



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



In the matter of:

Applicant for Public Trust Position

ADP Case No. 15-08777

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: Susanna K. Farber, Esq.

03/27/2017

Decision

HARVEY, Mark, Administrative Judge:

Applicant did not make sufficient progress addressing her delinquent debts. She has owed federal and state income taxes since 2009. She has not made payments on her federal income tax debt since 2014. Financial considerations trustworthiness concerns are not mitigated. Eligibility for a public trust position is denied.

Statement of the Case

On April 11, 2014, Applicant signed an Electronic Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On June 10, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant, pursuant to DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, and modified; DOD Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), which became effective on September 1, 2006.

The SOR alleges trustworthiness concerns under Guideline F (financial considerations). (HE 2) The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the interests of national security to grant or continue

Applicant's eligibility to occupy a public trust position, which entails access to sensitive but unclassified information. (HE 2) The DOD CAF recommended referral to an administrative judge to determine whether such access to sensitive information should be granted, continued, denied, or revoked. (HE 2)

On June 30, 2016, Applicant responded to the SOR allegations and requested a hearing. (HE 3) On August 29, 2016, Department Counsel indicated she was ready to proceed. On October 13, 2016, the case was assigned to me. On December 22, 2016, the Defense Office of Hearings and Appeals issued a hearing notice setting the hearing for January 19, 2017. (HE 1) The hearing was held as scheduled. At the hearing, the Government provided five exhibits; Applicant offered five exhibits; and all exhibits, except Government Exhibit (GE) 4, were admitted into evidence without objection. (Tr. 15-18; Applicant Exhibits (AE) 1-5) On January 27, 2017, DOHA received the transcript of the hearing. On March 20, 2017, Applicant's counsel informed me that Applicant was not going to submit any post-hearing documentation. (Tr. 53; AE 6)

Applicant objected to GE 4, Applicant's December 1, 2015 Equifax credit report because it is redundant with Applicant's August 28, 2016 Equifax credit report. (Tr. 15-16) I overruled Applicant's objection because the consistency or redundancy between the two credit reports tends to show the credit reports are reliable. The two credit reports are not identical, and each report is a snap shot of Applicant's financial condition when Equifax created these two credit reports. Each report provides relevant information about Applicant's financial history.

Findings of Fact¹

In her Answer to the SOR, Applicant indicated that she denied all of the SOR allegations based on lack of information or belief. (HE 3)

Applicant is a 38-year-old customer service representative or associate employed by the same employer since 2002. (Tr. 47; GE 1; AE 5) She moved into a public trust position in 2014. (Tr. 28) She has never married, and her children are ages 11, 13, and 19. (Tr. 43, 47) She lives with the father of her three children and her three children. (Tr. 43-44) She has not served in the U.S. Armed Forces. (Tr. 47)

Financial Considerations

Applicant's SOR alleges Applicant failed to timely file her federal and state income tax returns for tax years 2008, 2009, 2010, 2012, 2013, and 2014, and she owed about \$6,485 for delinquent federal income taxes and about \$3,622 for delinquent state income taxes (SOR ¶¶ 1.a to 1.d).

Applicant's SOR and credit reports also allege 12 delinquent debts totaling \$19,747 as follows: ¶ 1.e is a charged-off student loan debt for \$12,252; ¶ 1.f is a

¹ Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

charged-off bank debt for \$401; ¶ 1.g is a collection debt for \$315; ¶ 1.h is a collection debt for \$1,054; ¶ 1.i is a medical collection debt for \$64; ¶ 1.j is a charged-off bank debt for \$718; ¶ 1.k is a grocery store collection debt for \$77; ¶ 1.l is a collection debt for \$115; ¶ 1.m is a collection debt for \$4,262; ¶ 1.n is a library collection debt for \$78; ¶ 1.o is a jewelry store collection debt for \$232; and ¶ 1.p is a collection debt for \$179.

The below table includes information from Internal Revenue Service (IRS) tax transcripts dated April 21, 2016. (AE 2) The taxes owed are as of April 21, 2016 and include some payments made as well as interest and penalties. (AE 2)

Tax Year	Tax Return Filed	Adjusted Gross Income	Tax Per Return	Withholding	Taxes Owed
2008	Nov. 9, 2009	\$57,808	\$4,251	\$385	\$1,418
2009	May 31, 2010	\$52,715	\$2,089	\$411	\$1,909
2010	July 30, 2012	\$52,808	\$3,371	\$2,257	\$1,209
2011	July 23, 2012	\$55,608	\$3,781	\$3,405	\$670
2012	July 6, 2015	\$42,987	\$2,381	\$2,467	Refund: \$87
2014	July 6, 2015	\$53,717	\$4,862	\$3,712	\$1,296

Applicant acknowledged that she failed to withhold sufficient funds from her salary for her taxes in 2008. (Tr. 29) In 2010, she reduced her exemptions on her IRS Form W-4 and increased the funds withheld and sent to the IRS. (Tr. 30; AE 2) In 2009, she recognized that she owed a substantial tax debt, and she panicked. (Tr. 31) She was worried about losing her house. (Tr. 31) An accountant told her she did not have to file a tax return for three years. (Tr. 32) From June 2011 to July 2014, she made \$126 monthly payments to the IRS to address her IRS tax debt for tax year 2008. (AE 2) She does not know why her payments to the IRS stopped in July 2014. (Tr. 34-35)

On July 25, 2016, the IRS wrote and advised Applicant that her debt for tax years 2008, 2009, 2010, 2011, 2013, 2014, and 2015 was placed in “currently not collectible” status. (Tr. 24; AE 4) (Applicant’s failure to pay her 2015 taxes when due is not alleged in the SOR and will not be considered in this decision.) Applicant said she thought the letter was advising her that she did not owe the IRS. (Tr. 24) The IRS letter said Applicant owes \$6,722 for those seven tax years. (Tr. 48; AE 4) The IRS will continue to charge penalties and interest until the debt is paid in full. (AE 4) She understands now that still she owes the IRS debt. (Tr. 24) At the time of her hearing, she had not resumed her payments to the IRS. (Tr. 36) She timely filed her 2015 tax return. (Tr. 24; AE 1)

As for the state income tax debt of \$3,622, Applicant’s monthly pay was garnished \$60 or \$30 since 2012, and her state tax debt has now been paid down to less than \$1,000. (Tr. 25, 34, 38, 49) She said she planned to provide documentation after her hearing showing her progress reducing this debt; however, she did not provide the promised corroborating documentation. (Tr. 25) She said she plans to continue to make the payments on her state tax debt. (Tr. 38)

The charged-off debt in SOR ¶ 1.e is a student loan debt for \$12,252. Applicant's son was in the third grade and was having difficulty learning how to read at the third-grade level. (Tr. 19) Her son is now 19 years old. (Tr. 19) She signed a contract at a learning center to pay about \$7,000 with \$2,800 down and \$88 monthly. (Tr. 19, 52) The course was scheduled for six months; however, the local learning center, which is part of a chain of learning centers, closed after four months. (Tr. 19) She called another learning center in the chain, and the learning center did not have a record of her debt. (Tr. 40) The debt was initially about \$3,200, and the debt was owed to an entity that provides student loans nationwide. (Tr. 20-21, 49, 53) The entity directly paid the learning center; however, the entity does not own or operate the learning center. (Tr. 20) She acknowledged that if she cannot get a refund from the learning center she will have to pay the loan. (Tr. 49) She planned to dispute the debt. (Tr. 20-21, 38-39)

The collection debt in SOR ¶ 1.m for \$4,262 resulted when Appellant posted bail for her nephew 17 years ago. (Tr. 25-26) The bail company has gone out of business. (Tr. 25) She planned to dispute the debt. (Tr. 25-26, 39)

She accepted responsibility for the debts in SOR ¶ 1.n, a library collection debt for \$78, and in SOR ¶ 1.o, a jewelry store collection debt for \$232. (Tr. 26, 39) She did not accept responsibility for the other SOR debts. (Tr. 26, 39)

In 2005, Applicant's mother was killed by a drunk driver, and Applicant received a large wrongful death settlement. (Tr. 22) In 2006, she paid \$100,000 from the settlement as a down payment on her home. (Tr. 22, 27) After two years, her mortgage monthly payment on her variable interest rate loan substantially increased. (Tr. 41) Real estate prices declined making it difficult for her to refinance her mortgage, and she was receiving less overtime pay. (AE 2) Her mortgage was refinanced; her mortgage is now \$81,505; and it is now current. (Tr. 27, 41-42; AE 3) She has about \$40,000 in her 401(k) account. (Tr. 45-46) Her vehicle payment is also current. (GE 5)

The only SOR debt receiving payments from Applicant is her state tax debt; however, she did not provide corroborating documentary evidence of her payments. (Tr. 51) Initially, she indicated that after she pays her tax debts, she plans to file for bankruptcy. (Tr. 27, 40, 46) After further consideration, she said she would contact each creditor on the SOR; she would validate each debt; and she would attempt to resolve those debts that were valid. (Tr. 54) She intended to dispute the debts that were invalid. (Tr. 54) She intended to contact the IRS to see if she could begin making payments on her federal income tax debt. (Tr. 54)

Character Evidence

On January 18, 2017, the director of human resources for Applicant's employer wrote that she "has always been an employee in good standing. She has not had any performance or attendance issues [She] has demonstrated she is a trustworthy employee." (AE 5)

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 [public trust position].” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The Government’s authority to restrict access to classified information applies similarly in the protection of sensitive, unclassified information. As Commander in Chief, the President has the authority to control access to information bearing on national security or other sensitive information and to determine whether an individual is sufficiently trustworthy to have access to such information. See *Id.* at 527.

Positions designated as ADP I and ADP II are classified as “sensitive positions.” Regulation ¶¶ C3.1.2.1.1.7, C3.1.2.2, and C3.1.2.1.2.3. “The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person’s loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security.” Regulation ¶ C6.1.1.1. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. See Regulation ¶ C8.2.1.

When evaluating an applicant’s suitability for a public trust position, an administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which may disqualify the applicant from being eligible for access to sensitive information. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s suitability for a public trust position. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her access to sensitive information[.]” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

The protection of national security and sensitive records is paramount. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of national security.”

Analysis

Financial Considerations

AG ¶ 18 articulates the trustworthiness concern for financial problems:

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 [sensitive] information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The Appeal Board, in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted), explained the scope and rationale for the financial considerations trustworthiness concern as follows:

This concern is broader than the possibility that an applicant might knowingly compromise [sensitive] information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security [or trustworthiness] eligibility.

AG ¶ 19 provides two disqualifying conditions that raise a trustworthiness concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the

burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's credit reports and hearing record establish the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago,² 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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;³ and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

² A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. February 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sep. 13, 2016)).

³ The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

The Appeal Board in ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013) concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's eligibility [for a public trust position], there is a strong presumption against the grant or maintenance of a [public trust position]. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising [trustworthiness] concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in [public trust position] decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to [sensitive] information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

No mitigating conditions fully apply; however, Applicant presented some important mitigating information. Three circumstances beyond her control adversely affected her finances: (1) she had difficulty making her house payments because the amounts of the payments on her mortgage were increasing; (2) real estate prices declined making it challenging for her to refinance her mortgage; and (3) she received less overtime pay. She filed all required state and federal tax returns. She made some payments to address her delinquent tax debts. She did not receive financial counseling or provide a budget.

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 [trust]worthiness in light of [applicant's] longstanding prior behavior evidencing irresponsibility." 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).

Applicant's credit reports establish Applicant has 12 delinquent debts totaling \$19,747. She did not provide enough details about what she did to address her SOR debts over the last four years. She did not provide documentation relating to any of her 12 SOR debts: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that she paid or made any payments to the creditors; (2) correspondence to or from the creditors to establish maintenance of contact; (3) credible debt disputes indicating she did not believe she was responsible for the debts and why she held such a belief; (4) more evidence of attempts to negotiate payment plans, such as settlement offers or agreements to show that she was attempting to resolve these debts; or (5) other evidence of progress or resolution. Applicant failed to establish mitigation under AG ¶ 20(e) because she did not provide documented proof to substantiate the existence, basis, or the result of any debt disputes.

