



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



In the matter of: )  
)  
) ISCR Case No. 18-02799  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andre Gregorian, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

03/10/2020

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**Decision**

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MURPHY, Braden M., Administrative Judge:

Applicant failed to timely file most of his federal income tax returns between tax years 2004 and 2010. He also failed to timely file state income tax returns for tax years 2010-2016. Given his long and recent pattern of failures to comply with federal and state tax requirements, Applicant did not provide sufficient evidence to mitigate the resulting security concerns under Guideline F for financial considerations. Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on August 26, 2015. On December 3, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant alleging security concerns under Guideline F, financial considerations. The DOD CAF acted 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 January 4, 2019. He included documents that I marked as Answer Attachments (Ans. Att.) 1-3. He initially requested a decision based on the written record. He subsequently requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on October 24, 2019, after he retained counsel. The case was assigned to me on November 20, 2019. On December 16, 2019, DOHA issued a notice scheduling the hearing for January 8, 2020.

The hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1-6, which I admitted without objection. Applicant testified and submitted Applicant's Exhibits (AE) A-L, which I admitted without objection. I held the record open to allow him the opportunity to submit additional documentation. After the hearing, Applicant provided account transcripts from the IRS for tax years 2014-2018 (AE M) and various receipts from the postal service and a tax preparation company (AE N), both admitted without objection. DOHA received the hearing transcript on January 16, 2020. The record closed on January 29, 2020.

### **Findings of Fact**

Applicant admitted both SOR allegations, ¶¶ 1.a and 1.b, with explanations and documentation. His admissions 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 62 years old. He has never married and he has no children. He earned a bachelor's degree in 1981. He has worked for the same employer, a large defense contractor, ever since. He installs systems on submarines. He has had a clearance since 1982. He has never had any security violations or incidents. (GE 1; AE A-E; Tr. 25-28, 42, 44, 68) Recent work evaluations show he has met or exceeded all professional expectations. (AE E)

Applicant lived and worked in State 1 from 1994 to October 2004. (GE 1 at 12; Tr. 68) From October 2004 to June 2010, he lived and worked in State 2, which has no state income tax. (GE 2 at 8-9; Tr. 42, 46-47, 68-69) From July 2010 to September 2017, he lived and worked in State 3, which has a state income tax. (GE 4; Tr. 43, 69) Since September 2017, he has lived and worked in State 4 (Tr. 43, 69).

SOR ¶ 1.a alleges that Applicant failed to timely file federal income tax returns as required for tax year 2004 and for tax years 2006-2010. SOR ¶ 1.b alleges that Applicant failed to timely file State 3 income tax returns as required for tax years 2011-2016. This is based on the information he provided in security clearance applications and interrogatory responses. (Ans. Att. 2, Ans. Att. 3; GE 3, GE 4)

Applicant testified that before 2004, he always filed his tax returns on time. (Tr. 43) When he submitted an SCA in April 2010 for his previous clearance investigation, he disclosed that he had “unfiled federal tax returns from 2004 to present” as well as an unfiled 2004 State 1 income tax return (not alleged). (GE 1 at 12, 33, 34, 42; Tr. 45, 72-73)

Applicant discussed his unfiled income tax returns during his 2010 background interview. He said that his tax filing issues were because of “the hassle of the paperwork” and because he moved frequently for his job. (GE 5 at 3; Tr. 53) His 2010 clearance application was subsequently granted. (GE 2 at 23)

On his 2015 SCA, Applicant reported additional tax issues. As before, he reported “unfiled federal returns for 2004 to 2010.” He also referenced unfiled State 3 tax returns from 2010-2014. He explained that his tax filing issues “started when banks ceased sending out Form 1099-INT for small amounts of interest.” (GE 2 at 24) He also stated,

Frequent moves, long distance, and the small amounts involved left me disinclined to chase it all down and unwilling to swear to the accuracy of my estimates for tax years 2010 and 2011. Not filing 2012, 2013, and 2014 is a combination of laziness and not receiving any letters of protest. (GE 2 at 24)

Applicant expanded on this explanation in his Answer and his hearing testimony. He testified that he did not want to underreport his interest income from his various bank accounts, when those banks did not him provide 1099-INT forms with exact details. (Answer; Tr. 59-61, 64, 84-85) He said to do so would be “lying on a government form.” (Tr. 62) He did not contact his banks to learn why he did not get a Form 1099-INT, nor did he contact the IRS to discuss his options beyond not filing his tax return because he lacked such forms. (Tr. 63) He was not aware that banks do not issue 1099-INT forms when the annual interest a taxpayer receives from an account is so small as to be not reportable. (Tr. 59-60; Answer)

Applicant acknowledged that the IRS does not have a duty to inform him of his own duty to file an annual return. From before his tax issues began, he was aware of the significance of the April 15 annual federal tax deadline, and said it is “crystal clear these days.” (Tr. 81, 88-89)

Applicant’s IRS account transcripts show that, as of 2018, no federal tax return had been filed for tax years 2004, 2006, 2007, or 2010. The IRS prepared substitute tax returns for tax years 2008 and 2009. (GE 3; GE 4; Tr. 56) (SOR ¶ 1.a)

Applicant testified that he did not know whether he had ever filed his federal income tax returns for tax years 2004, 2006, 2007, or 2008. (Tr. 54-55) He testified that he had filed his 2009 and 2010 federal income tax returns, but provided no updated

corroborating documentation. He believes he filed his past due returns in 2017, after prompting by his background investigator. (Tr. (Tr. 36-38), 74-75)

Applicant filed his federal income tax returns on time for tax years 2005, 2011, 2013, and 2014, and he filed his 2012 federal return in late April 2013 (a few days late). (GE 4) He also documented that his subsequent federal returns (2014-2018) have all been filed on time. (AE I, M; Tr. 44)

As to SOR ¶ 1.b, the documentation Applicant provided in a 2018 interrogatory response, from the State 3 tax authority, shows that his 2011-2016 returns had been filed, but were filed late. (GE 4 at 12; Tr. 57) Applicant testified that he filed those returns in 2017, when he moved to State 4. He acknowledged that he filed the returns due to “pressure from the investigator” (Tr. 58, 63, 74-75, 77)

Applicant explained that his late filing of his State 3 tax returns was due to “habit,” because he moved there from State 2, a state with no state income tax return). (Tr. 52, 76, 85) As of March 2018, Applicant was in compliance with State 3 tax authorities and owed no taxes or other liability there. (GE 4 at 14; Tr. 39)

Applicant provided a variety of reasons why he did not file his tax returns. In his background interviews, he said it was because he was “lazy.” (GE 6 at 4; Tr. 40, 65) He also said he rarely owed money in taxes. (Tr. 30-31; AE G, AE H, AE I)

In his Answer and at hearing, Applicant also asserted, for the first time, that he has a medical condition that has caused him severe concentration problems. Those issues, in turn, made it difficult for him to prepare and file his tax returns on time. (Answer; Tr. 41-42, 85) He was diagnosed with the condition in 2011. (Ans. Att. 1; Tr. 65-66), a year that post-dates all of the tax years alleged in SOR ¶ 1.a. Applicant asserted that his condition went undiagnosed for some time.

Applicant also provided no documentation to corroborate the assertion that the medical condition causes concentration problems. (Tr. 65, 69) He acknowledged during his testimony that none of his own doctors had ever told him that. (Tr. 70) He also acknowledged that he had never had concentration problems in other areas of his life. (Tr. 70) He said his medical condition is under control, and his concentration has improved. (Tr. 42, 69)

Applicant testified at hearing that he is current on his tax filings, including with State 4, where he now lives. (Tr. 28, 83) He earns over \$130,000 annually. (Tr. 28) He has excellent credit (AE F) and between \$80,000 and \$90,000 in savings. (Tr. 33; AE H, AE J, AE K, AE L) He has no difficulty paying his bills. (Tr. 44)

Post-hearing, Applicant provided receipts from a nationally known tax preparation service showing a \$600 payment and receipts for certified mailings to the IRS, all dated January 2020. (AE N) What was prepared by the tax service and what was mailed to the IRS is not clear, since it is not in the record.

## Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

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 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. 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.

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

(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 his federal income tax returns from tax years 2004-2010 (but for tax year 2005, which was timely filed). Applicant also did not timely file his State 3 income tax returns for tax years 2011-2016. SOR ¶¶ 1.a and 1.b are established by the record evidence, and AG ¶¶ 19(c) and 19(f) both apply.

In ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis added), the DOHA appeal board detailed the security concern about applicants who fail to file their tax returns as follows:

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).

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;

(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 disclosed on his SCAs in both 2010 and 2015 that he had failed to file his federal income tax returns from 2004 to 2010. On his 2015 SCA, he also disclosed failing to file several years of State 3 income tax returns as well. His State 3 tax issues went beyond that, from tax year 2011 to 2016.

Applicant responded to DOHA interrogatories in 2018, and provided up-to-date documentation from the IRS about the status of his tax returns. The IRS account transcripts he provided show that no federal tax return had been filed for tax years 2004, 2006, 2007, or 2010, and show that the IRS prepared substitute tax returns for tax years 2008 and 2009.

At his hearing, Applicant testified that he did not know whether he had ever filed his federal income tax returns for tax years 2004, 2006, 2007, or 2008. He testified that he had filed his 2009 and 2010 federal income tax returns, but provided no updated documentation to corroborate this. He also testified that he is current on his taxes. Applicant filed his past-due State 3 tax returns in 2017. He believes he filed his past-due federal returns in 2017 as well, though this is not documented. (It is also contradicted by

his 2018 interrogatory responses, which do not show that those returns were, in fact, filed).

It is reasonable to expect applicants to present documentation about the satisfaction of individual debts (or, as here, about the satisfaction of their tax filing requirements). ISCR Case No. 07-10310 at 2 (App. Bd. Jul. 30, 2008)(citing ISCR Case No. 06-17520 at 2 (App. Bd. Sept. 20, 2007)). As to the federal tax returns at issue in SOR ¶ 1.a, Applicant did not provide such documentation.

Applicant's State 3 tax returns at issue (2011-2016) were filed, though they were filed late. He acknowledged that he filed those returns because he was pressured to do so by the interviewing investigator. The fact that Applicant acted to cure his unfiled State 3 returns (and perhaps his older, unfiled federal returns as well) 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, as well as rules and regulations in general. See, e.g., ISCR Case No. 15-01070 at 4 (App. Bd. Mar. 9, 2016). Further, even if Applicant had documented that he has now filed all his past-due returns, I cannot simply adopt a position of "no harm, no foul" or "all's well that ends well." ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015). AG ¶ 20(d) does not apply.

Applicant's federal tax issues relate to tax years 2004, and 2006-2010, a number of years ago. Though the current status of those returns is largely undocumented, Applicant has been compliant with federal filing requirements ever since. However, Applicant has had two separate timeframes of lengthy non-compliance with state and federal tax return filing requirements, going back to over 15 years ago. He has not established a track record of 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, judgment, and trustworthiness. AG ¶ 20(a) does not fully apply. The lack of documentation in the record to verify that Applicant has fully cured his past-due federal income tax returns precludes a conclusion that AG ¶¶ 20(c) or 20(g) should fully apply.

### **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.

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 had a long and successful career in the defense industry, with a clearance. However, he has had problems complying with state and federal income tax filing requirements going back many years, over two separate security clearance adjudications. He gave several reasons for his lack of action, not all of which were credible, and none of which were enough to mitigate his conduct. Given his long and recent pattern of repeated failure to comply with federal and state tax filing requirements, Applicant did not provide sufficient evidence to mitigate the security concerns that arose from his conduct. Overall, the record evidence leaves me with questions and doubts as to Applicant's continued eligibility for access to classified information.

### **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

### **Conclusion**

In light of all of the circumstances presented, 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