



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



In the matter of:	)	
	)	
-----	)	ISCR Case: 19-00279
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Adrienne Driskill, Esquire, Department Counsel  
For Applicant: *Pro se*

September 30, 2019

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**Decision**  
\_\_\_\_\_

ROSS, Wilford H., Administrative Judge:

Applicant did not file her Federal or state tax returns for tax years 2010 through 2017. She did not submit evidence to show that any of the returns have now been filed. Resulting security concerns were not mitigated. Based upon a review of the pleadings, exhibits, and testimony, national security eligibility for access to classified information is denied.

**Statement of Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on April 19, 2017. (Government Exhibit 1.) On February 19, 2019, 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 action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security*

*Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective within the Department of Defense on June 8, 2017.

Applicant answered the SOR, with attachments, on February 22, 2018, and requested a hearing before an administrative judge. (Answer.) The Government was ready to proceed on May 14, 2019. The case was assigned to me on May 21, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 20, 2019, scheduling the hearing for July 30, 2019. The hearing was convened as scheduled. The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on her own behalf. DOHA received the transcript of the hearing (Tr.) on August 7, 2019.

### **Findings of Fact**

Applicant is 58 years old and single. She is a high school graduate and has worked for her current employer since 2012. She has never held a security clearance. (Government Exhibit 1 at Sections 13A and 17; Tr. 15-16.)

#### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleged in this paragraph that Applicant is ineligible for clearance because she has failed to meet her financial obligations and is therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted both SOR allegations (1.a and 1.b), with attachments and explanations.

1.a. Applicant admitted that she had not filed her Federal tax returns in a timely manner for tax years 2010 through 2017.

1.b. Applicant admitted that she had not filed her state tax returns in a timely manner for at least tax years 2010 through 2017.

In Section 26 of Applicant's e-QIP (Government Exhibit 1) she admitted that she had not filed Federal or state taxes for tax years 2010 through 2016. Asked for the reason she stated, "The normal withholding/tax credits from previous years would adequately satisfy the taxes owed," and, "I have always insured that the normal withholding would adequately satisfy the taxes owed."

Applicant was interviewed by an investigator from the Office of Personnel Management (OPM) on May 9, 2018. During that interview Applicant was asked about her failure to file Federal or state tax returns from 2010 to 2016. The report stated:

The subject [Applicant] has not filed for her federal or state taxes since 2010 out of stupidity and feels embarrassed by it. The subject also hasn't filed because she believes she has gotten a refund each year and figured it would all balance out. Regardless, the subject intends on filing within the next few months and settling anything she might owe to include [any] penalty or fine. In the meantime, the subject has been gathering paperwork to prepare and has also contacted the IRS to request her transcripts for each year. (Government Exhibit 2 at 3.)

Interrogatories were propounded to Applicant by DOHA on August 3, 2018. Applicant responded to them on December 18, 2018. Her response included IRS transcripts from the tax years 2010 to 2017. The transcripts for tax years 2010 and 2013 through 2017 state, "Requested data not found." The transcripts for tax years 2011 and 2012 do not show any information as to Applicant's income, or tax information. In December 2012 Applicant was sent an inquiry by the IRS as to why she had not filed her 2011 tax return. She wrote in her Answer, "State . . . did not provide any data since returns were not filed and money was not owed." (Government Exhibit 3.)

In her Answer and at the hearing, Applicant argued that she did not have to file a tax return because she was owed a refund. In her Answer Applicant set out for each tax year what she purported to be her income, the standard deduction, her taxable income, the tax withheld, and any proposed refund she was owed. She did this for both the Federal income taxes and her state income taxes. Applicant was unemployed in 2011 and 2012 and did not have any income information for those years. She stated that she wanted to have complete information for all tax years before filing her tax returns. Applicant did not provide pay stubs, W-2 forms or other documentation to support her statements as to her Federal or state income taxes. (Tr. 16-29.)

In addition, Applicant relied on a statement from the IRS website, "There's no penalty for failure to file if you're due a refund." (Internal Revenue Service, *Topic 153 What to Do if You Haven't Filed Your Return*, <https://www.irs.gov/taxtopics/tc153> (last updated Aug. 1, 2019). However, Applicant was reminded that the law states all persons whose income is above the standard deduction must file a tax return. (Internal Revenue Service, *Publication 501; Dependents, Standard Deduction, and Filing Information; Filing Requirements for Most Taxpayers 3*, <https://www.irs.gov/pub/irs-pdf/p501.pdf> (accessed September 24, 2019). (Tr. 26-27.)

When pressed, Applicant admitted that her conduct did not show good judgment. She admitted to feeling "stuck," and unable to move forward in filing her tax returns. (Tr. 29.)

## Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## Analysis

### Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes one condition that could raise security concerns and may be disqualifying in this case:

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay Federal, state, or local income tax as required.

Applicant failed to timely file Federal and state tax returns, as required, for at least eight years. These facts establish prima facie support for the foregoing disqualifying condition, and shift the burden to Applicant to mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's failure to timely file tax returns:

(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, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; 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 did not file eight years of Federal and state income tax returns. In addition, at the hearing she showed no intention of filing them in the foreseeable future. She has known for at least two years of the Government's concern, yet has taken no steps to resolve that concern. It may be true that Applicant was owed refunds for the affected tax years, but that does not obviate the requirement that she file tax returns. In addition, she failed to present any evidence that the argument she made with regard to her Federal returns also applied to her state returns. The conduct is current and continuing. There is no evidence that Applicant failed to file the tax returns due to circumstances beyond her control. Her unwillingness to abide by income tax rules and regulations that apply to all cast doubt on her reliability and trustworthiness. Applicant did not mitigate her tax issues. Guideline F is found against Applicant.

### **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 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.

According to 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 applicable 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 did not provide sufficient evidence to show that she would file her tax returns in the near future. The potential for pressure, exploitation, or duress remains undiminished. Overall, the evidence creates substantial doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. She failed to meet her burden to mitigate the security concerns arising under the guideline for financial considerations.

### **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:

AGAINST APPLICANT

Subparagraphs 1.a and 1.b:

Against Applicant

### **Conclusion**

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

Wilford H. Ross  
Administrative Judge