



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



In the matter of: )  
)  
) ISCR Case No. 18-01830  
)  
Applicant for Security Clearance )

**Appearances**

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

03/08/2019

**Decision**

GOLDSTEIN, Jennifer, Administrative Judge:

Applicant presented evidence sufficient to mitigate the security concerns arising under Guidelines F for financial considerations and E for personal conduct. His late filing of his tax returns for tax years 2015, 2016, and 2017, were attributable to a diagnosed mental condition and he is receiving treatment for that condition. Further, he voluntarily corrected his omission of his failure to file those returns on his August 2016 security clearance application during his security clearance interview. National security eligibility for access to classified information is granted.

**Statement of the Case**

On August 17, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, financial considerations and E, personal conduct. 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 in writing (Answer) on October 29, 2018, and requested a decision based on the administrative record. Department Counsel submitted the Government's File of Relevant Material (FORM) on November 27, 2018. Applicant received it on December 7, 2018. The Government's evidence is identified as Items 1 through 5. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. On January 27, 2019, Applicant submitted a 25-page response to the FORM (Response). Items 1 through 5 and the Response are admitted into the record without objection. The case was assigned to me on March 4, 2019.

### **Procedural Ruling**

Pursuant to Additional Procedural Guidance ¶¶ E3.1.2, E3.1.3, E3.1.7, and E3.1.13 of the Directive, Department Counsel moved in the FORM to amend the SOR issued to Applicant to add an additional allegation, to conform to the evidence. Applicant raised no objections to the amendment in his Response and I hereby grant the motion. The SOR ¶ 1 is amended to include the following:

b. Applicant failed to timely file, as required, Federal income tax returns for the tax year 2017.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a and 2.a, with clarifications. Applicant failed to admit or deny the new allegation, SOR ¶ 1.b, in his Response. As a result, SOR ¶ 1.b will be treated as a denial. The SOR alleged Applicant failed to file his Federal income tax returns for tax years 2015, 2016, and 2017. The SOR also alleged that Applicant failed to disclose his delinquent tax filings when he completed his security clearance application in August 2016. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 39 years old. He is single and has no children. He has been employed in government service either as a contractor or a civilian employee since 2002. He was awarded the Meritorious Civilian Service Award in September 2014, for his work with the U.S. Navy. He has held a security clearance since 2006, without incident. (Response; Answer; Item 3.)

Applicant has been diagnosed with Social Anxiety Disorder. His "presenting problems include marked fear or anxiety about possible scrutiny by others, fear of being rejected by others, and avoiding situations that might lead to those fears." (Response.) He has been receiving treatment for this condition weekly since August 2018. His board certified counselor opined that Applicant is "making the necessary changes to live a

healthier lifestyle and is deeply committed to his treatment and living a life free of anxiety.” She gave him a favorable prognosis. He voluntarily sought treatment for this condition, and self-reported it to the government. (Response.)

Applicant explained that prior to receiving treatment his anxiety caused him to “withdraw or to become inactive during uncomfortable situations rather than dealing with them directly.” As a result, when he realized he forgot to timely file his 2015 Federal income taxes, his anxiety condition caused him “to ignore [his] oversight rather than [to] immediately file [his] tax returns.” (Response.) With the help of counseling, he has developed tools to cope with his anxiety.

Applicant failed to timely file his 2015 and 2016 Federal income tax returns. He documented that they were filed, along with his 2017 Federal income tax return on April 25, 2018. His 2017 Federal tax returns were filed seven days late, as that return was due on April 17, 2018.<sup>1</sup> Applicant received refunds for the 2015 through 2017 tax years. He is now current on his required tax filings, and promised to timely file his income tax returns in a timely manner in the future. His new toolset for managing anxiety will aid him in following that requirement. (Answer; Response; Item 4; Item 5.)

When Applicant completed his security clearance Application on August 16, 2016, he answered “no” to question 26, which asked if he had failed to file or pay Federal, state, or other taxes as required by law. However, when Applicant was asked this same question during his subject interview on January 19, 2018, Applicant answered, “yes” and voluntarily disclosed that he had not filed his 2015 or 2016 Federal income tax returns. He explained that his failure to list his delinquent 2015 tax returns on his security clearance application was due to an oversight.<sup>2</sup> (Response; Item 5.)

## **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 AG 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 AG ¶ 2 describing 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,

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<sup>1</sup> 2018 IRS filing date obtained from <https://www.irs.gov/newsroom/irs-announces-2018-tax-filing-season-opens-with-april-17-deadline-155-million-tax-returns-projected-70-percent-expect-refunds>.

<sup>2</sup> Applicant was not required to disclose his delinquent 2016 Federal tax return, as it was not yet delinquent at the time he completed the security clearance application.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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.

Finally, Section 7 of EO 10865 provides that adverse 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 is potentially applicable:

(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 his Federal income tax returns in 2015, 2016, and 2017. There is sufficient evidence to raise substantial security concerns under the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from Applicant's 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; 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.

The DOHA Appeal Board has held that a person who fails to abide by legal obligations, such as filing returns and paying taxes when due, does not exhibit the good judgment and reliability expected of those with access to national security information. *See, e.g.*, ISCR Case No. 17-01256 at 3 (App. Bd. Aug. 3, 2018). Applicant readily admitted that he suffered from a defect in judgment at the time he failed to comply with his responsibilities to file his Federal income tax returns. However, Applicant's failure to file his 2015 through 2017 Federal income tax returns in a timely manner was attributable to his diagnosed anxiety disorder. He has since sought treatment for his condition, is showing progress, and has a good prognosis. Similar lapses in following the tax filing requirements are unlikely to recur, as evidenced by the letter from his counselor documenting his treatment progress. Further, all of his delinquent tax returns were filed prior to receiving the SOR. He owes nothing to the IRS. AG ¶¶ 20(a) and 20(g) provide mitigation.

## **Guideline E, Personal Conduct**

The security concern relating to the guideline for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following is potentially applicable in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant omitted his failure to file his 2015 Federal income tax return on his August 2016 security clearance application. However, there is no evidence that Applicant did so intentionally. Applicant fully disclosed his failure to file his 2015 and 2016 Federal income tax returns when going over his 2016 security clearance application with an investigator, before being confronted with the facts. The evidence is insufficient to raise AG ¶ 16(a) with respect to that omission.

## **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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 national security eligibility 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 pertinent facts and circumstances surrounding this case. Applicant has successfully held a security clearance since 2006, without incident. He was awarded the Meritorious Civilian Service Award in September 2014. He has sought and received treatment for his diagnosed anxiety disorder and is making sufficient progress to garner a favorable prognosis. He is committed to following through on his responsibilities, now that he has the tools to manage his anxiety disorder. The record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guidelines F and E.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant access to classified information. National security eligibility is granted.

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Jennifer I. Goldstein  
Administrative Judge