



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



In the matter of:

)  
)  
)  
)  
)

ISCR Case No. 16-02191

Applicant for Security Clearance

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel  
For Applicant: Donna Price, Esq.

04/25/2018

---

**Decision**

---

MATCHINSKI, Elizabeth M., Administrative Judge:

Overwhelmed by difficult life circumstances, Applicant did not timely file his federal income tax returns for tax years 2011 through 2014. His delinquent tax returns have been filed, and he intends to comply with tax-filing and tax-payment deadlines in the future. Clearance is granted.

**Statement of the Case**

On September 9, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue his access eligibility to classified information. 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 October 22, 2016, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On January 25, 2017, the case was assigned to a DOHA administrative judge, who, on April 3, 2017, scheduled a hearing for May 17, 2017. On April 17, 2017, counsel for Applicant entered her appearance and requested a continuance of the hearing date to sometime after June 1, 2017. A continuance was granted without any objection from Department Counsel.

On October 30, 2017, the case was transferred to me to conduct a hearing. On October 31, 2017, with the agreement of the parties, I scheduled a hearing for December 6, 2017. In prehearing guidance, Applicant was informed that the then Director of National Intelligence (DNI) had issued Security Executive Agent Directive 4 establishing the National Security Adjudicative Guidelines (AG) effective June 8, 2017, to all adjudications for national security eligibility or eligibility to hold a sensitive position.<sup>1</sup>

At the hearing, two Government exhibits (GEs 1-2) and seven Applicant exhibits (AEs A-G) were admitted in evidence.<sup>2</sup> Two hearing exhibits (HE) were marked but not entered into evidence: a December 1, 2017 letter forwarding GEs 1-2 to Applicant (HE 1) and a list of the Government's exhibits (HE 2). Applicant and two witnesses testified, as reflected in a transcript (Tr.) received on December 14, 2017.

### **Findings of Fact**

The SOR alleges that Applicant failed to file his federal income tax returns for tax years 2012 through 2015 as required (SOR ¶ 1.a). When he responded to the SOR allegation, Applicant admitted his late tax filings, but he also indicated that his federal and state income tax returns for tax years 2011 through 2015 have been filed.<sup>3</sup> He described difficult family circumstances that led him to feel overwhelmed. After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is 67 years old and has a doctorate degree awarded in 1978. He has been employed as a systems engineer by a DOD contractor since January 2005. He was initially granted a DOD Secret clearance in 1998 for duties with another defense contractor. (GE 1; Tr. 52-55.) He needs to retain his clearance eligibility for his employment. (Tr. 92.)

---

<sup>1</sup> Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

<sup>2</sup> Some of Applicant's exhibits include multiple documents, which are differentiated by number. For example, AE C consists of Applicant's annual performance evaluations for 2010 (AE C.1) through 2016 (AE C.7).

<sup>3</sup> Applicant apparently had also not timely filed his state income tax returns. These delinquent returns cannot be relied on for disqualification because they were not alleged in the SOR. The DOHA Appeal Board has long held that the administrative judge may consider non-alleged conduct to assess an applicant's credibility; to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for the whole-person analysis. See, e.g., ISCR Case No. 09-07219 (App. Bd. Sep. 27, 2012).

Applicant and his ex-wife married in July 1983, separated in June 2010, and divorced in August 2012. They have two sons, ages 33 and 31, and a daughter age 24. The older of Applicant's sons has been disabled from birth. He has resided with Applicant his entire life. Applicant's wife had another daughter, now age 37, whom Applicant adopted in approximately 1984. This daughter has a child. (GEs 1-2; Tr. 56-59, 63.)

Applicant's marriage was strained, in part, because of the demands of caring for his disabled son, who uses a manual wheelchair for transport, does not drive an automobile, and requires some assistance with the activities of daily living. In September 2009, this son enrolled as a full-time student at a private university to obtain a bachelor's degree. He initially lived on campus, but his personal-care needs proved to be difficult to manage. He moved back home and with Applicant's help, commuted to the university located 50 miles from his home. He did not enroll that next semester because Applicant did not have the funds to cover his tuition. (GE 2; AE E.19; Tr. 71-73.)

Applicant's ex-wife moved out of the marital home and filed for divorce in June 2010. (AE B.2.) Shortly thereafter, Applicant inherited an estate worth \$400,000 from his stepmother. He was named as sole heir in her will. Applicant's brother, who had been estranged from the family for about ten years, sued Applicant in early 2011 for half of the estate. The lawsuit caused a hold on the distribution of the estate. (AE E.24; Tr. 64-67, 74.) Needing some of the inheritance to pay for his disabled son's college costs and to pay his divorce attorney, Applicant settled with his brother out of court. Applicant used \$90,000 of his inheritance to pay off the mortgage loan on his home, and \$25,000 went to his divorce attorney. (GE 2; Tr. 74-75.)

In September 2011, Applicant's disabled son re-enrolled in college, but he was unable to finish because of serious medical issues that required surgery in November 2011. (AE E.25.) Then, over the April to May 2012 time period, Applicant had a health scare of his own that required some diagnostic procedures and surgery. (AEs E.20-E.22.)

On his divorce in August 2012, Applicant agreed to pay \$675 per week to his ex-wife, \$525 of which was alimony and \$150 of which was child support for their youngest child until she graduated from college or turned 23, whichever occurred first. Applicant's child-support payments ended in June 2015, but Applicant paid alimony at \$525 a week until July 2016, when he reached full retirement age. Applicant also had to give his ex-wife half of his retirement assets; buy out his ex-wife's interest in the marital home so that he and his disabled son could remain in the house; and pay \$74,000 within 30 days of the judgment of divorce to his ex-wife, which represented her share of his inheritance (\$90,000 less \$16,000 in her legal fees already paid by Applicant). College tuition costs for their minor daughter were shared. Their divorce decree also stipulated that Applicant and his ex-wife file separate income tax returns starting with tax year 2012. Applicant was allowed to claim his youngest daughter as a dependent on his tax returns for the even tax years. (GE 2; AE B.2; Tr. 69-70.)

In late October 2013, Applicant's adopted daughter incurred a \$2,797 bill from an attorney who represented her in a custody matter against her daughter's father. (AE E.12.)

Applicant sent his daughter some money to pay her attorney (Tr. 77), but she spent some of it on rent and car insurance. In January 2014, she asked Applicant to arrange a repayment plan for her attorney fees. (AE E.14.) She had petitioned the court to allow her to move her daughter across the country away from her daughter's father. (AEs E.16-E.18.)

Applicant, who has been treated on and off for depression since 1983, had a difficult time dealing with his divorce; his medical scare; multiple medical issues for his disabled son; and issues involving his other children, including his adopted daughter. (GE 2; AEs E.20, E.21, E.25.) He focused on work and his disabled son and let other issues go, including his taxes. He made no effort to timely file his federal and state income tax returns for tax years 2011 through 2014.<sup>4</sup> (GEs 1-2; Tr. 108-109, 112.)

In January 2014, Applicant began working with a trust and estate lawyer about establishing a trust for his disabled son's care. (AE E.3; Tr. 84-85.) In early 2015, Applicant met with a tax attorney from the law firm about possibly helping him resolve his tax issues. (GE 2.) Applicant "thought things were moving." He did not follow up at that time, even though he heard nothing more from the tax attorney. (Tr. 97-98.)

On February 10, 2015, Applicant certified to the accuracy of a Questionnaire for National Security Positions (SF 86). He indicated on his SF 86 that he did not file his federal and state income tax returns for 2012 until November 2014 because of "divorce [and] depression;" that he owed \$8,000 in past-due taxes for that tax year; and that he was awaiting a repayment schedule. He also disclosed that he had yet to file his federal return for tax year 2013, but stated that he was "in the process of filling [sic] those forms and plan on paying any penalties." He estimated that he owed about \$3,000 in taxes for that tax year. (GE 1.)

In an email of late September 2015, Applicant advised his trust and estate attorney that he had an issue of back taxes and unfiled income tax returns. He indicated that he needed to get his life in order and asked for a referral to someone in the firm that could help him deal with the IRS. (AE E.1.) Sometime that fall, Applicant retained the services of a certified public accountant (CPA) affiliated with the law firm to resolve his tax issues. (GE 2.)

On April 1, 2016, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant explained that he did not file his federal and state tax returns for 2012 until approximately November 2014 because he was depressed about his divorce and his son's medical issues. He estimated that he owed the

---

<sup>4</sup> Applicant indicated during his April 2016 subject interview that he had not filed timely tax returns for tax years 2012 through 2014 and that he owed the IRS about \$8,000 in delinquent taxes for 2012 because he had taken a premature withdrawal of his retirement assets in 2012 to pay college tuition for his son. (GE 2.) Other evidence is discrepant. Applicant initially testified that he took a disbursement from his retirement in 2010 [sic] to pay for his son's tuition (Tr. 73), but he then indicated that he received disbursements in 2011 and 2012. (Tr. 76.) An IRS account transcript for 2011 shows that the IRS inquired of Applicant in November 2012 about his missing return for 2011. (AE A.13.) Applicant subsequently admitted on cross-examination that tax year 2011 was "the first one that was missed." (Tr. 103.)

IRS \$12,000 (\$8,000 in back taxes and \$4,000 in penalties and fees) for tax year 2012 because he had taken a disbursement from his retirement account to pay for his son's college tuition. Facing a significant tax debt, he "stopped paying attention to his IRS debt." He disclosed that he had received some collection notices from the IRS, including as recently as fall 2015, which he ignored. He had a state income tax refund of \$3,900 that he had yet to cash. Applicant explained that he had yet to file his federal and state tax returns for tax years 2013 and 2014. He did not want to file them before he had dealt with his tax debt for 2012. He attributed his noncompliance with his tax-filing obligation in part to his depression and everything else that was occurring in his life. He added that an attorney has been looking into his tax issues since early 2015. He asserted that he planned to file his delinquent returns in the next couple of months and to have all his tax issues resolved in 2016. Concerning his finances, Applicant estimated that he had a net monthly remainder of \$535 after expenses and debt payments, not accounting for his past-due income taxes. He described his finances as tight, but he was living within his means. (GE 2.)

By late July 2016, Applicant had provided the CPA with his divorce decree and some other documents, but the CPA needed additional information about Applicant's deductions to file the delinquent income tax returns. (AE E.2.) In early October 2016, the CPA requested more information from Applicant to complete his delinquent tax returns. Applicant responded promptly, and on October 12, 2016, the CPA notified Applicant that the returns "should be all set and mailed by tomorrow." (AEs E.4-E.5.) On October 13, 2015, the CPA mailed Applicant's federal and state income tax returns for tax years 2011 through 2014 to him for filing. Applicant was advised that he owed \$4,149 [sic] for tax year 2011,<sup>5</sup> but that he was entitled to refunds for subsequent tax years. Given that the extended deadline for filing his 2015 federal and state income tax returns was near, the CPA informed Applicant that he would electronically file Applicant's tax returns for tax year 2015, and Applicant gave him authorization for the electronic filing.<sup>6</sup> (AE E.6.)

