



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



In the matter of:	)	
	)	
XXXXXXXXXXXXXXXXXXXXX.	)	ISCR Case No. 15-02935
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah A. Minster, Esquire, Department Counsel  
For Applicant: Alan V. Edmunds, Esquire

03/23/2017

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**Decision**

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METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,<sup>1</sup> Applicant's clearance is denied.

On 31 December 2015, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations.<sup>2</sup> Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 11 April 2016 and I convened a hearing 23 May 2016. DOHA received the transcript 1 June 2016.

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-2, and Applicant exhibits (AE) A-N. AE N was timely received post hearing, and the record closed.

<sup>2</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 the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

## Findings of Fact

Applicant is a 48-year-old planner employed by a U.S. defense contractor since June 2010. He has never married, and has no children. He seeks to retain the clearance he obtained in March 2003, when he was employed as a security officer (GE 1).

Applicant denied the SOR allegations. The SOR alleges, and Government exhibits prove, that Applicant failed to timely file his Federal income tax returns for tax years 2010-2012 and 2014 (SOR 1.a),<sup>3</sup> and failed to timely file his state tax returns for tax years 2010-2014 (SOR 1.b). Applicant failed to disclose his tax issues on his November 2012 clearance application (SOR 2.a) (GE 1), which Applicant attributes to overlooking the word “filed” in the question and focusing on the word “paid.” The tax records that Applicant provided in his December 2015 response to DOHA interrogatories (GE 2), show that his income tax withholding was adequate to cover his tax liability for the years in question.

During Applicant’s April 2013 interview with a Government investigator (GE 2), Applicant volunteered that he was delinquent filing his state and Federal taxes for 2010-2012. Applicant failed to timely file his 2010 tax returns because he had a question about income related to a stock sale. He had not clarified the issue with his father or the Internal Revenue Service (IRS), placed the incomplete forms in an unrecalled location, and forgot about the filings. In 2011 and 2012, he delayed filing because he had not completed his 2010 tax returns and wanted to complete that task first. However, he ultimately put those incomplete forms away and forgot about the filings. He received no communications from the IRS about his unfiled taxes. Applicant told the investigator that he would file his 2010-2012 Federal tax returns by the end of April, and his tax records show that he did so.

Applicant timely filed his 2013 Federal tax returns. However, he did not file his 2014 Federal tax return until December 2015 because the completed forms fell under the seat of his car—which was then under repair for awhile—and he did not discover them until after he got the car back from the repair shop. His 2015 Federal tax return was filed early (AE C), as was his state tax return (AE A).

Applicant owes no state taxes for 2010-2014 (AE A). Applicant thought he had timely filed his 2010 return, but was mistaken (Tr. 33). Applicant did not file his 2010-2014 state income tax returns until October 2015 (AE N). He had not filed his 2011-2014 state income tax returns because he understood from earlier discussions with the state that he did not have to file a return if he owed less than \$5 (Tr. 33-34).

Applicant undertook some online financial counseling in March 2016 (AE F). He acknowledged that some of his problems with filing his tax returns were organizational

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<sup>3</sup>Applicant’s 2013 tax return transcript (GE 2) reflects that he timely filed this tax return on 15 April 2014.

(Tr. 22, 25). His March 2016 credit report (AE E) shows no delinquent accounts, and he has a \$422 positive monthly cash flow (AE F, G).

Applicant has an excellent work record (AE H, J), and has received numerous certificates of recognition (AE I). A childhood friend, a neighbor, and a former coworker/current supervisor consider him honest and trustworthy, and recommend him for his clearance (AE K). However, only the supervisor knows anything about the SOR, and that apparently relates only to the falsification allegation. Applicant stated his intent to never again untimely file his tax returns, on pain of immediate revocation of his clearance (AE D).

### **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 are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

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>4</sup>

### **Analysis**

The Government established a case for disqualification under Guideline F, and Applicant failed to fully mitigate the security concerns. Applicant failed to timely file his

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<sup>4</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

state and Federal income tax returns for many years.<sup>5</sup> Applicant documented that he has no state or Federal tax liability remaining as a result of his untimely filing of his tax returns. However, the judgment issues raised by Applicant's failure to timely file his state and Federal income tax returns over a period covering tax year 2010 to tax year 2014 raise security concerns that remain unmitigated.

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>6</sup>

This is true whether the failure to file is willful<sup>7</sup> or attributed to the press of other circumstances.<sup>8</sup> As recently as December 2015, the Appeal Board upheld a denial of clearance, in a case 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

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<sup>5</sup>¶19 (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

<sup>6</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).

<sup>7</sup>See, ISCR Case No. 98-0801 (App. Bd. Jun. 8, 2000)(tax protester).

<sup>8</sup>See, ISCR Case No. 98-0761 (App. Bd. Dec. 27, 1999)(routine failure to file).

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 there were no delinquent debts to be resolved. But, delinquent debts are not required to hold Applicant accountable for his failures to timely file his tax returns. Here, the failure to file was deliberate. Applicant fell behind filing his Federal income tax returns, and misunderstood his state filing obligations..

Applicant only partially meets the mitigating conditions for financial considerations. His failures to timely file his Federal and state taxes are multiple and recent, and the circumstances are not likely to recur.<sup>9</sup> However, the circumstances were not beyond his control. He deliberately failed to file taxes after 2010, and he appears to have been motivated to file his Federal tax returns by his April 2013 interview with a Government investigator.<sup>10</sup>

The circumstances of this case do not suggest that Applicant would benefit from credit or financial counseling, but he undertook counseling to help him address his organizational issue, and there are no financial aspects to his untimely filings.<sup>11</sup> Applicant has documented what his tax account status for tax years 2010 to 2014, and all tax years have been resolved. Applicant's efforts with the IRS constitute a good-faith effort to address his debts.<sup>12</sup> However, Applicant mostly disregarded these tax obligations over several years. He was over two years late filing the oldest of his tax returns. Moreover, his work record and character references are insufficient to support a whole-person assessment to overcome the security concerns raised by his conduct. I conclude Guideline F against Applicant.

The Government failed to establish a case for disqualification under Guideline E. Applicant overlooked one aspect of the question and focused on the issue of whether his taxes had been paid, which he correctly considered done. His conduct does not constitute a deliberate omission or evasiveness inconsistent with the candor required of applicants.<sup>13</sup> This is particularly true where he brought up the issue during his April 2013

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<sup>9</sup>¶20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

<sup>10</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>11</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>12</sup>¶20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

<sup>13</sup>¶ 16 (a) deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

subject interview without being confronted by the investigator.<sup>14</sup> Accordingly, I resolve Guideline E for Applicant.

### **Formal Findings**

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs a-b: Against Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph a: For 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.

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JOHN GRATTAN METZ, JR  
Administrative Judge

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<sup>14</sup>¶ 17 (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;