



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



In the matter of: )  
)  
) ISCR Case No. 19-02207  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: *Pro Se*  
02/05/2020

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**Decision**

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HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns raised by his tax issues. National security eligibility for access to classified information is denied.

**History of the Case**

Applicant submitted security clearance applications (SCA) on November 26, 2018, and December 2, 2009. On July 26, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F, Financial Considerations. Applicant answered (Answer) the SOR on August 12, 2019, and requested a decision on the written record without a hearing.

On October 17, 2019, a complete copy of the File of Relevant Material (FORM), containing six Items, was mailed to Applicant. He received the FORM on October 29, 2019. 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. Applicant responded to the FORM and submitted documentation. The case was assigned to me on December 4, 2019. I marked Applicant's documentation as Applicant Exhibit (AE) A. Items 1 through 6 and AE A are admitted into evidence without objection.

## Findings of Fact

Applicant is 61 years old. He was married and divorced twice before 1995. He married his third (current) wife in 1995, and they separated in 2007. They have two children who are 20 and 22. After graduating from high school in 1976, Applicant enlisted in the U.S. Army, and he served on active duty until 1992. He served in the Army National Guard from 1996 until 1998, and then served on active duty in the Army Reserve until he honorably retired in 2006 with a 30% disability rating from the Department of Veterans Affairs. (Item 3; Item 4)

Applicant has been unemployed since November 2017, and supports himself with his military retirement pay, savings, and disability pay. He worked as a mechanic for a defense contractor in Iraq from January 2008 until November 2009. He then worked for a defense contractor in Qatar until March 2017, when he returned to the United States. (Item 3; Item 4; Item 6)

Applicant admitted in his November 2018 SCA that he had not filed his 2010 through 2017 state and federal income tax returns. He claimed he would file the 2017 returns when he filed his 2018 returns. (Item 3 at 42-43)

During his February 2019 personal subject interview (PSI), Applicant told the government investigator that he was unaware he was required to file tax returns while he was living and working overseas. However, he lived the majority of 2017 in the United States and all of 2018 in the United States. He failed to file his 2017 and 2018 tax returns, as required. (Item 2; Item 6 at 3)

In his answer to the SOR, Applicant admitted that he failed to file his state and federal income tax returns for tax years 2010 through 2017, as required. He also admitted that he failed to file his state and federal income tax returns for tax years 2009 and 2018. Applicant submitted the first page of his Internal Revenue Service (IRS) Form 1040s for tax years 2009 through 2018. Each 1040 was stamped as received by a local IRS office on August 12, 2019. He did not include complete and signed copies of the tax returns, nor did he include any state income tax returns. (Item 2)

In his response to the FORM, Applicant included an IRS transcript for tax year 2010. The transcript reflects that the IRS sent Applicant notices three times between 2012 and November 2018. Applicant also submitted his complete state and federal tax filings for tax years 2010 through 2018. These filings were all signed by Applicant on November 8, 2019. According to the filings, he does not owe the IRS any money for tax years 2010 through 2018. He owes \$301 to State A for tax year 2018. (AE A)

In his 2017 income tax return, Applicant claimed he lived overseas for the entire year in 2017; however, in his SCA, he admitted that he returned to the United States in March 2017, and since then, he has continued to live in the United States. (Item 3 at 9-10; AE A at 38-39)

Applicant has not obtained credit counseling. He provided no evidence that he made efforts to file his income tax returns or file extensions for his returns prior to August 2019. (Item 6 at 4)

### **Policies**

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 access to classified information 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.

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 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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline F: Financial Considerations

The security concern under Guideline F 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. . . .

AG ¶ 19(f) outlines a condition that could raise a security concern and may be disqualifying as follows: "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." The record evidence establishes AG ¶ 19(f) in that Applicant failed to file his federal and state income tax returns as required by law.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

(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; 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 filed his federal income tax returns for tax years 2010 and 2017 in August 2019, after the SOR was issued. Because he filed his state and federal income tax returns, there is some evidence that AG ¶ 20(g) is potentially applicable.

Applicant's failure to timely file his federal and state income tax returns for tax years 2009 and 2018 was not alleged in the SOR, and these tax years were not considered in determining if the disqualifying condition in AG ¶ 19(f) was applicable. However, his failure to timely file his returns for tax years 2009 and 2018 demonstrates that Applicant's tax issue is not mitigated as it has been an ongoing problem for ten years, and this issue is not isolated, raising additional questions regarding his judgment, reliability, and trustworthiness.

In his SCA, PSI, and answers to the SOR and Forms Applicant provided discrepant information regarding his failure to file his tax returns. He provided a tax transcript for only one year. Without transcripts for the additional years in question, it is difficult to determine if the tax returns were accepted and if Applicant owes money to the IRS due to penalties and interest that were the result of his failure to file his returns in a timely manner. He filed the tax returns so recently that the IRS tax transcripts may not have been available when he responded to the FORM.

Applicant's efforts to resolve his taxes after the SOR was issued and after he received the FORM do not demonstrate a good-faith effort to resolve his obligation to file state and federal income tax returns. As a taxpayer, he had an affirmative obligation to contact the IRS or research the requirement to file tax returns. His claim that he was unaware of his obligation to file the returns does not establish conditions that were beyond his control, nor did he act responsibly to address his obligations in a timely manner. Mitigation under AG ¶¶ 20(a), 20(b), 20(c), and 20(d) was not established.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns. The record lacks sufficient evidence to demonstrate that he is reliable, trustworthy, and exercises good judgment. His failure to file his tax returns until after the SOR was issued, is indicative that his motivation for filing was primarily the result of his desire to obtain or retain a security clearance. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security of the United States to grant him 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's eligibility for access to classified information. National security eligibility is denied.

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CAROLINE E. HEINTZELMAN  
Administrative Judge