



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

ISCR Case No. 15-04458

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel  
For Applicant: *Pro se*

01/26/2017

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant failed to file his income tax returns as required between 2008 and 2011. He recently completed filing of all his past-due returns but did not provide adequate justification for waiting almost five years to do so. His request for continued access to classified information is denied.

**Statement of the Case**

On December 17, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew his eligibility for access to classified information. After reviewing the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.<sup>1</sup>

On December 29, 2015, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns about financial considerations (Guideline F).<sup>2</sup> Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. On February 24, 2016, Department Counsel for the Defense Office of Hearings

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<sup>1</sup> Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive).

<sup>2</sup> See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

and Appeals (DOHA) issued a File of Relevant Material (FORM)<sup>3</sup> in support of the SOR. Applicant received the FORM on March 8, 2016, and timely provided additional information in response to the FORM (Response to FORM). The record closed on April 8, 2016. The case was assigned to me on November 4, 2016.

### **Findings of Fact**

Under Guideline F, the Government alleged Applicant failed to file his federal income tax returns for tax years 2008 through 2011 (SOR 1.a); that he failed to file his State A income tax return for the 2008 tax year (SOR 1.b); that he failed to file his State B income tax returns for tax years 2008 through 2010 (SOR 1.c); and that he failed to file his State C income tax returns for tax years 2008 through 2011 (SOR 1.d). (FORM, Item 1)

Applicant denied the SOR 1.b allegation because the state in question does not have a personal income tax. He is correct. SOR 1.b is resolved for Applicant.

In his SOR response, dated February 1, 2016, Applicant admitted the remaining allegations, but averred that he had filed all of his past-due returns, except for the 2008 tax year, the same day he answered the SOR. In response to the FORM, Applicant provided documents from a tax preparation service that support his claim that he has filed all of his past-due returns for 2009 through 2011. (FORM, Item 1; Response to FORM)

Applicant is 67 years old. He served in the United States Army until February 1984 after graduating from the United States Military Academy at West Point in June 1971. He was honorably discharged. Applicant has worked in the defense industry since January 1988 and has held a security clearance throughout his career. (FORM, Item 2)

Applicant has relocated several times for employment. He lived in State A from October 2001 until moving to State B in December 2008. He lived there until December 2010, when he moved to State C. He has always been required to file annual federal income tax returns, regardless of where he lived. He was also required to file annual income tax returns for income earned in States B and C. In his 2012 EQIP, Applicant disclosed that, as alleged in SOR 1.a, 1.c, and 1.d, he had not filed his federal or state income tax returns between 2008 and 2011. He attributed his conduct to a combination of two surgeries, relocations, and difficulty accessing his tax records. He also claimed that he did not timely file because he knew he would receive refunds for each tax year at issue. (FORM, Items 1 and 2)

Applicant was interviewed by a government investigator in June 2013. In relevant part, he discussed his failure to file his tax returns between 2008 and 2011. Again, he attributed his failure to file to his surgeries, lack of records, and job relocations. At the very end of the summary of investigation provided at FORM Item 3 is the following: "The subject has completed 4506-T for tax years 2008 - 2011. Those. . ."<sup>4</sup> 4506-T refers to a request from the IRS for a transcript of one's tax status and filing history. The record does not reflect what, if anything, Applicant did with any information he received from the IRS. It is clear that he did not file any past-due returns for another 32 months after the interview. As to the returns he filed in February 2016, records show he overpaid his

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<sup>3</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included three exhibits (Items 1 - 3) proffered in support of the Government's case.

<sup>4</sup> The text may have continued on another page but it was not provided.

taxes for those years and would have received refunds, as he claimed. But he has yet to file his 2008 returns. (FORM, Items 1 and 3; Response to FORM)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>5</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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 and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>6</sup> for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.<sup>7</sup> If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.<sup>8</sup>

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information.<sup>9</sup> A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.<sup>10</sup>

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<sup>5</sup> Directive. 6.3.

<sup>6</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>7</sup> Directive, E3.1.14.

<sup>8</sup> Directive, E3.1.15.

<sup>9</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>10</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

## Analysis

### Financial Considerations

Available information supports the SOR allegations. The resulting security concern about the facts established by the Government is expressed, in relevant part, at 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

More specifically, Applicant's conduct requires application of the disqualifying condition at AG ¶ 19(g) (*failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same*). None of the mitigating conditions at AG 20 apply. Applicant has yet to fully comply with his tax reporting obligations. Also, even if he had filed all of his returns, his failure to act for at least four years after submitting his EQIP undermines any sense that he has complied promptly or in good faith. Indeed, Applicant did not act until it was made clear to him through the SOR that he might lose his clearance because of his failure to file.

Lastly, Applicant's reliance on the fact that he would receive refunds for the tax years at issue is irrelevant. The issue here is not whether Applicant might owe money to the Government; rather, the question is asked if he can be relied on to comply with rules and regulations even when doing so may be inconvenient or not in his self interest. Applicant's inaction in this regard shows he does not have the reliability or judgment required of one in whom the Government might entrust its sensitive information. Applicant has not mitigated the security concerns raised by his failure to comply with basic income tax reporting obligations.

In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant did not carry his burden of presenting sufficient information to refute or mitigate the security concerns raised by his failure to comply with his income tax reporting obligations. Without such information, doubts about his suitability for access to classified information remain. Because protection of the national interest is the principal focus of these adjudications, those doubts must be resolved against the Applicant.

### Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a, 1.c, 1.d:	Against Applicant
Subparagraph 1.b:	For Applicant

### **Conclusion**

In light of all available information, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's security clearance is revoked.

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MATTHEW E. MALONE  
Administrative Judge