Applicant's tax returns for 2015 were filed electronically before the extended deadline in October 2016. He was owed a \$12,920 refund of federal income taxes. (AEs A.10-A.11.) On October 16, 2016, Applicant submitted his federal and state income tax returns for tax years 2011 through 2014. (Tr. 114-115.) His federal returns were received by the IRS on October 20, 2016. (AEs A.1-A.9.) He paid \$4,139 (\$2,509 in tax liability plus penalties and interest) with his federal return for 2011. (AEs A.1-A.3, A.13.) Applicant expected a refund of \$2,145 in federal income taxes for tax year 2012 (AE A.4), but the IRS recalculated his return and assessed penalties and interest in March 2017 to an account balance of zero for that year. (AE A.5). He overpaid his federal income taxes for 2013 by \$12,850 (AEs A.6-A.7) and for 2014 by \$14,434. (AEs A.8-A.9.) The CPA prepared Applicant's tax returns for 2016. Applicant overpaid his federal income taxes by \$10,173 in 2016. (AE A.12.) Applicant intends to have the CPA prepare his future tax returns. (Tr. 88.) He knows meeting his tax obligations is important. (Tr. 107.)

---

<sup>5</sup> In a cover letter from the CPA, Applicant was informed that he owed \$4,319 to the IRS and that while he was entitled to a state refund, he would not receive it because his return was being filed more than three years after its due date. (AE A.1.)

<sup>6</sup> Applicant applied for an automatic extension of time to file his federal income tax return for 2015. (AE A.10.)

With the termination of his alimony obligation, Applicant's financial situation improved significantly. In May 2017, Applicant paid \$2,208 in moving expenses for his adopted daughter and her child. (AE E.15; Tr. 77-78.) He bought his daughter a used car for \$6,000. (Tr. 118.) In October 2017, Applicant opened a low-limit credit card, and he also purchased a 2014 model-year vehicle. He paid \$8,000 cash and obtained a vehicle loan for \$13,065 with repayment at \$404 monthly. (AEs F-G; Tr. 84.) As of November 2017, he was paying \$358 per month on a home-equity loan obtained in July 2017 for \$35,000 (Tr. 83-84) and \$175 per month on a revolving charge account with a \$2,782 balance. He had not missed a payment on an account in over four years. (AE F.) Applicant has net monthly income (which includes \$2,690 in social security income) after expenses and debt payments of \$6,410. (AE G; Tr. 89-90.) He had "a little over \$5,000" in checking deposits and \$12,000 in savings deposits. (Tr. 117-118.)

### **Character References and Work Evaluations**

Applicant met his employer's job requirements for 2010 through 2014 and in 2016. He exceeded his job requirements in 2015. (AEs C.1-C.7.) In 2011, his rating manager characterized him as very hardworking, but also requiring more direction and course corrections than would normally be expected of someone in his position. He was somewhat disorganized and not good at following up on actions assigned to him. He was ranked in the bottom ten percent of his peer group. (AE C.2.) Applicant was more effective in a team environment in 2012 and required minimal supervision. (AE C.3.) His team benefitted from his expertise in 2013, and he was often asked to provide solutions for some complex systems. (AE C.4.) Applicant made important contributions in his three areas of assignment in 2014, showing his versatility. (AE C.5.) For much of 2015, Applicant support one product line. He worked well with software developers and achieved a "monumental task" with limited resources. His rating manager in 2015 considered Applicant to be "a strong and valued employee who is committed to the superb quality of his work." (AE C.6.) Applicant showed innovation and flexibility in carrying out his duties in 2016. Toward the end of the year, he transitioned to another program where he faced several challenges. He worked well with little oversight and exhibited a positive attitude while meeting his job requirements. (AE C.7.)

A technical supervisor with more than 30 years of experience in the defense industry has known Applicant for the past eight years. They worked closely together during the first four years of that time. Aware of Applicant's divorce, medical scare, and care for his disabled son, this co-worker believes that Applicant was living within his means and doing the best that he could. He was made aware that Applicant failed to file his tax returns over several years and yet had no hesitation in recommending Applicant for security clearance eligibility. (AE D.6; Tr. 25-32.)

A senior manager, who has worked closely with Applicant since April 2015, considers Applicant to be an honest person who reliably does his best effort in completing required tasks timely and with high quality. In his experience, Applicant has been very trustworthy in handling sensitive and classified information. Having seen the SOR and

discussed the issues of security concern with Applicant, he recommends that Applicant be approved to retain his security clearance eligibility. (AE D.5.)

