



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



In the matter of: )  
)  
) ISCR Case No. 19-01343  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

01/30/2020

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On July 22, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on August 16, 2019, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on October 15, 2019, and reassigned to me on January 8, 2020.

The hearing was convened as scheduled on January 13, 2020. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through C, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that I have marked AE D through F and admitted without objection.

## Findings of Fact

Applicant is a 52-year-old self-employed subcontractor of a defense contractor. He seeks to retain a security clearance, which he has held intermittently for more than 30 years. He is a high school graduate, and he completed a four-year apprenticeship. He has never married, and he has no children. (Transcript (Tr.) at 27, 36, 42; GE 1)

Applicant did not pay all his federal income taxes when they were due for tax years 2011 and 2013. The IRS transferred \$80 from his 2016 credits and \$2,037 from his 2018 credits to pay his 2011 taxes. The IRS transferred \$716 from his 2016 credits and \$954 from his 2018 credits to pay his 2013 taxes. (GE 2)

Applicant made a large withdrawal from a 401(k) retirement plan in 2014, which he used in an unsuccessful attempt to be a "day trader." He filed his 2014 federal income tax return on time, but he did not understand the consequences of his 401(k) withdrawal, and he did not report it as income. The 2014 IRS tax transcript reported that \$3,083 and \$20,568 were "W-2 or 1099 withholding." It is likely that \$3,083 was the normal withholding from his paycheck and \$20,568 was withheld from the 401(k) disbursement. He paid an additional \$1,576 with his return. The IRS assessed additional taxes, penalties, and interest in April 2017. (Tr. at 15-18, 28-35; Applicant's response to SOR; GE 1-3; AE A)

The IRS transferred \$2,023 from his 2015 credits for his 2014 taxes. In June 2019, the balance in taxes, penalties, and interest was \$24,017. Applicant made five monthly \$350 payments between August 2019 and December 2019, leaving a balance of \$22,784. He paid \$22,500 to the IRS on January 14, 2020, to pay all or almost all of what was owed for 2014. (Tr. at 22-24; GE 2; AE A, B, D-F)

Applicant did not file his federal and state income tax returns when they were due for tax years 2015 through 2017. He stated that he was traveling extensively for work and that he was too busy. He reported his failure to file tax returns for 2016 and 2017 on a Questionnaire for National Security Positions (SF 86) that he submitted in July 2018. He wrote that he failed to file the returns because he was "out of town." He also wrote: "As for the Federal Tax, at this time, nothing has been done. I feel that I am due a refund for this tax year so it should not create a problem by filing late." He also reported that he owed "\$20,000 (Estimated)" for tax year 2014, and that "[a]ny following tax refund has automatically been applied to this debt." (Tr. at 15, 21, 36; Applicant's response to SOR; GE 1-3; AE A)

Applicant was interviewed for his background investigation in October 2018. He discussed his unfiled tax returns and his unpaid taxes. He stated that he planned to file the returns in 2019 when he files his 2018 returns. He stated that he talked to an IRS representative about the taxes owed for 2014, and was told the taxes were considered uncollectable by the IRS. This is consistent with the IRS transcript for 2014 that reported on July 3, 2017: "Balance due account currently uncollectable." The tax transcript shows that the account changed to "collectable" on August 15, 2019, shortly before it received Applicant's first \$350 payment. (Tr. at 40-41; GE 2, 3; AE A)

Applicant hired an accountant and filed his state and federal income tax returns for tax years 2015 through 2018 in April 2019. He would have been due refunds from the IRS for each year, but the IRS transferred what would have been his refunds to his back taxes. He does not owe any state taxes. His state issued refunds for tax years 2016 and 2017. (Tr. at 22, 36-37, 41, 45; GE 2-3; AE A)

Applicant lost most of the money that he invested as a day trader. He realizes it was a mistake, and he does not intend to pursue it again. He now has an accountant to handle his taxes and prepare his returns. He paid \$6,500 in estimated federal tax payments in 2019 for tax year 2019. He paid \$3,250 in estimated tax payments to his state in 2019 for tax year 2019. He credibly stated that he has learned a valuable lesson from this experience and there will no recurrence of his tax problems. (Tr. at 16, 22, 29-33, 37-38, 50; AE B-D)

### **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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."

Under Directive ¶ E3.1.14, the Government must 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." The applicant 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.

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 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.

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

(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 did not file his 2015 through 2017 federal and state income tax returns when they were due, and he did not pay his 2014 federal income taxes when they were due. AG ¶ 19(f) is applicable.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following is potentially applicable:

(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's failure to file his tax returns and pay his taxes when required raises questions about his judgment and willingness to abide by rules and regulations. He filed all his returns before the SOR was issued, and he completed his payments to the IRS after the hearing. His returns indicated that he was due refunds for each year, which were applied to his back taxes.

AG ¶ 20(g) is applicable, but that does not end the discussion. An applicant who begins to resolve his or her financial problems only after being placed on notice that his or her clearance is in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. See, e.g., ISCR Case No. 16-03187 at 4 (App. Bd. Aug. 1, 2018). I found Applicant to be honest and truthful, but unsophisticated about financial matters and lax about his legal requirement to file his tax returns and pay his taxes in a timely manner. I am convinced that he has learned a valuable and costly lesson, and that all future returns and taxes will be filed and paid on time. Security concerns about Applicant's finances are mitigated.

### **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 have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations 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: For Applicant

Subparagraphs 1.a-1.c: For Applicant

## **Conclusion**

It is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge