



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



In the matter of: )  
)  
) ISCR Case No. 17-04338  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Mary M. Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

02/06/2019

---

**Decision**

---

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence, but failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 20, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline B, foreign influence. The action was taken 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 (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on May 21, 2018, and requested a hearing before an administrative judge. The case was assigned to me on December 11, 2018. The Defense

Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 11, 2018. I convened the hearing as scheduled on January 17, 2019. The Government offered exhibits (GE) 1 through 3. Applicant offered Applicant's Exhibits (AE) A through K. There were no objections to any exhibits, and they were admitted into evidence.<sup>1</sup> DOHA received the hearing transcript on January 28, 2019.

### **Request for Administrative Notice and Procedural Matters**

Department Counsel withdrew SOR ¶ 1.c. Department Counsel submitted HE II, a written request that I take administrative notice of certain facts about the Philippines. Applicant did not object, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications.<sup>2</sup>

### **Findings of Fact**

Applicant admitted the SOR allegations in ¶¶ 1.a and 1.b. He denied the allegation in SOR ¶ 2.a. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 51 years old. He earned an associate's degree in 1988. He was married and divorced twice from 1997 to 2003. There were no children from the marriages. He remarried in 2012 and has children, ages five years old and 21 months. He has worked for the same federal contractor since 1988.<sup>3</sup>

Applicant failed to timely file federal income tax returns for tax years 2007 through 2016 and owed past-due federal income taxes.<sup>4</sup>

Applicant completed a security clearance application (SCA) in February 2015. He disclosed that he failed to timely file his 2007, 2008, 2009, 2010 and 2011 federal income tax returns. He stated: "I am currently working to file federal taxes for 2007."<sup>5</sup> He repeated this statement for each of the tax years he disclosed and stated he estimated owing \$500 for each year. He did not disclose he failed to timely file federal income tax returns for

---

<sup>1</sup> Hearing Exhibit I (HE) is a demonstrative exhibit provided by Government Counsel.

<sup>2</sup> Source documents are attached to Hearing Exhibit II.

<sup>3</sup> Tr. 21-24; GE 1.

<sup>4</sup> Tr. 25; GE 1, 2, 3; AE A through K.

<sup>5</sup> GE 1.

2012, 2013 and 2014. He testified he could not recall why he failed to disclose the other tax years. At that time his 2015 federal income tax return was not yet due.<sup>6</sup>

Applicant was interviewed by a government investigator in November 2015. He disclosed that in September 2015 he filed his 2007 through 2011 federal income tax returns. He explained that these tax returns were not timely filed because he was lazy and did not realize he owed money. He was unaware at that time of the total amount he owed, but stated that he would possibly set up a payment plan. He initially hired a professional tax consultant firm to help him, but it went bankrupt.<sup>7</sup>

Applicant testified that he mailed his 2007, 2008, and 2009 federal tax returns in 2015 and he never heard back from the IRS and the returns were not processed. He said he called the IRS frequently to find out the returns' status.<sup>8</sup>

Applicant completed government interrogatories.<sup>9</sup> In response to inquiries, he explained that he failed to file his 2007 through 2011 federal income tax returns. He said he did not realize at the time that he owed taxes. He stated: "There is not a real reason for not filing other than I had been burning myself in my work."<sup>10</sup> He stated he had met with the IRS in December 2016 about negotiating a payment plan or settlement. There was an error in his 2007 return so he was told it needed to be corrected and resubmitted. He explained his plan was to hire a tax attorney to complete his taxes, resubmit his 2007 return and negotiate a settlement. He provided the first page of his 2008, 2009 and 2010 IRS 1040 forms that only included his income and no other information. They were stamped by the IRS on December 13, 2016.<sup>11</sup>

Applicant completed additional government interrogatories in April 2018. He explained he submitted tax documents to the IRS three weeks prior to his government interview, but the IRS had not received his submission. He resubmitted tax documents in person at an IRS office. He said all of his tax documents were accepted except for tax year 2007 because it was missing a document. He resubmitted it, and he said his 2007 tax return was being processed to determine his tax liability. Applicant provided the first

---

<sup>6</sup> Tr. 28-30; GE 1. I have not considered any derogatory information that was not alleged in the SOR for disqualifying purposes. I may consider such information when making a credibility determination, in the application of mitigating conditions, and in a whole-person analysis.

<sup>7</sup> GE 3.

<sup>8</sup> Tr. 32.

<sup>9</sup> Applicant dated his response to the Government's August 2016 interrogatories as October 11, 2016. However, in his narrative response he provided dates he made contact with the IRS as December 2016, which would have occurred after the date he signed his interrogatories.

<sup>10</sup> GE 2.

<sup>11</sup> Tr. 34-35; GE 2.

page of his 2007 IRS 1040 that was stamped on January 24, 2016. The second page shows that it was prepared on January 19, 2018, by a tax preparer.<sup>12</sup>

IRS transcripts confirmed that Applicant submitted a 2007 IRS 1040 form in January 2016, and it was filed in January 2018. Substitute tax returns were prepared by the IRS for tax year 2008 in May 2010 and for tax year 2009 in August 2011. Applicant submitted his federal income tax returns to the IRS for tax year 2010 in December 2016; tax years 2011, 2012, 2013, 2014, 2015, and 2016 were all filed in January 2018. Applicant's annual income for tax years 2008 to 2016 ranged from \$98,000 to \$130,000. He was not married in 2007 through 2011.<sup>13</sup>

Applicant testified that he was dedicated to his work and did not practice due diligence in timely completing his federal income tax returns. He said he had been working with a professional tax consultant firm in 2012, but it went bankrupt. He said after that he was missing documents. He understood he had a duty to file his tax returns. He kept getting busy and delayed filing his tax returns. He said he was unable to retrieve from the IRS tax transcripts for 2007 and 2008, because they were too old. He said the reason he failed to timely file his 2011 through 2016 federal tax returns was because he was trying to get a tax number for his wife. He was told by the IRS that he was due refunds for certain tax years, and he should wait for all of the delinquent years to be processed. Applicant testified that refunds he was entitled to for tax years 2012 through 2016, were applied to the federal income taxes he owed for tax years 2006, 2007, and 2008. In May 2018, he withdrew money from his pension plan, paid the penalty, and paid the federal income taxes he owed for tax years 2009, 2010 and 2011. Applicant provided an IRS document that shows he has a zero balance as of January 2019.<sup>14</sup>

Applicant was asked if he had timely filed his 2017 federal income tax return, which was due on April 15, 2018. He did not. He stated he filed it about three weeks before his hearing. He did not file an extension. He did not have an explanation for his failure to timely file his 2017 federal income tax return. He stated "It was a credit, I didn't owe". He testified that he promised he would file his tax returns on time in the future.<sup>15</sup>

Applicant's mother-in-law was born in the Philippines. She became a permanent resident of the United States in September 2015. She was sponsored by Applicant's wife's sister and her husband, who are U.S. citizens. Applicant's mother-in-law has returned to the Philippines for several months since acquiring her permanent resident status, but has not returned there since 2017. She works as a child care provider and is

---

<sup>12</sup> GE 3.

<sup>13</sup> Tr. 36-38; AE D through K.

<sup>14</sup> Tr. 25, 39-48; AE C.

<sup>15</sup> Tr. 48-51.

self-sufficient. Applicant and his wife do not provide her financial support. Applicant's mother-in-law has family that lives in the Philippines.<sup>16</sup>

## Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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 overarching 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

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

---

<sup>16</sup> Tr. 52-78; AE A, B.

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 concern relating to the guideline for financial considerations is set out 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (c) a history of not meeting financial obligations; and
- (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.

Applicant failed to timely file federal income tax returns for tax years 2007 through 2016. He owed a substantial tax debt that was past due. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 individual has received or is receiving financial 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;

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

(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 failed to timely file federal income tax returns for ten years. He owed a significant tax debt. He completed an SCA in February 2015 and disclosed some of the tax years he failed to file returns, but not all of them. After being put on notice about that his failure to timely file tax returns was a security concern, he failed to timely file his 2016 and 2017 federal income tax return. Applicant owed federal income taxes for numerous tax years that were not paid until May 2018. There is insufficient evidence to conclude that his behavior is unlikely to recur. Applicant's repeated failure to pay his federal taxes and file his federal income tax returns casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his failure to timely file his federal income tax returns to being lazy and working hard. He did not think he owed taxes. He also attributed his failure to timely file during the later years to not having a tax number for his wife. These factors did not impact Applicant's ability to comply with tax laws and obligations. These factors were not beyond Applicant's control. Even if he could not obtain a tax number for his wife for one year, it does not explain why this was not corrected in subsequent years. It also did not prevent him from filing his tax returns. Applicant's eventual resolution of his delinquent tax filings and payment of his overdue taxes years after they were due does not show he acted responsibly. Even after he was put on notice about the security concerns, he did not act responsibly. AG ¶ 20(b) does not apply.

Applicant has filed his delinquent federal income tax returns and paid his past-due federal taxes. AG ¶¶ 20(c) and 20(g) apply. I cannot find that Applicant's eventual payment of his federal income taxes years after they were due and only after his security clearance became an issue constitutes a good-faith effort to resolve his debts. AG ¶ 20(d) does not apply.

## Guideline B: Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they resulted in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is it associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

AG ¶ 7(a) requires evidence of a "heightened risk." The "heightened risk" required to raise this disqualifying conditions is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

Applicant's mother-in-law is a citizen of the Philippines and has been permanent resident of the United States since 2015. She was sponsored by Applicant's sister-in-law and brother-in-law. His mother-in-law is employed in the United States and is self-sufficient. I do not find there is a heightened risk or a potential for foreign influence. I find AG ¶¶ 7(a) and 7(b) do not apply. I find in Applicant's favor under the Guideline B security concerns.



## Whole-Person Concept

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

(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is 51 years old. His mother-in-law is a citizen of the Philippines and a permanent resident of the United States since 2015. She lives in the U.S., is employed, and is self-sufficient. I did not find any disqualifying conditions applied and find in Applicant's favor under Guideline B, foreign influence.

Applicant has been employed by the same federal contractor since 1986. He failed to timely file his 2007 through 2016 federal income tax returns. Even after he was aware of the seriousness of his conduct in 2015, he failed to timely file his federal income tax returns for 2016 and again in 2017. The fact that years later he finally completed his legal obligations does not show he exercises good judgment and is reliable. The DOHA Appeal Board has held that:

Someone who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. August 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).<sup>17</sup>

---

<sup>17</sup> ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

Applicant's history of non-compliance with a fundamental legal obligation to timely file and pay his federal income taxes raises serious security concerns. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

### **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-1.b:	Against Applicant
Subparagraph 1.c:	Withdrawn
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

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

---

Carol G. Ricciardello  
Administrative Judge