



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-02765  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Brittany Muetzel White, Esq., Department Counsel  
For Applicant: *Pro se*

06/09/2021

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 19, 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 December 17, 2019, and requested a hearing before an administrative judge. The case was assigned to me on March 2, 2021.

The hearing was convened as scheduled on May 12, 2021. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through F, which were admitted without objection. The record was held open for Applicant to submit additional information. He indicated in an email that he would not submit additional documents. The email contains factual information, so I have marked it AE G and admitted it without objection.

## Findings of Fact

Applicant is an 82-year-old self-employed engineer and consultant for a defense contractor. He seeks to obtain a security clearance, which he has held intermittently since the late 1960s. He served in the U.S. Marine Corps Reserve from about 1956 until he was honorably discharged in 1957, and the Navy Reserve from 1957 until he was honorably discharged in 1962. He has a bachelor's degree, which he earned in 1966, and he has attended graduate school without earning a post-graduate degree. He is married with four children. (Transcript (Tr.) at 27-28, 47; Applicant's response to SOR: GE 1, 2, 4, 5; AE E)

Applicant has a history of tax issues, which he eventually resolves. A credit report from June 2013 listed a \$7,013 federal tax lien that was filed in 2003 and released in 2007 after the taxes were paid; and an \$818 federal tax lien that was filed in 2009 and released in 2012. The credit report also listed a \$5,242 state tax lien that was filed in 2011.<sup>1</sup> Applicant discussed his tax issues when he was interviewed for his background investigation in July 2013. (Tr. at 48-50; GE 3, 5)

Applicant did not file his federal and state income tax returns when they were due for tax years 2012 through 2017, and he did not pay all the taxes owed for those years when they were due. He stated that he bought a house in another state in 2012, and during the move, he mistakenly disposed of documents necessary to file the returns. He also indicated that he underwent cancer surgery and treatment during the period. (Tr. at 24-25, 30, 32; Applicant's response to SOR; GE 1, 4)

Applicant reported his failure to file tax returns for 2012 through 2016 on a Questionnaire for National Security Positions (SF 86) that he submitted in March 2018. He estimated that he owed \$100 for each tax year. He wrote that the reason he failed to file the returns was that he was "playing to[o] much golf, hunting, [and] fishing - sorry." (Tr. at 30; GE 1)

Applicant was interviewed for his background investigation in March 2019. He confirmed that he did not file state and federal tax returns and pay all the taxes owed for tax years 2012 through 2016. He also admitted that he did not file his 2017 federal and state tax returns, nor did he pay all the taxes owed. He stated that he put off working on his taxes because he did not want to ask his wife for the paperwork. (Tr. at 31; GE 4)

Applicant hired a tax professional and filed his back federal and state income tax returns through tax year 2017 in about August or September 2019. His tax professional attempted to negotiate an offer in compromise with the IRS for his unpaid taxes. The IRS did not accept the offer in compromise because his income was too high. In December 2020, the IRS filed a \$39,738 tax lien against Applicant and his wife for tax years 2013 through 2016. Applicant paid the back taxes for 2013 through 2016, and the

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<sup>1</sup> The tax liens were not alleged in the SOR. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered when assessing Applicant's overall financial situation, in the application of mitigating conditions, and during the whole-person analysis.

federal tax lien was released in February 2021. His assertion that he paid his state taxes is accepted. (Tr. at 24, 33, 36, 41-46; AE A, B)

Applicant did not file his federal and state tax returns for tax year 2019 until about March or April 2021. He paid the IRS \$10,779 in April 2021 for his 2019 taxes. He may owe an additional amount for penalties and interest. He has filed his federal and state tax returns for tax year 2020. He paid the IRS \$13,157 in April 2021 for his 2020 taxes. (Tr. at 34-36, 45; AE C, D)

Applicant highlighted the importance of his work, and how it is in the Government's best interest for him to receive a security clearance expeditiously. He received a certificate of achievement for his part in the delivery of a historic aircraft. (Tr. at 25-26, 57-58; AE E, F, G)

### **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 2012 through 2017 federal and state income tax returns 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 filed the tax returns at issue in about August or September 2019, and he paid the back federal taxes for 2013 through 2016 sometime between December 2020 and February 2021. The state taxes have also been paid. AG ¶ 20(g) is applicable, but that does not end the discussion.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, 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. 17-01382 at 4 (App. Bd. May 16, 2018). This may be true even when the returns have been filed, as 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).

The most troubling aspect of this case is Applicant's continued disregard of his obligation to file his tax returns and pay his taxes in a timely manner. A man of his age, education, and experience had to know that tax compliance is a requirement of all U.S. citizens and residents. Additionally, the DOD kept reminding him of its importance: through his 2013 interview, his 2018 SF 86, his March 2019 interview, and his November 2019 SOR. In spite of the "reminders," Applicant did not file the back returns until August or September 2019; he did not pay the back taxes until sometime between December 2020 and February 2021; he did not file his 2019 federal and state tax returns until about March or April 2021; and he did not pay the IRS the taxes owed for 2019 until April 2021. Applicant simply has not convinced me that his history of being a tax scofflaw is in the past. I find that security concerns about Applicant's finances remain despite the presence of some mitigation.

### **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. I also considered Applicant's honorable military service and the important work he has done over many decades for the United States. Unfortunately, his lax attitude about his taxes has left me with little choice.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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:	Against Applicant
Subparagraphs 1.a-1.b:	Against Applicant

### **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge