



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



In the matter of: )  
)  
) ISCR Case No. 20-01122  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric C. Price, Esq., Department Counsel  
For Applicant: *Pro se*

June 7, 2021

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On February 5, 2018, Applicant submitted a security clearance application (e-QIP). (Item 3.) On September 2, 2020, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), 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; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective within the DoD after June 8, 2017.

Applicant responded to the SOR (Answer) on a date uncertain. (Item 2.) He requested that his case be decided by an administrative judge on the written record. Department Counsel submitted the Government’s written case on October 28, 2020. A complete copy of the File of Relevant Material (FORM), containing four Items was received by Applicant on November 5, 2020. He was afforded an opportunity to file

objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant submitted a response to the FORM within the 30-day period consisting of twenty-eight pages, referred to as Applicant's Exhibit A, which was admitted into evidence without objection. DOHA assigned the case to me on May 25, 2021. Items 1 through 4 will hereinafter be referred to as Government Exhibits 1 through 4.

### **Findings of Fact**

Applicant is 56 years old and is married with five adult children. He has a Master's degree. He is employed by a defense contractor as a Senior Consultant. He is seeking to obtain a security clearance in connection with his employment.

### **Guideline F - Financial Considerations**

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information.

The SOR alleges that the Applicant failed to file his Federal and state income tax returns for tax years from 2013 through 2018, and that he is indebted to the Federal government for delinquent taxes for tax years 2014, 2016 and 2017. Applicant admits allegations 1.a. and 1.b. set forth in the SOR. He denies the indebtedness to the Federal government for delinquent taxes in the amounts alleged in the SOR. Applicant began working for his current employer in January 2018. Applicant served in the U.S. Army from 1983 to 2006, before retiring with an honorable discharge. (Government Exhibit 2.)

In his answer to the SOR, Applicant explained that he did not file his Federal and state income tax returns in a timely fashion because he was missing supporting documents from 2013 and 2014 to substantiate his deductions. He believed his income tax returns could not be filed without this supporting documentation. He states that all of his income tax returns in question were filed in April 2020. Applicant has provided documentary evidence to support this assertion. (Government Exhibit 2, and Applicant's Exhibit A.)

With respect to his Federal tax liability, the SOR alleges that Applicant is indebted for tax year 2014 in the amount of \$25,682.91; tax year 2016 in the amount of \$22,697.45; and tax year 2017 in the amount of \$15,236.09. This assessment was based on the IRS filing Applicant's tax returns as "Married Filing Separately." Applicant's Response to the FORM, includes Account Statements from the IRS, and copies of endorsed checks that show Applicant has satisfied his Federal tax liability. A letter of Good Standing from the state tax authority dated December 23, 2020, indicates that he has filed all required state income tax returns and paid all state taxes. When Applicant filed the Federal and state income tax returns in question, he filed as "Married

Filing Jointly,” and the proper adjustments were made by the IRS. Applicant was indebted for tax year 2014 in the amount of \$1,309; no taxes were owed for 2016 and 2017. Applicant received some refunds and paid off all of the debt he owes, including all assessed penalties, interest and fees. (Applicant’s Exhibit A.)

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 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 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 avoided drawing 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, 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 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 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 as to 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. 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 notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (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 file his Federal and State income tax returns for tax years 2013, 2014, 2015, 2016, 2017 and 2018, in a timely fashion. He also failed to pay his Federal and state income taxes for 2014, 2016 and 2017. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under the Financial Considerations guideline are potentially applicable under AG ¶ 20;

- (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), and the individual acted responsibly under the circumstances;

(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 failed to file his Federal and state income tax returns in a timely fashion for six years, 2013, 2014, 2015, 2016, 2017, and 2018. He gives no reasonable excuse for his failure to file his income tax returns. His only claim is that he was missing documentation, but that, in itself, is not sufficient reason to fail to file Federal and state income tax returns for six years. Applicant also failed to pay his taxes during this period, placing the onus on the IRS to file his income tax returns for him. Given his experience, military background and advanced education, Applicant knew or should have known the legal requirement to file Federal and state annual income tax returns. In this regard, he ignored both Federal and state law. Evidence shows that Applicant finally filed these income tax returns in April 2020. At this time, he also paid the requisite taxes, penalties, interest, and fees associated with his late filings. Applicant's conduct established a long pattern of procrastination, delay, irresponsible behavior, and violations of law that the Federal government takes very seriously. Applicant did not act reasonably or responsibly until April 2020. His inaction for so long reflects a pattern of unreliability, untrustworthiness, and poor judgment. Accordingly, Applicant does not meet the requirements to access classified information.

### **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 relevant facts and circumstances surrounding this case. I conclude Applicant has not 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a.: through 1.e:	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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge