



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



In the matter of: )  
 )  
 --- ) ISCR Case No. 15-03888  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Ross Hyams, Esquire, Department Counsel  
For Applicant: Ronald C. Sykstus, Esquire

01/30/2017  
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**Decision**  
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GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is denied.

**Statement of the Case**

On July 8, 2013, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.<sup>1</sup> On December 31, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to him, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns

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<sup>1</sup> GE 1 (e-QIP, dated July 8, 2013).

under Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on January 13, 2016. On February 2, 2016, he responded to the SOR and elected to have his case decided on the written record in lieu of a hearing.<sup>2</sup> A complete copy of the file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on March 15, 2016, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on April 19, 2016. On May 16, 2016, Applicant's attorney filed a Notice of Appearance in which he stated that Applicant had now requested a hearing.<sup>3</sup> Department Counsel indicated the Government was prepared to proceed on June 17, 2016. The case was assigned to me on August 4, 2016. A Notice of Hearing was issued on August 31, 2016. I convened the hearing as scheduled on September 20, 2016.

During the hearing, Government exhibits (GE) 1 and GE 2, Applicant exhibits (AE) A through AE Q, and administrative exhibits I and II were admitted into evidence without objection. Applicant and four witnesses testified. The transcript (Tr.) was received on September 28, 2016. I kept the record open until October 25, 2016 to enable Applicant to supplement it. Applicant took advantage of that opportunity and timely submitted various additional documents, which were marked and admitted as AE R through AE AE, without objection. The record closed on June 27, 2016.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted, with comments, the factual allegations (§ 1.a.) pertaining to financial considerations. Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 58-year-old employee of a defense contractor. He has been a technician with the company or its wholly-owned subsidiary since October 2002.<sup>4</sup> He is a June 1977 high school graduate, with over three years of college training in electrical engineering, but no degree.<sup>5</sup> Applicant has never served in the U.S. military.<sup>6</sup> He has held

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<sup>2</sup> Applicant's Answer to the SOR, dated February 2, 2016.

<sup>3</sup> While Applicant's attorney indicated that Applicant had requested a hearing, there is no document in the case file to reflect such a decision by Applicant.

<sup>4</sup> GE 1, *supra* note 1, at 9-11; AE Q (Resume, undated, at 2).

<sup>5</sup> GE 1, *supra* note 1, at 9.

<sup>6</sup> GE 1, *supra* note 1, at 12.

a secret security clearance since 2003.<sup>7</sup> Applicant was married the first time in June 1982 and divorced in June 1996. He married again in September 1998 and divorced in March 2009.<sup>8</sup> Applicant has no children.

## Financial Considerations

Based on the information Applicant entered in his 2013 e-QIP, as well as his statements during a July 2013 interview with an investigator from the U.S. Office of Personnel Management (OPM), the SOR alleged that Applicant failed to timely file his federal and state income tax returns for the tax years 2011 and 2012.<sup>9</sup> During the hearing, Department Counsel moved to amend the SOR, under the authority of the Directive, Encl. 3, ¶ E.3.1.17, to conform to the developed evidence.<sup>10</sup> The motion proffered was to replace the allegation in the SOR with the following: “You failed to timely file your federal and state income tax returns for tax years 2009, 2011, 2012, 2013, 2014, and 2015, as required.”<sup>11</sup> There being no objection, the motion was granted and the SOR was amended.<sup>12</sup> The evidence with respect to the federal and state income tax returns and their respective current status, according to evidence presented by the Government and Applicant, and Applicant’s comments regarding same, are described below:

2009: Applicant was unable to meet the April 2010 filing deadline for his federal and state income tax returns for the tax year 2009, so he filed for an automatic extension until October 2010.<sup>13</sup> He failed to file his returns before the expiration of that deadline. Applicant finally filed his federal income tax return for 2009 on May 23, 2011, about six months after they were due.<sup>14</sup> He received a \$3,716 refund from the IRS.<sup>15</sup> The status of the state income tax return remains unclear and unsupported by any documentation. Applicant attributed his failure to timely file his income tax returns for 2009 to two factors: (a) his tax advisors advised him of the benefit of collecting sales tax receipts (like the sales tax he might spend at Burger King), utilities, and medical expenses, so he started searching for them; and (b) the collection of necessary documentation was very stressful

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<sup>7</sup> GE 1, *supra* note 1, at 27-28.

<sup>8</sup> GE 1, *supra* note 1, at 14-15.

<sup>9</sup> GE 1, *supra* note 1, at 29-30; GE 2 (Personal Subject Interview, dated July 31, 2013), at 1.

<sup>10</sup> Tr. at 72-73; ¶ E.3.1.17 states, in part: “The SOR may be amended at the hearing by the Administrative Judge on his or her own motion, or upon motion by Department Counsel or the applicant, so as to render it in conformity with the evidence admitted or for other good cause. . . .”

<sup>11</sup> Administrative Exhibit II (Motion to Amend the SOR).

<sup>12</sup> Tr. at 74.

<sup>13</sup> AE G (Internal Revenue Service (IRS) Account Transcript, dated June 17, 2016); AE U (IRS Account Transcript, dated October 4, 2016).

<sup>14</sup> AE U, *supra* note 13; AE G, *supra* note 13.

<sup>15</sup> AE U, *supra* note 13; AE G, *supra* note 13.

and overwhelming, to the point that he considered it a phobia.<sup>16</sup> Applicant also added an additional reason for his lackadaisical attitude towards the timely filing of his income tax returns: he generally files his income tax returns late and the IRS does not seem to mind his practice and has never penalized him for doing so.<sup>17</sup> This portion of the allegation is substantiated.

2011: Applicant was unable to meet the April 2012 filing deadline, so he filed for an extension until October 2012.<sup>18</sup> He failed to file his returns before the expiration of the deadline. Applicant finally electronically filed his federal and state income tax returns for 2011 on October 15, 2013, one year after they were due.<sup>19</sup> He received a \$4,265 refund from the IRS and a \$1,944 refund from the state.<sup>20</sup> In addition to the three factors described above, Applicant attributed his failure to timely file his income tax returns for 2011 to one additional factor: his mother was hospitalized.<sup>21</sup> This portion of the allegation is substantiated.

2012: Applicant was unable to meet the April 2013 filing deadline, so he filed for an extension until October 2013.<sup>22</sup> He did so by electronically filing his federal and state income tax returns for 2012 on October 15, 2013, the established filing extension due date.<sup>23</sup> He received a \$3,752 refund from the IRS and a \$1,818 refund from the state.<sup>24</sup> This portion of the allegation is unsubstantiated.

2013: Applicant was unable to meet the April 2014 filing deadline, so he filed for an extension until October 2014.<sup>25</sup> He failed to file his returns before the expiration of the deadline. Applicant finally electronically filed his federal and state income tax returns for 2013 on May 12, 2016, approximately 18 months after they were due,<sup>26</sup> and about five

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<sup>16</sup> Tr. at 26, 31-32; GE 2, *supra* note 9, at 1.

<sup>17</sup> GE 2, *supra* note 9, at 1.

<sup>18</sup> GE 1, *supra* note 1, at 29.

<sup>19</sup> AE W (IRS Account Transcript, dated October 4, 2016); AE E (Federal and state income tax returns and associated papers for 2011, dated October 15, 2013); Tr. at 25.

<sup>20</sup> AE E, *supra* note 19.

<sup>21</sup> Tr. at 26; GE 2, *supra* note 9, at 1.

<sup>22</sup> GE 1, *supra* note 1, at 29-30.

<sup>23</sup> AE X (IRS Account Transcript, dated October 4, 2016); AE D (Federal and state income tax returns and associated papers for 2012, dated October 15, 2013); Tr. at 25.

<sup>24</sup> AE D, *supra* note 23.

<sup>25</sup> AE Y (Extension Request Confirmation, dated April 16, 2014).

<sup>26</sup> AE C (Federal and state income tax returns and associated papers for 2013, dated May 12, 2016).

months after the original SOR was issued. He received a \$3,745 refund from the IRS and a \$1,923 refund from the state.<sup>27</sup> This portion of the allegation is substantiated.

2014: Applicant was unable to meet the April 2015 filing deadline, so he filed for an extension until October 2015.<sup>28</sup> He failed to file his returns before the expiration of the deadline. Applicant finally electronically filed his federal and state income tax returns for 2014 on May 12, 2016, approximately seven months after they were due,<sup>29</sup> and about five months after the original SOR was issued. He received a \$6,238 refund from the IRS and a \$3,917 refund from the state.<sup>30</sup> This portion of the allegation is substantiated.

2015: Applicant was unable to meet the April 2016 filing deadline, so he filed for an extension until October 2016.<sup>31</sup> He did so by electronically filing his federal and state income tax returns for 2015 on May 12, 2016, well before the established filing extension due date.<sup>32</sup> He received a \$5,831 refund from the IRS and a \$3,980 refund from the state.<sup>33</sup> This portion of the allegation is unsubstantiated.

Applicant claims that he has learned from his earlier practices. He now acknowledges that the degree of detail he was seeking to achieve was unnecessary, and he was overwhelmed by it. He intends to simplify his efforts in the future, and he will be submitting the bare minimum documentation to his professional tax advisors. He is no longer distracted by his mother's poor health because she passed away in January 2016. He claims he has accepted the idea of filing his income tax returns on time.<sup>34</sup> While not focusing on his income tax returns, but rather on debt resolution, Applicant noted that he listens to the Dave Ramsey radio show and took a course about becoming debt free.<sup>35</sup>

Applicant submitted a Personal Financial Statement, dated October 3, 2016, in which he reflected a net monthly income of \$2,311.36; monthly expenses totaling \$1,968; and a monthly remainder of \$343.36 available for savings or investing. He has bank savings of \$318,519; and miscellaneous cash assets, including a 401(k), and Individual Retirement Account (IRA), and an inheritance with a combined value of \$257,505.<sup>36</sup> Applicant's recent credit reports listed some previously negative accounts or minor

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<sup>27</sup> AE C, *supra* note 26.

<sup>28</sup> AE Z (Extension Request Confirmation, dated April 15, 2015).

<sup>29</sup> AE B (Federal and state income tax returns and associated papers for 2014, dated May 12, 2016).

<sup>30</sup> AE B, *supra* note 29.

<sup>31</sup> AE AA (Extension Request Confirmation, dated April 15, 2016).

<sup>32</sup> AE A (Federal and state income tax returns and associated papers for 2015, dated May 12, 2016).

<sup>33</sup> AE A, *supra* note 32.

<sup>34</sup> Tr. at 26-27, 36; AE AD (Notice of Death and to File Claim, dated March 10, 2016).

<sup>35</sup> Tr. at 28.

<sup>36</sup> AE AB (Personal Financial Statement, dated October 3, 2016); AE AC (Miscellaneous Financial Information, various dates).

delinquencies, but those blemishes have either been resolved or are in the process of being resolved.<sup>37</sup>

## **Work Performance and Character References**

Applicant's direct supervisor (and corporate Operations Manager) considers Applicant to be a very conscientious detail-oriented individual who does a very good job. He noted that Applicant hates paperwork, and that he sometimes goes overboard in trying to be too detail-oriented. He considers Applicant to be reliable.<sup>38</sup> Applicant's performance appraisals for the periods 2009 through 2015, signed by the supervisor, generally reflect an employee whose overall rating is "commendable," meaning he periodically exceeds requirements of the job.<sup>39</sup> On two consecutive periods (2012-2013), his overall rating was "outstanding," meaning he consistently exceeds job requirements in all key areas.<sup>40</sup> Regardless of the overall rating, Applicant was consistently rated "outstanding" as to his attention to detail, and with one exception, "commendable" as to his timely completion of tasks. The one exception was when he was rated "acceptable" in 2009. Applicant's earlier performance appraisals, covering the periods 2003-2008, purportedly were more reflective of an "outstanding" (four times during the period) performer.<sup>41</sup> Applicant received an end of year bonus in 2014.<sup>42</sup>

The corporate Business Administrator and Facility Security Officer (FSO) has known and worked with Applicant for 16 years. They have daily contact. Applicant is considered an excellent worker, he is well-liked, and is trusted. As FSO, he is aware of Applicant's income tax return issues, but he does not consider Applicant's timely filing "oversight" to constitute a security risk sufficient to deny him access to classified material.<sup>43</sup> Another coworker who has known Applicant for 11 months considers him to be a very dependable, detailed, and trustworthy individual.<sup>44</sup>

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<sup>37</sup> AE R (Experian Credit Report, dated September 22, 2016); AE S (Equifax Credit Report, dated September 22, 2016); AE T (TransUnion Credit Report, dated September 22, 2016).

<sup>38</sup> Tr. at 53-59.

<sup>39</sup> AE O (Performance Appraisal, dated October 15, 2009); AE N (Performance Appraisal, dated October 29, 2010); AE M (Performance Appraisal, dated November 9, 2011); AE I (Performance Appraisal, dated November 4, 2014); AE H (Performance Appraisal, dated October 31, 2015).

<sup>40</sup> AE L (Performance Appraisal, dated October 31, 2012); AE K (Performance Appraisal, dated November 1, 2013).

<sup>41</sup> AE P (Memorandum, dated September 15, 2016).

<sup>42</sup> AE J (Memorandum, dated December 8, 2014).

<sup>43</sup> Tr. at 67-70.

<sup>44</sup> Tr. at 64-66.

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”<sup>45</sup> As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”<sup>46</sup>

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”<sup>47</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.<sup>48</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship

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<sup>45</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>46</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>47</sup> “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>48</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”<sup>49</sup>

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”<sup>50</sup> Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. . . .

The guideline notes one particular condition that could raise security concerns. Under AG ¶ 19(g), security concerns may be raised when there is a “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.” Applicant failed to timely file his federal and state income tax returns for the tax years 2009, 2011, 2013, and 2014, as required by law. AG ¶ 19(g) applies.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” Also, under AG ¶

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<sup>49</sup> *Egan*, 484 U.S. at 531.

<sup>50</sup> See Exec. Or. 10865 § 7.



20(b), financial security concerns may be mitigated where “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.” Evidence that “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control” is potentially mitigating under AG ¶ 20(c).

AG ¶ 20(b) minimally applies. AG ¶¶ 20(a) and 20(c) do not apply. The issue with Applicant’s income tax returns occurred frequently over a multi-year period, with his most recent episode being resolved on May 12, 2016 when he finally electronically filed his federal and state income tax returns for 2014. As noted above, Applicant attributed his failure to timely file his income tax returns for most of the period in question to the following factors: (a) his tax advisors advised him of the benefit of collecting sales tax receipts (like the sales tax he might spend at Burger King), utilities, and medical expenses, so he started searching for them; (b) the collection of necessary documentation was very stressful and overwhelming, to the point that he considered it a phobia; and (c) he generally files his income tax returns late and the IRS does not seem to mind his practice and has never penalized him for doing so. For part of the time, he added his mother’s poor health as a distraction from attending to his income tax returns.

Applicant’s heavy emphasis on his self-proclaimed phobia surrounding the gathering of documents is difficult to accept. In reality, over a multi-year period, Applicant exhibited a lackadaisical attitude towards the timely filing of his income tax returns. Furthermore, to the extent there were some problems, it is difficult to conclude that they were largely beyond Applicant’s control, or that Applicant acted responsibly under the circumstances. While Applicant has listen to Dave Ramsey and taken a course on debt resolution, nothing described by Applicant links such training to income tax return filings. Finally, it remains unclear if Applicant has actually embraced the paradigm of timely filing federal and state income tax returns, especially when his failure to do so is casually referred to as giving the Government an interest-free loan every year as far back as 2009.

A willful failure to timely file a federal income tax return is a misdemeanor-level federal criminal offense.<sup>51</sup> For purposes of this decision, I am not weighing Applicant’s failure to timely file his federal income tax returns against him as a federal crime.

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<sup>51</sup>Title 26 U.S.C, § 7203, willful failure to file return, supply information, or pay tax, reads:

Any person . . . required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to . . . make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor . . . .

A willful failure to make return, keep records, or supply information when required, is a misdemeanor without regard to existence of any tax liability. *Spies v. United States*, 317 U.S. 492 (1943); *United States v. Walker*, 479 F.2d 407 (9<sup>th</sup> Cir. 1973); *United States v. McCabe*, 416 F.2d 957 (7<sup>th</sup> Cir. 1969); *O’Brien v. United States*, 51 F.2d 193 (7<sup>th</sup> Cir. 1931).

The record establishes that Applicant failed to timely file his federal and state income tax returns for the tax years 2009, 2011, 2013, and 2014. The DOHA Appeal Board has commented:<sup>52</sup>

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns*. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* 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, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

In failing to timely file his federal and state income tax returns for the tax years 2009, 2011, 2013, and 2014, Applicant appears to have acted imprudently and irresponsibly. Applicant's actions, or inactions, under the circumstances confronting him, continue to cast doubt on his current reliability, trustworthiness, and good judgment.<sup>53</sup>

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation

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<sup>52</sup> ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). See ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)). ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015). The Appeal Board clarified that even in instances where an "[a]pplicant has purportedly corrected [the applicant's] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant's security worthiness in light of [applicant's] longstanding prior behavior evidencing irresponsibility" including a failure to timely file federal income tax returns. See ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. June 15, 2016) (characterizing "no harm, no foul" approach to an Applicant's course of conduct and employed an "all's well that ends well" analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR).

<sup>53</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).



## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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ROBERT ROBINSON GALES  
Administrative Judge