



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



In the matter of: )  
)  
) ISCR Case No. 19-02779  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrea Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

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**Decision**

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BENSON, Pamela C., Administrative Judge:

Applicant acted responsibly in filing his 2016-2018 Federal and state income tax returns. He now uses a professional tax service to prepare his complicated income tax returns. He does not owe any back taxes. In addition, he has recovered from a toxic relationship that ended in 2013 with his former girlfriend, who had filed a protection order against him. He has not had any contact with her since she filed the protection order, which expired nearly three years ago. Applicant has not had any similar incidents or adverse contact with law enforcement since 2013. Guideline F (financial considerations) and Guideline E (personal conduct) security concerns are mitigated. National security eligibility for access to classified information is granted.

**Statement of the Case**

On March 13, 2019, Applicant completed and signed his security clearance application. On December 12, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F and Guideline E. 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 *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant provided an undated response to the SOR. He requested a hearing before an administrative judge. The case was assigned to me on March 17, 2021. On May 25, 2021, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for June 17, 2021.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4, and Applicant provided two documents, which I labeled as Applicant Exhibits (AE) A and B. All proffered documents were entered into evidence without objection. I held the record open for two weeks, until July 1, 2021, in the event Applicant wanted to submit additional documentation after the hearing. Applicant timely submitted four documents, which I labeled AE C, D, E, and F. I admitted all proffered exhibits into evidence without objection. DOHA received the hearing transcript (Tr.) on June 30, 2021, and the record closed July 2, 2021.

### **Findings of Fact**

Applicant is 36 years old. He has never been married and has no children. He earned a bachelor's degree in 2007 and his master's degree in 2011. In 2007, he started employment with a federal contractor, and in 2012, he was granted a DOD security clearance. His current job title is advanced lead engineer and his annual salary is approximately \$110,000. (Tr. 8, 26; GE 1)

### **Financial Considerations**

The SOR alleges Applicant failed to file his 2016, 2017, and 2018 Federal income tax returns. He also failed to file his state income tax returns for the same years. He admitted both SOR allegations (§ 1.a and § 1.b)

Applicant stated in his response to the SOR that the reason he fell behind on filing his Federal and state income tax returns was due to his taxes becoming complicated. This stemmed, in part, from both a rental property and him becoming part owner of a family business. He expected tax refunds for all three years, and mistakenly believed that he had three years to file the income tax returns in order to receive his Federal and state tax refunds. In early 2020 he hired an accountant who was working on filing these specific Federal and state income tax returns. (SOR Response; Tr. 41-42)

During the hearing, Applicant testified that he had purchased a house in early 2008. Instead of selling the house when he moved out in 2013, he chose to turn it into a rental property. There were years that he made about \$12,000 - \$14,000 in annual income from this rental property, and there were other years the house sat vacant while he remodeled the bathroom and finished other projects on the home. Overall, he has not made much money from the rental property, and as of the date of the hearing, he was planning to put the rental property up for sale within the next month or two. When preparing his Federal and state income tax returns for 2016, he realized he had some

questions about properly reporting his rental income and expenses. He decided that he needed the services of a tax professional. (Tr. 28-30)

The other tax complication Applicant encountered was related to being gifted in 2017 with six percent ownership of a family business. His aunt operated two ice cream kiosks in a large out-of-state mall. In 2017, he received quarterly checks of \$6,000, or \$24,000 annual revenue for his six percent ownership. In 2018, major renovations were made on the kiosks, which impacted his earnings. This and other business situations affected his Federal and state income taxes. He used Turbo Tax software, but he did not feel comfortable that he had prepared his income tax returns correctly. He realized that he again needed professional tax assistance to report his income correctly to the Federal and state tax authorities. (Tr. 30-32, 37, 42)

In early 2020, Applicant hired an accounting service to prepare his delinquent 2016, 2017, and 2018 state and Federal income tax returns, and to prepare his income tax returns for 2019 as well. According to the Internal Revenue Service (IRS) transcripts in the record, in June 2020, Applicant's 2019 and 2018 Federal income tax returns were filed. Applicant's 2016 Federal income tax return was filed in June 2021. Applicant stated that he made a tax payment to the IRS in June 2018 due to the income he earned from the family business in 2017. There was confusion about the tax payment, which was actually recorded as Applicant filing his 2017 Federal tax return in June 2018, based on the IRS transcript in evidence. The accounting service saw that his 2017 Federal tax return was listed as "filed" in the IRS database. The accounting service assumed he had filed all of his income tax returns for tax year 2017, so they did not process his newly prepared state income tax return for 2017. Applicant was not aware of this until he received notification last year from the state tax authority that his 2017 income tax return had never been filed. (Tr. 44-52; AE C)

Applicant testified that he initiated contact with a professional tax service before he received the SOR. He provided documentation which showed the accounting service had prepared the 2017 state income tax return in May 2020. In June 2021, he received a 2017 state tax refund of \$348. The accounting service also prepared his 2016, 2018, and 2019 state income tax returns in May 2020. Applicant received tax refunds for all of these tax years. He also provided documentation from the accounting service showing that he filed his 2020 Federal and state income tax returns in June 2021. He intends to continue using the tax accounting service to prepare his complicated income tax returns in the future. He will receive a Federal tax refund of \$2,733 and a state tax refund of \$941 for tax year 2020. All unfiled Federal and state income tax returns alleged in the SOR have been filed and fully resolved. Applicant lives within his means and does not have any other financial delinquencies, to include any delinquent state or Federal taxes. (Tr. 36, 52, 76-80; AE B, AE C, AE E, AE F)

## **Personal Conduct**

The SOR alleges that in August 2013, Applicant received a complaint from a former girlfriend that he was stalking her, harassing her, and ignoring her boundaries. The court issued a temporary *ex-parte* civil order of protection. At a later hearing where

Applicant personally appeared to address the complaint, the court extended the civil order of protection until August 2018. (¶ 2.a; GE 2, GE 3; AE A)

Applicant admitted the allegation that he received the protective order, but not necessarily the alleged inappropriate or criminal conduct alleged in the protective order in his response to the SOR, and he also provided additional information during the hearing about the circumstances of this toxic relationship. He stated that his former girlfriend threatened to kill herself repeatedly, harassed him with constant e-mails, phone calls and messages, and texts from unknown phone numbers. He denied that he stalked her, harassed her, or threatened her with violence. He showed up to court to respond to the protection order without any evidence of her communications, since she had deleted most of them from his phone, and without the benefit of a lawyer. Since August 2013, the time the civil protection order was granted, he has had no contact with his former girlfriend. The protective order expired in August 2018. He has never had any other adverse issues with law enforcement. (SOR response, Tr. 52-74; AE A)

### **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(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 access to classified information will be resolved in favor of 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 not drawn inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 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 Executive Order 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**

### **Financial Considerations**

AG ¶ 18 articulates the security concern for financial problems:

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.

Appellant's failure to file Federal and state income tax returns for three consecutive years (2016-2018) support the application of AG ¶ 19(f).

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

Appellant knew he was required to timely file his state and Federal income tax returns. He encountered tax complications stemming from a rental property and income earned from a family business. He prepared his tax returns on Turbo Tax software, but he did not file them because he was uncertain of their accuracy. He decided he needed professional advice from a tax accounting service. He also discovered that he had up to three years to file his 2016, 2017, and 2018 income tax returns and still be qualified to receive a tax refund. Although he was incorrect about having three years to file his tax returns, and he delayed in hiring the tax accounting service, he did act responsibly by contacting an accountant to get his tax returns filed before receipt of the SOR.

The tax accounting service prepared Applicant's Federal and state income tax returns for 2016, 2017, 2018, 2019, and 2020. All of his Federal and state tax returns have been filed and all of his tax issues are now settled. Under the current circumstances, there are clear indications that Appellant's tax problem is resolved. His failure to timely file his Federal and state income tax returns for three consecutive years occurred under such circumstances that it is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, and good judgment. Financial considerations security concerns are mitigated.

## **Personal Conduct**

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes one condition that could raise a security concern and may be disqualifying in this case,

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information,

supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

- (2) any disruptive, violent, or other inappropriate behavior.

In August 2013, a civil protection order was initiated by Applicant's former girlfriend against him for inappropriate behavior. The court continued the protection order until August 2018, which supports the application of AG ¶ 16(d)(2).

AG ¶ 17 sets forth a potentially applicable mitigating condition under Guideline E:

- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant admitted the protection order was issued against him by the court in August 2013. He was involved in a toxic relationship with a former girlfriend that turned accusatorial and confrontational. He denied the criminal conduct alleged in the protective order. The court ordered him to have no contact with his former girlfriend during the five-year period of the protection order. Applicant has fully complied with these terms and the protection order expired in August 2018. He has not had any adverse contact with law enforcement. He was never arrested for violating the protective order. I find that the toxic relationship was a unique situation that is not recent. Time has shown that the incident is unlikely to recur and does not cast doubt on Applicant's current reliability, trustworthiness, and good judgment. Personal Conduct security concerns 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 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 and Guideline E and the AG ¶ 2(d) factors in this whole-person analysis.

The Federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. In deciding whether to grant or continue access to classified information, the Federal government can take into account facts and circumstances of an applicant's personal life that shed light on the person's judgment, reliability, and trustworthiness. Furthermore, security clearance decisions are not limited to consideration of an applicant's conduct during work or duty hours. Even if an applicant has a good work record, his or her off-duty conduct or circumstances can have security significance and may be considered in evaluating the applicant's national security eligibility.

To his credit, Applicant took responsible action to file his 2016-2018 Federal and state income tax returns by contacting an accounting service before receipt of the SOR. He does not owe any back taxes. He used the services of a tax accounting service to handle his complicated tax returns, and he intends to continue using their services in the future. He ended a toxic relationship with his former girlfriend, and he has not had any contact with her since she filed a protection order against him, which expired nearly three years ago. He has not been involved in any similar incidents or had any adverse contact with law enforcement. After evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the financial considerations and personal conduct 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 H:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant



## **Conclusion**

In light of all of the circumstances presented by the record in this case, I conclude that it is clearly consistent with national security to grant or continue Applicant's national security eligibility. Eligibility for access to classified information is granted.

Pamela C. Benson  
Administrative Judge