A systems engineer, who has held DOD security clearance eligibility for some 30 years, worked closely with Applicant from 2005 to 2015 when this engineer moved to another facility. This engineer considers Applicant to be hardworking, loyal, and of good character. To his knowledge, Applicant has never had any problems complying with the requirements to safeguard classified information. Applicant had shared with him some of the details of his difficult divorce, his fight with a sibling over an inheritance, and his care for his severely handicapped child. This engineer believes Applicant was undergoing “undue hardship during the period of time when he neglected to pay his federal income tax.” (AE D.2.)

Another professional colleague attested to Applicant handling his work tasks reliably and responsibly. Applicant never allowed his personal difficulties to affect his work. He also recommends that Applicant’s security clearance eligibility be continued as he has seen Applicant take his security responsibilities seriously. (AE D.3.)

A close friend of Applicant’s since they were college undergraduates together in 1968 knows Applicant to be a devoted father. Applicant has been especially dedicated to providing his disabled son with what he needs to enjoy a long and high-quality life. Applicant has also been generous in volunteering his time to youth sports activities.<sup>7</sup> He was made aware of the issues of concern alleged in the SOR and recommends approval of Applicant’s security clearance. (AE D.4.)

Applicant’s fiancée testified and provided a character reference letter for Applicant. They met through an online dating service in January 2013 and currently live independent lives. She has observed Applicant to be dedicated to his work as a systems engineer and to caring for his disabled son, who spends the day confined to his bed or his wheelchair. Applicant often must adjust his work schedule so that he can take his son to physical therapy, social events, personal training sessions, and medical appointments. She has found Applicant to be financially conservative in that he has very little debt apart from a home loan to repair his residence. Around the spring of 2015, she learned that Applicant had not filed some of his income tax returns, and she was “appalled.” After she told him that the tax matters had to be resolved, he sought the services of a tax attorney. She attributes his noncompliance with his tax filing obligation to a combination of personal events that overwhelmed his ability to successfully handle all of his personal affairs. She is aware that Applicant’s delinquent tax returns were filed and processed in 2016, and that he received tax refunds. (AE D.1; Tr. 40-49.)

## **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

---

<sup>7</sup> Applicant coached youth soccer in his community for about 18 years. (Tr. 80-81.)

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(a), 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 national security eligibility will be resolved in favor of the 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 articulated in AG ¶ 18:

Failure 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 or



sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The SOR alleges that Applicant failed to file his federal income tax returns for tax years 2012 through 2015. The evidence establishes that Applicant did not timely file his federal and state income tax returns for tax years 2011 through 2014. Although Applicant indicated that he did not file his tax returns for 2015 on time, other evidence raises some doubt about whether his returns for 2015 were late. His returns for 2015 were filed electronically for him by the CPA. Included in his 2015 federal return (AE A.10) is a form 4868, *Application for Automatic Extension of Time to File U.S. Individual Income Tax Return*. The extended deadline for federal income taxes for tax year 2015 was October 17, 2016, and the IRS transcript for tax year 2015 indicates that his return was received on October 14, 2016. (AE A.11.) Applicant's un rebutted testimony is that his state returns were submitted at the same time as his federal returns.<sup>8</sup>

Disqualifying condition AG ¶ 19(f), "failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required," is established. The burden is on Applicant to mitigate the serious judgment concerns raised by his failure over four consecutive years to attend to his known obligation to file timely federal tax returns. One or more of the following conditions under AG ¶ 20 may apply:

- (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;
- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

---

<sup>8</sup> Applicant's state of residence allows for an automatic six-month extension to file an income tax return as long as the taxpayer has paid at least 80% of the total amount of tax due on or before the due date. See Mass. Gen. Laws Chapter 62C, Section 19. Applicant testified that he was entitled to a refund of state income taxes in tax year 2015 because of his alimony payments. (Tr. 114.)

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant unquestionably faced difficult family circumstances. His marital separation and divorce, his medical scare and son's medical issues, the burden of being sole caregiver for his disabled son, his brother's lawsuit over a share of their stepmother's estate, and his adopted daughter's custody battle are all circumstances which understandably required or took his attention and left him feeling overwhelmed. His divorce and his brother's lawsuit over the inheritance are circumstances that are not likely to recur, but Applicant's tax problems are relatively recent and constitute a pattern of poor judgment. Applicant told an OPM investigator that he became inattentive to his tax obligations after he realized he owed taxes due to the disbursement of retirement funds, and that he ignored tax notices from the IRS. By April 2015, when his federal income tax return for 2014 was first due, Applicant's divorce had been final for 2.5 years. His medical scare had been resolved, and his son's medical situation had stabilized to where Applicant could reasonably be expected to have given more priority to resolving his income tax issues.

Applicant is credited with asking his trust and estate attorney for his firm's assistance in resolving his delinquent tax matters in 2015 and then retaining the services of a CPA in the firm to address his issues. He took these actions before the SOR was issued in September 2016. Even so, he should have acted more expeditiously to address his delinquent tax returns. Applicant first consulted with the law firm in January 2014 about establishing a trust for his son's care. He does not recall meeting with a tax attorney from the firm about his taxes before early 2015, and then he assumed he would hear from the tax attorney. It was not until September 2015 that he again asked for help resolving his taxes. Neither AG ¶ 20(a) nor AG ¶ 20(b) fully apply.

AG ¶¶ 20(c) and 20(g) apply because Applicant filed his delinquent tax returns and paid his outstanding income taxes for 2011 in October 2016. Although his returns for 2012 through 2014 were also filed late, he had no outstanding tax liability for tax year 2012, and he had overpaid his federal income taxes by \$12,850 for tax year 2013 and \$14,434 for tax year 2014. Also with the assistance of the law firm's CPA, Applicant filed timely income tax returns for tax years 2015 and 2016, and he intends to retain the services of the CPA to prepare his future tax returns.

Even where tax problems have been corrected and an applicant is motivated to present 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). 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.) Applicant's belated compliance with his tax filing obligation is not condoned, but it is not likely to reoccur. Applicant is not likely to jeopardize his longtime defense-contractor employment by failing to timely file his income tax returns and paying

his taxes in the future. His financial situation has stabilized sufficiently to make recurrence of unpaid taxes also unlikely.

### **Whole-Person Concept**

In assessing the whole person, 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(d). The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

The security clearance adjudication involves an evaluation of an applicant's judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). Applicant's failure to comply with such an important obligation as filing his income tax returns came as a surprise to his co-workers, to a longtime friend, and to his fiancée, who know him to be a responsible and hardworking colleague and a devoted father to his disabled son. His fiancée testified that she was appalled to learn in 2015 about his failure to file income tax returns for several years. However, to a person, Applicant's references believe that he was overwhelmed by difficult life circumstances. They recommend that he be allowed to retain his security clearance. Applicant has demonstrated that he takes his security responsibilities seriously by handling classified information appropriately.

The Appeal Board has repeatedly held that the government need not wait until an applicant mishandles or fails to safeguard classified information before denying or revoking security clearance eligibility. See, e.g., ISCR Case No. 08-09918 (App. Bd. Oct. 29, 2009, citing *Adams v. Laird*, 420 F.2d 230, 238-239 (D.C. Cir. 1969)). 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). Yet, the security clearance adjudication is not intended to punish an applicant for past mistakes or shortcomings. Applicant has resolved the security issues and is not likely to jeopardize the employment that he needs to support himself and his disabled son by ignoring tax-filing deadlines in the future. Based on the evidence before me, I conclude that it is clearly consistent with the national interest to continue Applicant's security clearance eligibility.

### **Formal Finding**

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

Paragraph 1, Guideline F:                   FOR APPLICANT

Subparagraph 1.a:                         For Applicant

## **Conclusion**

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

---

Elizabeth M. Matchinski  
Administrative Judge