Applicant has owed federal income taxes since tax year 2008. She failed to withhold sufficient funds from her income to pay her taxes when due in six of the last eight tax years, and she currently owes \$6,722 in delinquent federal income taxes. She owes a state tax debt of less than \$1,000; however, she did not provide the requested proof of the status of her state tax debt. In 2010, 2011, and 2012, she failed to timely file her state and federal income tax returns. Her explanations do not fully mitigate financial considerations trustworthiness concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 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 ultimate determination of whether to grant eligibility for a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

Applicant is a 38-year-old customer service representative employed by the same employer since 2002. She has three children to support. Three circumstances beyond her control adversely affected her finances: (1) she had difficulty making her house payments because the amounts of the payments on her mortgage were increasing; (2) real estate prices declined making it challenging for her to refinance her mortgage; and (3) she received less overtime pay. Her mortgage is now current. She has about \$40,000 in her 401(k) account. Her vehicle payment is also current. She disclosed her financial problems on her SCA. She filed all required state and federal tax returns. She made some payments to address her delinquent tax debts. The director of human resources for Applicant's employer described her as "an employee in good standing. She has not had any performance or attendance issues [She] has demonstrated she is a trustworthy employee." (AE 5)

The negative financial information relating to her taxes is more significant. Applicant has owed federal and state income taxes since tax year 2008. She failed to withhold sufficient funds from her income to pay her federal income taxes when due in six of the last eight tax years, and she currently owes \$6,722 in delinquent federal

income taxes. She said she owes a state tax debt of less than \$1,000; however, she did not provide the requested proof of the status of her state tax debt. In 2010, 2011, and 2012, she failed to timely file her state and federal income tax returns.

When a tax issue is involved, an administrative judge is required to consider how long an applicant waits to file their tax returns, whether the IRS generates the tax returns, and how long the applicant waits after a tax debt arises to begin and complete making payments.⁴ The primary problem here is that Applicant has owed delinquent taxes since tax year 2008, and she failed to establish her tax problems are being resolved. In 2014, she stopped making payments to the IRS.

It is well settled that once a concern arises regarding an applicant's eligibility for a public trust position, there is a strong presumption against the grant or renewal of access to sensitive information. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant of access to sensitive information to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a public trust position in the future. With a track record of behavior consistent with her obligations, she may well be able to demonstrate persuasive evidence of her worthiness for a public trust position.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations trustworthiness concerns are not mitigated.

⁴ The recent emphasis of the Appeal Board on security and trustworthiness concerns arising from tax cases is instructive. See ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016) (reversing grant of security clearance and stating, "His delay in taking action to resolve his tax deficiency for years and then taking action only after his security clearance was in jeopardy undercuts a determination that Applicant has rehabilitated himself and does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation's secrets."); ISCR Case No. 14-01894 at 2-6 (App. Bd. Aug. 18, 2015) (reversing grant of a security clearance, discussing lack of detailed corroboration of circumstances beyond applicant's control adversely affecting finances, noting two tax liens totaling \$175,000 and garnishment of Applicant's wages, and emphasizing the applicant's failure to timely file and pay taxes); ISCR Case No. 12-05053 at 4 (App. Bd. Oct. 30, 2014) (reversing grant of a security clearance, noting not all tax returns filed, and insufficient discussion of Applicant's efforts to resolve tax liens). More recently, in ISCR Case No. 14-05476 (App. Bd. Mar. 25, 2016) the Appeal Board reversed a grant of a security clearance for a retired E-9 and cited applicant's failure to timely file state tax returns for tax years 2010 through 2013 and federal returns for tax years 2010 through 2012. Before his hearing, he filed his tax returns and paid his tax debts except for \$13,000, which was in an established payment plan. The Appeal Board highlighted his annual income of over \$200,000 and discounted his non-tax expenses, contributions to DOD, and spouse's medical problems. The Appeal Board emphasized "the allegations regarding his failure to file tax returns in the first place stating, it is well settled that failure to file tax returns suggest that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information." *Id.* at 5 (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002) (internal quotation marks and brackets omitted). See also ISCR Case No. 14-03358 at 3, 5 (App. Bd. Oct. 9, 2015) (reversing grant of a security clearance, noting \$150,000 owed to the federal government, and stating "A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information.").

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:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a through 1.p: Against Applicant

Conclusion

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

Mark Harvey
Administrative Judge