR. See, ISCR Case No.15-03481 (App. Bd. Sep. 27, 2016, at 5). The Appeal Board affirmed a denial of clearance where the Applicant had resolved his tax issues, but had been irresponsible in filing his tax returns. See, ISCR Case No. 14-06201 (App. Bd. Mar. 7, 2000).

concerns raised by his pattern of failing to file in a timely fashion. Nor does the fact that the IRS has not undertaken any enforcement action against Applicant, or is likely to do so. Further, his exemplary careers and his absence of security violations are undercut by eleven years of security-significant conduct regarding his taxes coincident with that performance. Finally, the favorable inference to be drawn by the fact that he disclosed his then-unfiled tax years on his clearance application, is undercut by the fact that he did not fully disclose his 2004-2007 tax issues. His “whole-person” evidence is insufficient, in my view, to overcome the security concerns which attach to his conduct.

None of the mitigating conditions for financial considerations fully apply. Notably, ¶19(g) is the only disqualifying condition that neither expresses nor implies a concomitant monetary issue, and is the only disqualifying condition that has no specific corresponding mitigating condition. However, examining his failure to timely file his tax returns against those mitigating conditions that clearly contemplate a monetary component, his evidence still fails to mitigate his conduct. His failures to timely file his 2004-2014 Federal and state taxes are both recent and multiple; to the extent that his difficult family circumstances from October 2012 to April 2014 contributed to his failures to timely file, the immediate causes of his problems may be unlikely to recur.¹⁸ Nevertheless, to the extent that his failures to file were due merely to the vicissitudes of life, those circumstances are constant. Similarly, while the medical issues Applicant confronted between October 2012 and April 2014 were certainly beyond his control, the other circumstances were not, and some were also essentially a condition of his employment situation. Moreover, Applicant was not responsible in addressing his taxes. Applicant points to the number of hours the IRS estimates are necessary to collect the documentation and complete a tax return as justification for his failures to timely file his tax returns. Still, he always found time to file his tax returns before he would lose his refund. Further, Applicant is an intelligent, well-educated man, with both the skill and experience to know when he should engage professional help. Yet, he did not do so for many years, and only when his clearance was at risk.¹⁹

The circumstances of this case do not suggest that Applicant would benefit from credit or financial counseling, but his taxes have been resolved.²⁰ Applicant’s tax accountant’s view of his tax situation has been confirmed by the 2012-2014 state and Federal tax refunds Applicant received. However, Applicant’s tardy contacts with the IRS cannot be considered a good-faith effort to address his taxes,²¹ to the extent that this mitigating condition could be considered applicable. Moreover, Applicant has mostly disregarded these tax obligations since April 2014, when his mother’s medical issues were largely resolved. His documented inaction for another year—until April 2015, when he filed his then-oldest Federal tax return—raises significant security concerns that Applicant had not addressed by the flurry of activity triggered by his receipt of the SOR. And that flurry of activity fails to mitigate Applicant’s overall course

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

¹⁹¶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;

²⁰¶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;

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

of conduct, as it cannot overcome my conclusion that Applicant's track record of eleven years procrastination makes it too soon to conclude that his security-significant conduct is behind him, based on his timely filing of his 2015 tax returns. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-b:	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