



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



In the matter of: )  
)  
) ISCR Case No. 18-00987  
)  
Applicant for Security Clearance )

**Appearances**

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

01/24/2019

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant 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 19, 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. 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 on June 8, 2017.

Applicant answered the SOR on May 12, 2018, and requested a hearing before an administrative judge. The case was assigned to me on October 1, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 12, 2018, scheduling the hearing for November 7, 2018. I convened the hearing as scheduled. The

Government offered exhibits (GE) 1 through 3. Applicant offered Applicant's Exhibits (AE) A and B. There were no objections and all of the exhibits were admitted into evidence. The record was held open until November 26, 2018, to permit Applicant to submit additional documents, which he did. They were marked AE C through H. There were no objections and they were admitted into evidence and the record closed. DOHA received the transcript on November 16, 2018.

### **Findings of Fact**

Applicant admitted both SOR allegations. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 55 years old. He earned bachelor's degree in 1985. He married in 1989 and divorced in 2011. His children from the marriage are ages 27, 23, 19, and 15 years old. Applicant remarried in 2012. He has four adult stepchildren. Applicant has worked for his current employer, a federal contractor since May 2017.<sup>1</sup>

Applicant worked in a foreign country and was employed by a foreign company from June 2013 until March 2017. He testified that in the past, he completed his federal income tax returns without assistance. He testified it was difficult to file his tax returns when living in a foreign country due to the foreign tax issues. He said his employer provided an attorney for him, but he was not a competent tax attorney and did not complete his obligation. Applicant further stated he did not want to file his federal tax returns because he knew they would be incorrect. He believed his U.S. tax debt would be minimal and most of his taxes would be owed to the foreign country where he was working. He explained that he was not able to get his attorney to understand the complexity of the issue. He also stated that he did not want to pay for a competent tax professional because the other one was being provided by his employer.<sup>2</sup>

Applicant testified that he failed to timely file his 2013 through 2016 federal income tax returns. He said he returned to the United States twice a year, but did not use that opportunity to file his tax returns. He did not seek the assistance of tax professionals because of anxiety over his tax situation. He stated he procrastinated and each year he ignored the problem and told himself he would address the issues in the future. He was aware of his legal tax obligations. When he left employment in the foreign country and returned to the United States in April 2017, he said he thought about filing his tax returns, but failed to do promptly.<sup>3</sup>

Applicant completed a security clearance application (SCA) in April 2017. He was interviewed by a government investigator in July 2017 and his delinquent tax returns were discussed. He completed government interrogatories in March 2018. In response to the

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<sup>1</sup> Tr. 18, 24-26.

<sup>2</sup> Tr. 25-28, 35-37.

<sup>3</sup> Tr. 37-40.

interrogatories, he provided IRS transcripts for tax years 2013, 2014, 2015, and 2016 verifying he failed to file his tax returns for these years. In May 2018, he filed federal income tax returns for 2013, 2014, 2015, 2016, and 2017. He provided an IRS document that shows he owes \$7,832 for tax year 2013. He provided a document to show he made one payment of \$500 in November 20, 2018 on that tax debt. He provided documents confirming an agreement with the IRS to pay \$500 a month. He provided IRS documents to show he did not owe taxes for the other tax years.<sup>4</sup>

Applicant's explanation for his failure to timely file federal income tax returns for multiple years and his failure to pay foreign taxes was because his father passed away in June 2013, and his father-in-law passed away in October 2015. After each death, he returned to the United States. He said these trips were unexpected expenses.<sup>5</sup>

Applicant disclosed in his SCA that he traveled for tourism to European countries in May 2014, September 2014, March 2015, July 2015, November 2015, April 2016, July 2016, August 2016, and March 2017. Applicant's wife provided a letter and noted these were relatively inexpensive trips.<sup>6</sup>

Applicant admitted he was responsible for paying taxes in the foreign country where he was living. He explained that he did not want to file his U.S. federal income tax returns because of the complexity with his foreign tax returns. He testified that he was paying very little toward his foreign income taxes because he had a significant child support obligation in 2013 that he was paying. He said he owed so much money that the United States would not issue him a passport. His ex-wife agreed to waive the support obligation if he agreed to make certain payments, which he did.<sup>7</sup> He testified that at the time his foreign taxes were not being paid. He was required to budget throughout the year so he could pay the taxes at the end of the tax year, but he failed to do so. At one point, personnel from the foreign tax authority came to his house and made him pay 5,000£, which he did. He continued to procrastinate and did not pay his foreign taxes. He admitted he paid minimal foreign taxes the years he was required to pay foreign taxes.<sup>8</sup>

Applicant testified that he paid approximately 33,000£ for his foreign taxes. His final two months of income, from February and March 2017 before he returned to the U.S., was seized by the foreign government. He said he had no money to live on during this period. He went to see a new attorney in the country where he was living, who worked

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<sup>4</sup> Tr. 46-55, 80-83; GE 1, 2, 3; AE A, B, C, F, G.

<sup>5</sup> Tr. 76-79.

<sup>6</sup> Tr. 78-79; GE 1; AE D.

<sup>7</sup> Applicant's child support is not an issue, except as he testified how it may impacted his ability to pay his foreign tax debt. I have not considered any derogatory information that was not alleged for disqualifying purposes. I may consider it when making a credibility determination, in applying mitigating conditions, and in my whole-person analysis.

<sup>8</sup> Tr. 35-37, 40-45, 57-68, 72-76.

with the foreign tax authorities, so he could receive some income while living there. Once he returned to the United States, Applicant testified he did not feel a sense of urgency to resolve the foreign tax issues. After he received the government interrogatories, he began pursuing resolution of his foreign tax debt.<sup>9</sup>

Applicant testified and provided a copy of a July 2018 letter from his foreign attorney who requested that Applicant provide him certain information. At the time of his hearing, Applicant had not yet responded to the request. Part of the letter included an accounting of the tax balance owed by Applicant, which noted credit for amounts he previously paid. The amount owed in dollars based on exchange rates from November 2018 is approximately \$142,532. In his post-hearing statement, Applicant said that he was in contact with his attorney and requested that he work out a payment agreement with the foreign tax authority with payments beginning in January 2019.<sup>10</sup>

Applicant testified that he would propose to pay \$1,000 a month for ten years to resolve his foreign tax debt. He stated his finances are stable. Applicant's wife provided a character letter. She provided insight into their travels and finances when they had to return to the United States due to family matters. She considers him to be a good and devoted father. She noted he has great respect for the law and follows the rules.<sup>11</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

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<sup>9</sup> Tr. 57-68, 81-82.

<sup>10</sup> Tr. 82, 85-89; AE C; AE E is the letter dated July 19, 2018. Applicant translated the document.

<sup>11</sup> Tr. 68-69; AE D.

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 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:

- (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 failed to timely file federal income tax returns for tax years 2013 through 2016. He is indebted to a foreign government for delinquent taxes in the approximate amount of more than \$117,000 for tax years 2013 through 2016. 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 his federal income tax returns for tax years 2013 through 2016. Despite being on notice of the Government's security concerns since he completed his SCA in 2017, he did not file these tax returns until May 2018, after receiving government interrogatories. Applicant intentionally failed to pay his foreign taxes from 2013 through 2016, and was aware of the foreign tax debt. Foreign tax authorities came

to his house for payment. His income was seized for two months before he left the country in 2017. His attorney sent Applicant a letter in July 2018, requesting that he provide certain documents. At the time of the hearing, Applicant testified he had not yet responded to the attorney's request. Applicant's debts are ongoing and recent. AG 20(a) does not apply.

Applicant indicated that because his federal income tax returns were complex due to the foreign tax implications, he procrastinated in completing them. He also explained that as the result of two family emergencies, he failed to timely file them. I did not find these factors were beyond his control due to the number of years he failed to complete his tax obligations. I did not find his explanation that his attorney was not competent, and therefore the situation was beyond his control. Applicant procrastinated for many years in addressing his domestic and foreign tax obligations. Even if these factors were beyond his control, he failed to act responsibly. AG ¶ 20(b) does not apply.

No evidence was submitted to show Applicant received financial counseling. He has not made payments toward his foreign tax debt. There are no clear indications that his financial problems are under control. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant failed to timely file 2013 through 2016 federal income tax returns. He subsequently filed these returns in May 2018. AG ¶ 20(g) minimally applies, as he did not file them until after he received the SOR. Applicant provided some evidence that he has a foreign attorney who is working for him. However, Applicant has procrastinated in providing his attorney with requested information necessary to resolve his foreign tax debt. Nor has Applicant provided documents to show he has a payment plan or made any payments on the plan. AG ¶ 20(g) does not apply to his foreign tax debt.

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

Applicant failed to timely file his 2013 through 2016 federal income tax returns. Despite being aware of the security concerns, he did not file his returns until after he was confronted with government interrogatories in April 2018. Applicant failed to pay his foreign income taxes for tax years 2013 through 2016. He left the country and did not resolve them. His income was seized for the last two months he lived abroad to pay his delinquent taxes. He owes a significant amount of taxes to that country. He has made minimal efforts to resolve this debt. The DOHA Appeal Board has held that:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with these things is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). 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>12</sup>

Applicant's history of non-compliance with a fundamental legal obligation to file his federal tax returns and to pay his foreign 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

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



## **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.

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Carol G. Ricciardello  
Administrative Judge