



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



In the matter of: )  
)  
) ISCR Case No. 18-00672  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: *Pro se*

03/15/2019

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**Decision**

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MURPHY, Braden M., Administrative Judge:

Applicant failed to file annual state and federal income tax returns on time, as required, from tax years 2011-2016. He also has ongoing federal income tax debt. He did not mitigate the resulting financial security concerns. Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on January 6, 2016. On June 13, 2018, 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. DOD CAF took this action under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on July 9, 2018, and requested a hearing.<sup>1</sup> The case was assigned to me on November 13, 2018. On November 21, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for December 13, 2018, a date agreed to by the parties.

The hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified and submitted Applicant's Exhibit (AE) A, which was admitted without objection. I held the record open until December 31, 2018, to allow Applicant the opportunity to submit additional documentation. On December 31, 2018, Applicant submitted four documents, which are marked as AE B through AE E, and admitted without objection.<sup>2</sup> Applicant also requested additional time to get documents from the Internal Revenue Service (IRS). At the time, the IRS was significantly affected by the 35-day federal government shutdown. As a result, I held the record open until January 31, 2019. (HE III)

On January 31, 2019, Applicant indicated by e-mail that he had submitted additional materials to DOHA, and "still [had] not received the transcript." I wrote back on February 7, 2019, and asked him to clarify his statement. (HE III) Applicant did not respond. No additional materials were received. I therefore closed the record on February 7, 2019. DOHA received the hearing transcript on January 4, 2019.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a, 1.b, 1.e – 1.i, and 1.k. He denied SOR ¶¶ 1.c, 1.d, 1.j, and 1.l. For most allegations, he included a brief explanation. His admissions and explanations are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 56 years old. He was married from 2000 to 2009. He has one adult son. Applicant has a high school diploma and some community college credits. He served in the United States Navy from 1980 to 2000, retiring as a chief petty officer (E-7). He has worked in the defense industry ever since, either for his current employer, or its predecessor. He has had a security clearance for 18 years. (Tr. 12, 26-30, 57; GE 1)

The SOR first alleges that Applicant failed to timely file his federal and state income tax returns, as required, for tax years 2011 to 2016. (SOR ¶¶ 1.a, 1.b) The

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<sup>1</sup> Applicant initially did not specifically "admit" or "deny" SOR ¶¶ 1.c and 1.j. He did so in a September 14, 2018 e-mail to DOD CAF that is included in his Answer.

<sup>2</sup> In post-hearing correspondence, I referred to Applicant's post-hearing exhibits as AE A through D. (Hearing Exhibit III) Since his hearing exhibit is already marked as AE A, I have re-marked his post-hearing exhibits sequentially, starting with AE B.

remaining allegations concern past-due federal and state income taxes. (SOR ¶¶ 1.c – 1.l)

On his January 2016 SCA, Applicant disclosed unfiled state and federal income tax returns for 2014 and 2015 and some tax debt. (GE 1 at 31-37) He discussed his tax situation in personal subject interviews conducted in February 2017, September 2017, and December 2017. (GE 2)

Applicant prepared and mailed his state and federal income tax returns for tax years 2011 to 2016 in May 2018, while preparing GE 2, his interrogatory response. (Tr. 33-38, 53-56) When he signed GE 2, in June 2018, he indicated that his returns remained unfiled, but clarified at hearing that though he had mailed the returns, he did not consider them “filed” until he had received confirmation of receipt from the IRS and the state tax authority. (Tr. 38-42)

Applicant also stated that he owed about \$24,278 combined in past-due federal income taxes for 2011-2016, with specific amounts detailed for each year. (SOR ¶¶ 1.e – 1.i; 1.k) He explained at hearing that he calculated those figures based on the returns that he prepared at that time. (Tr. 53) He stated that he had requested a payment plan with the IRS. He stated that he owed \$500 in past-due state income taxes for those years. (SOR ¶ 1.l) He did not provide documentation from the IRS or the state tax authority, though he was requested to do so. (GE 2) He said this was because he did not keep copies of the returns, which is also why he was not able to provide them at his hearing. (Tr. 40)

Applicant has lived in the same house since 2010. (Tr. 28-30; GE 1) The home he shared with his wife was foreclosed in 2009, after she stopped paying the mortgage, he said. He disclosed the foreclosure on his SCA. (GE 1) It is not alleged in the SOR, and is not reflected on credit reports in the record. (Tr. 28-30) Applicant and his former wife remain on good terms. For a time, he paid her rent (\$600 a month) but stopped doing that to have more money to pay his back taxes. Applicant’s former wife now lives with him. (Tr. 32)

Applicant explained that his tax debts and filing problems arose from two circumstances, both arising after his 2009 divorce. First, he stated that for several years, he had not received his IRS form W-2 related to his Navy pension, from the Defense Finance Accounting Service (DFAS). He acknowledged at hearing that, though he received W-2’s regularly from his employer, he never reported to DFAS that he had moved in 2010, which could explain why he did not receive his Navy W-2s. (Tr. 30-31; GE 1; GE 2) Since he did not have his Navy W-2s, he did not file his tax returns, and chose instead to wait passively until he received them. This went on for several years, through tax years 2011 to 2016. Applicant testified he procrastinated and that “it slipped my mind.” Applicant did not rectify his issues with DFAS until he prepared his interrogatory response. (Tr. 30-31, 36)

Second, Applicant also acknowledged at hearing that, although he had been divorced from his wife since 2009, he never changed his tax filing status to reflect that he was no longer married. As a result, he incurred significant federal income tax debt, since his taxes were being calculated on the basis of exemptions to which he was no longer entitled. (Tr. 44-45)

Applicant denied SOR ¶ 1.j, a 2015 wage garnishment by the IRS for \$7,115, and said he did not recall it. (Tr. 52) However, he also disclosed that garnishment on his SCA, with the exact dollar amount. (GE 1 at 34) Applicant also denied SOR ¶ 1.c, a \$3,856 state tax lien issued in 2010. Both debts are on GE 5, an incident report relating to Applicant from DOD's Joint Personnel Adjudication System (JPAS). (GE 5; Tr. 45-46) The tax lien at ¶ 1.c is no longer reflected on more recent credit reports. (GE 3, 4)

Applicant denied SOR ¶ 1.d, a \$21,279 federal tax lien, also issued in 2010. (GE 5) He testified that when he learned of the lien, he went to the bank and paid it off with a check, in full. (Tr. 48-52, 55) He provided proof of the payment after the hearing. (AE C)

Applicant denied SOR ¶ 1.i, the \$500 state tax debt from tax years 2011-2016. He paid the debt in April 2018. (AE B; Tr. 56) Applicant also stated that he does not know if he owes any additional state taxes because he was told that those returns are "in processing" with state tax authorities. They told him there are no outstanding state liens. (Tr. 33-34) He provided no state income tax returns, and no documents from state tax authorities about the status of his returns and state tax debt, even after the hearing.

Applicant said he had a tax advisor when he owned his marital home and paid a mortgage, but has not otherwise had a tax counselor or pursued credit counseling. He has not sought tax advice available to him through the military. (Tr. 69-74)

AE A is Applicant's payment agreement with the IRS, dated July 3, 2018. It references tax years 2016 (alleged) and 2017 (not alleged).<sup>3</sup> Applicant is to pay \$600 a month for six years (a total of about \$43,000), through automatic withdrawals from his checking account. His first payment was on August 10, 2018. (AE A; AE D; Tr. 42-43, 67-69) No other tax payments are documented.

AE A does not reference any other tax years. There are no other documents from the IRS in the record. Applicant's tax returns from 2011-2016 are also not in evidence. Thus, there is no documentation of what Applicant currently owes in past-due federal taxes, penalties and interest.

Applicant's supervisor attested that Applicant is responsible and trustworthy. He has integrity. He is reliable, efficient, and has an excellent work ethic. He works well

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<sup>3</sup> Applicant testified that he filed his 2017 state and federal income tax returns on time, and paid what he owed. (Tr. 31, 54) The reference in AE A to the 2017 tax year suggests that Applicant may owe past-due taxes for that year. However, there are no additional details in the record on that point, so I do not make that inference.

with others, and is an easy-going and well-liked team member. He is a “phenomenal employee.” (AE E)

## Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.”<sup>4</sup>

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 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(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. Likewise, I have not drawn 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. Under Directive ¶ E3.1.15, 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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

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<sup>4</sup> *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

extrapolation of potential, rather than actual, risk of compromise of classified information.

## **Analysis**

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

The security concern 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The guideline sets forth several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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's tax filing issues occurred after his divorce, when he failed to advise DFAS of his move, so he stopped receiving his W-2s. As a result, he decided not to file several years' worth of state and federal income tax returns (2011-2016). (SOR ¶¶ 1.a, 1.b). Applicant's federal and state income tax debt from those years (SOR ¶¶ 1.e – 1.j, 1.l) resulted from his failure to adjust his exemptions after his divorce to reflect that he was no longer married. Both circumstances were preventable, and implicate AG ¶ 19(b), given Applicant's unwillingness to act responsibly. SOR ¶ 1.j, a 2015 wage garnishment by the IRS, is also established. AG ¶¶ 19 (a), (c), and (f) also apply.

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No, 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, *neither is it directed towards*

*inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. Id.* A person 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. Aug. 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>5</sup>

SOR ¶¶ 1.c and 1.d concern two tax liens issued against Applicant, by the state and the IRS, respectively, in 2010. Applicant denied both, stating he did not recognize one and he paid the other. Both are referenced in a JPAS incident report (GE 5), and are therefore established, since they existed at one point. The 2010 federal tax lien was resolved in 2011, when Applicant paid it in full with a check. The 2010 state tax lien was likely also resolved around then as well, though this is undocumented. Both liens predate the 2011 tax year, the first year Applicant failed to timely file his returns, and the origin of those tax debts is unclear. The above AGs also apply to those allegations.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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;
- (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 perform simple due diligence after he divorced by updating his address and his tax exemptions. Rather than investigate the matter when he did not receive his Navy W-2s, he did nothing, and chose instead not to file his state and federal income tax returns for several years. These circumstances were of Applicant's

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<sup>5</sup> ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis added). See ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

own making, and he failed to act responsibly in addressing them. AG ¶ 20(b) does not apply.

Even before Applicant's tax filing issues, he had significant tax debt, as shown by the two liens issued in 2010. SOR ¶ 1.d was paid and resolved in 2011. There is no record evidence to establish that SOR ¶ 1.c, the state tax lien, has been resolved. Exactly how much Applicant currently owes in past-due federal tax debt remains unknown, as there are no state or federal tax returns in the record. However, Applicant acknowledged that he has enough ongoing federal tax debt to warrant a six-year payment plan at \$600 a month, meaning he likely owes about \$43,000. Applicant paid the \$500 he owed in state taxes from 2011 to 2016, so SOR ¶ 1.i is resolved. No other state tax debt is evident.

Applicant has not established good-faith compliance with his tax requirements to show that his prior tax issues are unlikely to recur or no longer cast doubt on his reliability, trustworthiness and judgment. Significant federal tax debt remains ongoing. AG ¶ 20(a) does not apply. Applicant has not sought credit counseling or tax assistance. AG ¶ 20(c) does not apply.

After years of being irresponsible and inattentive, Applicant was finally energized to address his overdue tax returns and tax debt when he received the Government's Interrogatories. The fact that he acted only when his clearance was imperiled raises questions about his willingness to follow the sometimes complex rules governing classified information when his personal interests are not at stake.<sup>6</sup> Even if Applicant had documented that he filed all his returns in May 2018, I cannot simply adopt a position of "no harm, no foul" or "all's well that ends well."<sup>7</sup> AG ¶ 20(d) does not apply.

Applicant provided no documented evidence of any tax returns, and showed evidence of one payment towards his federal tax repayment plan. The mere fact that Applicant made belated arrangements with appropriate tax authorities to file his returns is insufficient to apply AG ¶ 20(g).

### **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 relevant 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

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<sup>6</sup> See, e.g., ISCR Case No. 15-01070 at 4 (App. Bd. Mar. 9, 2016).

<sup>7</sup> ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015)



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 Guideline F in my whole-person analysis. Applicant has spent his entire adult life in honorable service to his country, first in the Navy for 20 years, and then for many years since then, in the defense industry. However, he has also spent his entire adult life making his living from the federal tax dollar. That background provides both mitigating and exacerbating evidence when considering his long and ongoing record of tax problems. Applicant's tax issues are also entirely self-created, and were resolvable with simple due diligence after his divorce. Applicant's demonstrated pattern of unwillingness to comply with his legal obligations until his eligibility for a security clearance was at stake raises serious security concerns. Overall, the record evidence leaves me with questions and doubts as to Applicant's continued eligibility for access to classified information. Applicant did not mitigate financial security concerns.

### **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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.k:	Against Applicant
Subparagraph 1.l:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record, it is not clearly consistent with the interests of national security to grant Applicant eligibility for continued access to classified information. Eligibility for access to classified information is denied.

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Braden M. Murphy  
Administrative Judge