



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
| Redacted                         | ) | ISCR Case No. 15-06756 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

02/15/2017

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant did not timely file federal income tax returns for several years initially because of post-traumatic stress disorder (PTSD) from deployments in a war zone for the U.S. military but more recently because of procrastination. He filed his delinquent income tax returns in May 2016, and he intends to comply with his income tax filing obligation in the future. Clearance is granted.

**Statement of the Case**

On March 4, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On March 31, 2016, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On May 19, 2016, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On May 19, 2016, I scheduled a hearing for June 15, 2016. With the agreement of the parties, on May 25, 2016, I moved the hearing to June 16, 2016.

I convened the hearing as rescheduled. Two Government exhibits (GEs 1-2) and eight Applicant exhibits (AEs A-H) were accepted into the record without objection. Applicant testified, as reflected in a transcript (Tr.) received on June 24, 2016.

I held the record open for one month after the hearing for additional documentary submissions from Applicant. On June 30, 2016, Applicant submitted 12 exhibits, which were admitted into the record as AEs I-T without objection from the Government. The record closed on July 7, 2016, when Department Counsel expressed no objection to the post-hearing exhibits.

### **Findings of Fact**

The SOR alleges under Guideline F that Applicant failed to file his federal income tax returns for tax years 2008 through 2014 (SOR ¶¶ 1.a-1.g), and that Applicant owed \$3,000 in past-due property taxes for tax year 2008 (SOR ¶ 1.h) as of March 2016. When Applicant answered the SOR allegations, he admitted that he had yet to file his income tax returns for the tax years alleged, but that he had hired an accountant to complete his returns for him. He indicated that he would have his delinquent returns filed by June 1, 2016. He denied owing the property taxes alleged in SOR ¶ 1.h and presented a receipt showing the taxes had been paid.

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 37-year-old test technician, who has worked for his current employer since June 2014. (GE 1; Tr. 41.) He is a high school graduate and has never been married. Applicant served honorably and with distinction on active duty in the U.S. military from February 2001 to September 2005. He held a secret clearance for his duties in the U.S. military. (GE 1; AE I; Tr. 20.) He has a Department of Veteran's Affairs (VA) disability benefit of 30% from his service (AE J; Tr. 45), which included deployments to the Arabian Peninsula from September 2002 to December 2002 (AEs K-L; Tr. 27-28) and to Iraq from November 2003 to March 2004. (AE O; Tr. 27-29.) Applicant received the highest ratings possible in all areas of his duty performance while he was in the service. His superior during his 104 days in theatre in support of Southern Watch and Enduring Freedom in 2002 commented that Applicant was always there when needed, "anytime, anyplace." (AE L.) He was variously described in his evaluations as a hard-charger, an excellent leader, a superior maintainer. No task was too large for him. Applicant was consistently recommended for immediate promotion (AEs K-Q) and awarded a military achievement

medal in April 2004 for his contributions in Iraq. (AEs I, P.) He served a second deployment in Iraq from December 2004 or January 2005 to May 2005. (Tr. 30-32.) Almost nightly, Applicant came under fire from small arms, improvised explosive devices (IEDs), and mortars while in Iraq. (Tr. 31-33.)

In mid-September 2005, Applicant was given temporary orders to deploy as a civilian to Afghanistan for 179 days. (AE R.) Applicant worked as a field technician in Afghanistan from September 2005 to February 2006 for a defense contractor. His work took him to several forward operating bases. (GE 1; Tr. 33-35.) On his return to the United States, he took a two-month break to de-stress from his demanding work in Afghanistan. (Tr. 36.) In April 2006, Applicant began working as a technician for a contractor. Applicant resigned from his job in October 2006 because of a contract dispute over his pay. He joined a labor union and worked on construction jobs when he could get work. (GE 1; Tr. 38-39.)

Around 2007, Applicant began having difficulty coping with daily living. He had nightmares, was “very jumpy,” and became very moody. (Tr. 37.) At the urging of his brother, Applicant sought assistance through the VA in 2009 or 2010. (Tr. 42.) He was diagnosed with PTSD and awarded a service-connected disability of 30% around April 2010. (AE J; Tr. 25-27, 38, 42.) It took him a long time to recover, partially because he chose not to take psychotropic medications. (Tr. 26, 42.) He had some counseling sessions with a psychiatrist, which he did not continue after early 2011. (Tr. 42-43.) He still experiences symptoms of his PTSD on occasion, particularly if he disagrees with management about how a job should be done. He copes by taking a breath, walking away, or talking with his mother. (Tr. 44.)

Applicant did not file federal income tax returns for 2006 through 2014 when they were due,<sup>1</sup> initially because of his PTSD but later because of “procrastination.” (Tr. 26.) He had no earned income for 2008. (Tr. 22.) In 2009, his wages totaled only \$10,379. (AE B.) In 2010, Applicant’s wages totaled \$29,315. (AE C.)

Applicant worked for a defense contractor in Afghanistan from March 2011 to December 2011. (GE 1; Tr. 26.) His wages totaled \$90,211 in 2011 (AE D), and as with previous years, he knew he didn’t owe any money. (Tr. 26.) He knew that he was required to file a tax return, but procrastinated and did not file an income tax return when it was due. (Tr. 26, 46.) He was also focused on assisting his mother, who needed financial help at that time. (Tr. 48.)

Applicant returned to his construction job with the union in 2012. (GE 1; Tr. 40.) He earned \$21,586 in 2012 (AE E) and \$14,937 in 2013. (AE F.) He also collected unemployment compensation of \$2,159 in 2013. (AE F.) In June 2014, Applicant began his current employment. (GE 1.) His wages for 2014 totaled \$14,397. (AE G.)

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<sup>1</sup> Applicant lives in a state that has no state income tax so he is not required to file state income tax returns. (Tr. 62.)

On January 26, 2015, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) for security clearance eligibility. Applicant responded affirmatively to an inquiry into whether he had failed to file or pay any federal, state, or other taxes in the last seven years. He indicated that he had not filed his federal income tax return for tax year 2008 because of financial difficulties and that he had failed to pay \$3,000 in local property taxes (SOR ¶ 1.h). In response to inquiries concerning any delinquency involving routine accounts, Applicant disclosed that he had defaulted on a \$220,000 mortgage loan, which led to foreclosure. (GE 1.) Applicant explained at his hearing that he had owned a home from 2007 to January 2009. He was renting out the house and his tenants “just disappeared.” (Tr. 62-63.)

On March 4, 2016, the DOD CAF issued the SOR to Applicant, alleging that he failed to file his federal income tax returns for tax years 2008 through 2014 and that he owed the \$3,000 in past-due property taxes. On the recommendation of a friend, Applicant retained the services of an accountant for \$1,200 to prepare his delinquent federal returns for him. (Tr. 24, 60.) This friend had referred him to the accountant initially around 2014, but Applicant “just kept pushing it back.” (Tr. 51-52.) By late March 2016, Applicant had provided the accountant with all the paperwork needed to file his income tax returns for tax years 2008 through 2015, and he had resolved his delinquent property tax debt. (Answer.)

On April 4, 2015, Applicant's accountant finished Applicant's 2015 federal income tax return, which he filed on time. (AE H; Tr. 57.) On earned wages of \$57,923 for 2015, he expected a tax refund of \$991. (AE H.)

On May 12, 2016, Applicant's accountant finished preparing Applicant's income tax returns for tax years 2009 through 2014. (AEs B-G.) Applicant was advised by his accountant that he was not required to file an income tax return for 2008 because he had no earned income that year. (Tr. 22-23.) Based on the income tax returns that Applicant filed in May 2016 (Tr. 19), he overpaid his federal income taxes by a total of \$9,747 for tax years 2009 through 2014. (AEs B-G.) As of mid-June 2016, Applicant had received his expected income tax refunds of \$1,630 for 2012 and \$991 for 2015. (Tr. 58.)

At his hearing, Applicant accepted full responsibility for not filing his income tax returns on time. (Tr. 46.) Concerning his future intent about filing his income tax returns, Applicant stated:

File taxes—I'm a mature, responsible adult now. I got a good job, and I think things are turned around for me. Just take responsibility and file my taxes. You know, that's what everyone's supposed to do. And just—if I have issues coming in, like I plan on seeing—going to the VA, just kind of just sit down and talk and just explain things. Because, what I was told [that] the VA was there to get you back into society as a functioning member. And I want to go there and tell them that things are getting better and if they take away my disability—that was a goal. To get me back into the workforce as a functioning adult. (Tr. 61.)

Applicant owes medical debt of approximately \$551 that has been in collection since March 2011. (GE 2; AE A.) He has no credit cards or outstanding loans. (GE 2; Tr. 48-49.) He pays his mother \$1,000 towards her rent each month. (Tr. 49.) He receives VA disability income of \$400 a month. After paying his monthly expenses but nothing toward the medical collection debt, he has about \$354 in monthly discretionary income. (AE A.) Applicant drives a 2001 model-year vehicle that has been “pretty reliable.” (Tr. 51.)

Applicant works overtime when needed for his employer. (AE T.) The lack of help at work causes his PTSD symptoms to surface once in a while. (Tr. 53.) He wanted to obtain an updated assessment from the VA, but he has been too busy at work. (Tr. 46.) In rating Applicant’s performance for 2015, Applicant’s manager described him as “a real team player [who] always has the interests of the company at heart.” Applicant was given a rating consistent with his “outstanding accomplishments and contributions.” (AE T.)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant’s eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to

classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concerns about financial considerations are set forth 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

As of the issuance of the SOR on March 4, 2016, Applicant had not filed his federal income tax returns for tax years 2008 through 2014 as alleged, although it appears that he was not required to file a return for tax year 2008. Applicant believed he owed no taxes based on his history, and his delinquent returns for 2009 through 2014 bear that out. Even so, he knew that he was required to file returns irrespective of whether he owed taxes. His failure to comply with his income tax filing obligation triggers disqualifying condition AG ¶ 19(g), “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.”

The SOR also alleges that he owed delinquent property taxes of approximately \$3,000, apparently based on his SF 86 disclosure. However, Applicant denied that he owed any property taxes when he answered the SOR, and he provided proof of a zero balance for the parcel. It is unclear when that debt was paid. The evidence falls short of establishing AG ¶ 19(a), “inability or unwillingness to satisfy debts,” or AG ¶ 19(c), “a history of not meeting financial obligations.”

Mitigating condition AG ¶ 20(a), “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,” cannot reasonably apply because of the pattern and recency of Applicant's noncompliance with his tax filing obligation.

Applicant's initial neglect of his income tax filing obligation is reasonably attributed to his PTSD. Although he did not provide evidence confirming the diagnosis, his repeated deployments are chronicled in his enlisted performance reports, his DD Form 214, his

September 2005 orders, and his candid testimony. The award of a 30% disability benefit from the VA tends to substantiate his testimony about the diagnosis, although the VA benefit letter confirming the disability does not identify its nature other than that it is service connected. Applicant's PTSD surfaced around 2007, and he did not seek treatment from the VA until 2009-2010. He learned some coping mechanisms through counseling with a psychiatrist, which he discontinued in early 2011. Yet his PTSD was not so severe as to prevent him from working as a civilian contractor at a forward operating base in Afghanistan from March 2011 to December 2011. While it is understandable that he would fail to give priority to his income tax filing obligations for 2009 and 2010 when he was in Afghanistan, he has not been deployed since 2011 and his income has exceeded the threshold required to file a return each year.<sup>2</sup> His income declined substantially from what he had earned in 2011, and he assisted his mother financially. Even so, he knew that he had not complied with his income tax filing obligation, as he so informed a friend in 2014. This friend referred him to an accountant, whose services Applicant did not retain until March 2016. Applicant's procrastination in filing his income tax returns in recent years is not a circumstance outside of his control that could implicate AG ¶ 20(b), which provides:

(b) 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.

Concerning income tax issues specifically, the Appeal Board has long held that the failure to file tax returns suggests a problem with complying with well-established government rules and systems. See e.g., ISCR Case No. 14-04437 (App. Bd. Apr. 15, 2016); ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). Applicant shows some reform under AG ¶ 20(c), "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," in that he filed his delinquent tax returns in May 2016. He filed his tax return for 2015 on time. Applicant has accepted full responsibility for not complying with his tax filing obligation, and he intends to comply with his obligation to file his tax returns on time in the future.

The Appeal Board had held that even where an applicant has corrected his federal tax problems and is motivated to prevent such problems in the future, the administrative judge is not precluded from considering an applicant's trustworthiness in light of longstanding prior behavior evidencing irresponsibility. See e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 2015). Applicant testified that he first contacted the accountant about preparing his delinquent returns a couple of weeks before he answered the March 4, 2016 SOR. (Tr. 24.) A letter from the accountant dated March 29, 2016, notes that Applicant had

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<sup>2</sup> The income thresholds for filing for a single person under 65 were \$9,350 in 2009 and 2010, \$9,500 in 2011, \$9,750 in 2012, \$10,000 in 2013, and \$10,150 in 2014. See [www.irs.gov](http://www.irs.gov). Applicant's wages totaled \$10,379 in 2009 (AE B), \$29,315 in 2010 (AE C), \$90,211 in 2011 (AE D), \$21,586 in 2012 (AE E), \$14,937 in 2013 (\$17,096 with his unemployment, AE F), and \$14,397 in 2014. (AE G.)

retained her services and provided the documentation necessary to file his tax returns.<sup>3</sup> Applicant answered the SOR on March 31, 2016. The evidence suggests that Applicant retained the accountant around the time that he received the SOR. The timing of his remedial actions suggests that he would not have taken action to file his delinquent returns if it had not become an issue for his security clearance eligibility. Applicant's timely filing for 2015 is not much of a track record of compliance in light of his prior history.

## **Whole-Person Concept**

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).<sup>4</sup> The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant testified persuasively to his intent to fulfill his responsibilities as a mature adult in the future, and to seek help at the VA if necessary. He served with distinction with the U.S. military in Iraq, in austere and stressful conditions, displaying abilities exceeding his pay grade. That service came at some personal cost to his mental health, and yet he returned to Afghanistan as a civilian contractor for nine months in 2011 to assist the U.S. military at forward operating bases. While his contributions to national security in the context of high-risk circumstances do not excuse his disregard of such an important obligation as filing taxes, Applicant has shown through his record of reliability under stressful conditions and his demeanor at his hearing that he can be counted on to abide by his commitments. He is not likely to jeopardize his employment that has helped him turn his life in a positive direction by ignoring his tax filing obligation in the future, particularly where he now has a relationship with an accountant that can assist him in that endeavor.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Applicant certainly would have a stronger case in mitigation had he taken the advice of his friend and retained his accountant in 2015. By then, his income had stabilized sufficiently to where he should have been able to retain the tax preparer. At the same time, a determination of an applicant's eligibility for a security clearance should not be made as punishment for specific

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<sup>3</sup> The letter from the accountant is considered as part of Applicant's answer to the SOR.

<sup>4</sup> The factors under AG ¶ 2(a) are as follows:

(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.



past conduct, but on a reasonable and careful evaluation of the evidence to determine if a nexus exists between established facts and a legitimate security concern. For the reasons noted above, I conclude that it is clearly consistent with the national interest to grant Applicant security clearance eligibility.

### **Formal Findings**

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

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| Paragraph 1, Guideline F: | FOR APPLICANT |
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| Subparagraphs 1.a-1.h: | For Applicant |
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### **Conclusion**

In light of all of the circumstances, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Elizabeth M. Matchinski  
Administrative Judge