



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



In the matter of: )  
)  
) ISCR Case No. 18-02155  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Carroll Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

07/23/2021

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 14, 2018, the Department of Defense Consolidated Adjudication Facility issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on January 14, 2019, and he requested a hearing before an administrative judge. This case was assigned to another administrative judge in April 2019. Applicant advised the administrative judge that he was overseas and unable to return to the United States until July 2019, and he would also be available in October

2019. In September 2019, he advised the administrative judge that he would not be returning to the United States in October 2019, as he had anticipated. The hearing was reassigned to another administrative judge. A notice of hearing was issued on January 13, 2020, scheduling the hearing for January 29, 2020. Applicant provided a doctor's note that he would be unable to attend the scheduled hearing, so it was postponed. The case was reassigned to me on February 24, 2020. The notice of hearing was issued on March 16, 2020, scheduling the hearing for April 7, 2020. Due to the Covid-19 pandemic, the hearing was canceled. Applicant was contacted in May 2021, advising him his hearing would be conducted through the Defense Collaboration System, and it was scheduled for June 14, 2021. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 and 2. Applicant offered Applicant Exhibits (AE) A through H. There were no objections and the exhibits were admitted into evidence. The record was held open until June 28, 2021, to allow Applicant to submit additional documents. He provided AE I through O that were admitted without objection, and the record closed. DOHA received the hearing transcript on June 24, 2021.

### **Procedural Matters**

The Government moved to withdraw SOR allegations ¶¶ 1a through 1.f. The motion was granted.

### **Findings of Fact**

Applicant partly admitted and denied the remaining SOR allegation in ¶ 1.g. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 58 years old. He attended college, but did not earn a degree. He was married from 1991 to 2006 and has an adult child from the marriage. He served in the Army National Guard and the Army Reserve from 1985 to 2013. He received an honorable discharge. He has worked for a federal contractor since 2017 and other periods in the past. (Tr. 20-22; GE 1)

Applicant completed a security clearance application (SCA) in February 2017. Question 26 asked if in the past seven years had he failed to file or pay Federal, state, or local taxes as required by law. He stated "yes" and disclosed he failed to file and pay his 2007 Federal income tax returns. He stated:

While doing this SF 86 I found out that I have not filed taxes and I owe Federal taxes. I did file while in Iraq and they were mailed by the company that was on base that prepared them. I am owed over [\$]6000 and I signed that over to the US Government because I knew I was going to owe. (GE 1)

Applicant also disclosed in the SCA that he believes the amount he owed for Federal income taxes for 2007 was \$7,000. In addition, he stated "I am just finding some

of this out and will be working with the IRS or getting an attorney to assist this situation.” (GE 1)

Applicant also disclosed in the SCA that he failed to file his Federal income tax return for tax year 2010. He stated the reason he failed to file was because he “did not have the money due to unemployment to file or pay.” He estimated he owed about \$1,000. He also stated: “I actually think I am owed a refund for that year but just found out [about] this.” (GE 1)

Applicant was interviewed by a Government investigator in September 2017. During his interview his tax issues were discussed. He told the investigator that in early 2017, he was notified by the Internal Revenue Service (IRS) that he owed approximately \$6,000 or \$7,000 in federal income taxes for tax year 2006 and approximately \$1,000 for tax year 2010. He inadvertently disclosed on his SCA that he failed to file and pay taxes for tax year 2007. That was incorrect and it should have been 2006. He told the investigator that the IRS indicated that he had not filed his 2006 return. He believed he had filed it while he was deployed to Iraq, but could not recall the date. Through a military program at the base, those serving as contractors and military personnel were provided a service for assisting them in filing their tax returns, but they were responsible for mailing them. He stated to the investigator that he had a refund owed to him of approximately \$6,000, and he elected to have it applied to his next year’s tax return as he expected he would owe taxes the following year. He said he was never contacted by the IRS until 2017 and was unaware that the 2006 return was not filed. He asked the IRS what he could do and was advised to pay 20% of the balance owed, which would be a payment of \$1,000 each month. He could not afford this payment. He told the investigator the IRS would not accept smaller payments. He said that he was in the process of resolving the issue. He said that the majority of his archived files were in storage, but he intended to retrieve all of the files and documentation in order to file his tax returns. He intended to try and have the issue resolved by the end of 2017. He believed that once the late return was filed, he anticipated having a refund which would counterbalance what is being identified as owed by the IRS. If he owed taxes, he intended to set up a payment plan with the IRS to ensure the amount was paid. (GE 2)

At his hearing, Applicant testified that he was due a refund for tax year 2006 because he had been overseas, and he used the IRS “preliminary check service” to forecast that he would receive a \$6,000 refund. He wanted this prospective refund applied to his 2007 income taxes. He said he was advised that the overseas tax benefit only applied if one was out of the country for 335 days, and it was not prorated. He believed he would owe taxes in 2007, so this is why he chose to have his 2006 refund applied to his 2007 taxes. He explained that he believed he had an extra year to file if he was out of the country and owed taxes and three years if he was due a refund. He said he filed his 2006 tax return. It was determined he filed his 2006 tax return in August 2008. He said the IRS never received his 2006 income tax return. He did not keep a copy of the return because it was past seven years. In 2019, he was on notice that his hearing was to be scheduled sometime after October 2019, when he returned from overseas. He said he tried contacting the IRS for a copy of the return, but was unsuccessful. He stated that he

had saved all of his returns, but he destroyed them after seven years and the statute of limitations had run. (Tr. 28-41 49-61)

Regarding Applicant's 2010 federal income tax return, he told the government investigator that he was aware he owed about \$1,000 before being contacted by the IRS. He was unemployed for a period during that year and was not able to pay the taxes owed due to other financial obligations. He put this debt on the "back burner" and had not paid it. He intended to resolve it along with the 2006 tax issue. He intended to resolve this issue and pay what he owed by the end of 2017. (GE 2)

At his hearing, Applicant testified that he could not verify the date he had filed his 2010 tax return. He said it was a mistake when he said he had not filed, but rather he had filed, but cannot prove it. He could not recall if he had filed before his 2017 interview or after it. He then said he filed it when he returned to the country in 2011, but the IRS informed him right before his 2017 interview that it did not have his 2010 tax return, and he needed to file again. He said he tried to file again, but the IRS would not accept it because the statute of limitations had run. He said he was told by the IRS that "we don't need them, they already assessed." (Tr. 40-42) He said he then re-filed sometime in 2018. He did not save any of this information because he said it was past the statute of limitations. He testified that he was unaware he owed taxes for 2010 until he was interviewed by the government investigator in 2017. This is inconsistent with his disclosures in his SCA. (Tr. 39-48, 56, 58-61; GE 2)

Applicant told the investigator that he wanted to focus on resolving his federal tax debt with the IRS before addressing other debts that he had at the time. He volunteered to work overseas so he could increase his income and use the money to resolve his debts. (GE 2)

Applicant testified that he contacted the IRS in June 2021 and was told that the statute of limitations had run on the tax years in question. He said that the IRS was able to confirm that he filed his Federal income tax returns for tax year 2006 in 2008, but it would take ten week for him to receive the transcript from the IRS. The IRS was unable to confirm he had filed his 2010 return. He stated: "They also have no record I didn't file." He further stated: "I tried to file, and follow the rules, and they said that they could not accept them, because it was too late." He then stated he could not remember what tax service he used to file the return, but was told when it attempted to file electronically the return was kicked back. (Tr. 52-54, 58, AE G)

Post-hearing Applicant provided a copy of the 2006 Federal income tax transcript that was requested on June 10, 2021 and the response date was the same. The transcripts shows his 2006 return was filed in August 2008 and he owed \$7,814. Penalties and interest were added. His 2007 federal tax refund was applied to the 2006 balance owed. The transcript notes that a "collection due process notice of intent to levy –return receipt signed" was issued on November 13, 2008. Five payments of \$55 were collected from April 2009 to June 2009. It is unknown if these payments were from a levy or if Applicant voluntarily made them. Additional penalties and interest were added over the

years. In 2016 the account was still deemed collectible. The last entry was September 17, 2017, stating "Write-off balance due \$7,267." Applicant failed to timely file his 2006 federal income tax return as noted on the transcript. (AE O)

The SOR does not allege Applicant failed to pay his 2006 or 2010 federal income taxes. It only alleges he failed to timely file the returns. His failure to pay his taxes and any reference to delinquent tax debts will not be considered for disqualifying purposes, but may be considered when analyzing the whole-person, in making a credibility determination, and in mitigation.

Applicant testified that because of his divorce in 2006 there was some confusion about who would file the tax return that year. He further testified that he had an automatic extension to file his 2010 federal tax return because he was working as a contractor overseas. He said he filed the return, but the IRS had no record. He said he throws his paperwork out after seven years. He included a document from the IRS to show he does not have a balance owed for tax years 2018 through 2021. It did not show if he timely filed his 2010 federal tax return. He indicated that the statute of limitations had run on his 2010 tax returns, which may or may not be true, but it is irrelevant regarding whether he timely filed his tax returns for purposes of his security clearance eligibility. He stated that the documents show he does not owe anything to the IRS, and it would have withheld refunds. This may be accurate, but speculative. If he filed on time and owed money, future refunds could be applied to a balance owed. The fact he has no balance for 2018 to 2020, does not show that he filed his 2010 tax return on time. He failed to provide a credible explanation for the contradictory statements he made on his SCA and to the government investigator. He testified that the IRS "don't have any records of 2010 whatsoever," which corroborates either they were not filed or they were lost. Back in 2017, Applicant was going to contact the IRS and resolve the matter. Four years have passed since then and now he states he cannot retrieve the documents because they are older than ten years. (Tr. 25-29, 62-63)

Applicant failed to provide the tax transcript for 2010. He provided a document from the IRS to show years the transcripts are available. The document he provided from 2021 shows transcripts were available for tax years 2011 to 2021, the past ten years. He did not provide an explanation for why he could request and receive in June 2021 the computer generated 2006 transcript and not the 2010 transcript. He explained in a written statement that he was told by two tax professionals that if he used the paper Form 4506 to request the 2010 tax transcript he would not receive it by the date the record closed. Applicant did not explain why he failed to resolve the issue in 2017, as he stated he would and when it was within the ten years. (AE D, F)

Applicant provided a copy of a 1040 Federal income tax form for tax year 2010 that he signed on June 18, 2021. It reflects an adjusted gross income of \$143,756 and tax owed of \$5,109. He provided receipts to show he mailed the return on June 18, 2021. (AE J, K, N, M)

In his post-hearing statement, Applicant said he found his working folder of all his W-2s and receipts for 2010. He did not indicate he had a copy of the 2010 tax return. His accountant recommended he “re-file” the 2010 tax return. He expected the IRS to “either thank me for my submission of my 2010 taxes or send me a letter acknowledging that they already have my 2010 filing.” (AE I)

Applicant testified: “To the best of my knowledge, I have done everything to comply with everything I’ve ever done with the IRS, and with the deployments, and being, the stuff I’ve gone through, I have filed everything, and I will do what it takes to prove that with the extension.” (Tr. 67) This statement contradicts the 2006 tax transcript that shows Applicant failed to timely file and pay the amount of tax owed for 2006 and it was written off by the IRS in 2018 as unpaid.

Applicant’s testimony contradicted his disclosures in his SCA, his statement to the government investigator, and the 2006 tax transcript. I did not find Applicant’s testimony credible.

Applicant provided character letters. In them he is described as an outstanding individual with the highest morality and personal integrity. He is trusted, professional, competent, reliable, faithful, methodical, dedicated, patriotic and considered worthy of protecting classified information. He follows procedures and protocols. (AE A, B, D, H, L)

### **Policies**

When evaluating an applicant’s national security eligibility, the administrative judge must consider the AG. 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(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.” 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F: Financial Considerations**

The security concern relating to the guideline 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

(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 2006 and 2010 Federal income tax returns. There is sufficient evidence to support the application of the above disqualifying condition.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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;

(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; 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's 2006 tax transcript shows he filed his federal income tax return late. Applicant failed to show he timely filed his 2010 federal income tax return. After his hearing, he provided a copy of the tax return he filed for 2010 and mailed in June 2021. Applicant disclosed his tax issues on his 2017 SCA. He told the government investigator he would resolve the issue by the end of 2017. He did not and now relies on his inability to obtain documents because ten years has passed and the statute of limitations has tolled. He also told the investigator that his documents were in storage, and he was going to retrieve them and resolve the issue. He did not. Instead he testified that he does not keep documents past seven years. At the time the issue arose, it was within seven years. It is disingenuous to destroy documents that may have pertained to 2010 when he put the government on notice that he had the issue in 2017. It is unknown why he could provide computerized 2006 tax transcripts, but could not provide 2010 tax transcripts. He did not provide any documents from the IRS corroborating any action he may have taken in the past regarding resolving his 2010 tax return.

Applicant's recently filed his Federal income tax return for 2010. His failure to timely resolve the issue casts doubt on his reliability, good judgment, and trustworthiness. His tax issues were not beyond his control. AG ¶¶ 20 (a) and 20(b) do not apply. Applicant provided documents to show he filed his 2010 Federal tax return and mailed it to the IRS on June 19, 2021. AG ¶ 20(g) applies.



## 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 the 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant neglected to timely file his Federal income tax returns for 2006 and 2010. Applicant claimed he was in compliance for both years, but the evidence does not support his claims. Relying on the statute of limitations does not show he has acted responsibly in resolving the issues he disclosed about his tax problems. Applicant provided contradictory statements. He had years after he completed his SCA to resolve the problems, but failed to do so. Applicant has the burden of persuasion. Despite some evidence of mitigation, it is insufficient to overcome his failure to timely resolve his tax issues.

The DOHA Appeal Board has held that:

Someone 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. August 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).<sup>1</sup>

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<sup>1</sup> ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

Applicant's non-compliance with a fundamental legal obligation to timely file his Federal income tax return raises serious concerns. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

### **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.f:	Withdrawn Applicant
Subparagraph 1.g:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge