



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 19-02199

Applicant for Security Clearance

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

07/01/2021

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**Decision**

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MASON, Paul J., Administrative Judge:

When asked in his August 2017 security clearance application whether he had tax issues, Applicant replied that he had not filed his 2015 and 2016 federal tax returns, but intended to submit both returns by October 2017. His subsequent claims of resolving all listed tax issues have not been sufficiently documented under the financial considerations guideline. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On August 25, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP, Item 3) requesting a security clearance so that he could work for a contractor. On June 11 and October 23, 2019, he provided answers to interrogatories with supplemental documents concerning federal and state tax issues. The Defense Counterintelligence and Security Agency (DCSA) could not make the necessary affirmative findings to grant or continue Applicant’s eligibility for a security clearance, and issued a Statement of Reasons (SOR) on February 19, 2020. The SOR detailed reasons

for their decision under the financial considerations guideline (Guideline F). The action was taken under Executive Order (E.O.) 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 Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), made effective in the DOD on June 8, 2017.

Applicant provided his answer to the SOR on March 10, 2020. He requested to have his case decided on the written record. Department Counsel submitted a copy of the File of Relevant Material (FORM) on January 25, 2021. The FORM contains six evidentiary exhibits (Items 1 through 6). Applicant received the FORM on February 2, 2021. He was advised that he could file objections to the FORM, or supply additional information in explanation or mitigation, to clarify his position concerning each allegation of the SOR. See page 5 of Department Counsel's FORM. Applicant's response was due on March 4, 2021. No response was received by DOHA. The case was assigned to me of April 7, 2021.

### **Findings of Fact**

The SOR presents four allegations (a Chapter 13 Bankruptcy discharge, federal and state tax issues) under the financial considerations guideline. Applicant admitted SOR ¶¶ 1.a and 1.d, and denied SOR ¶¶ 1.b and 1.c.

Applicant is 63 years old. According to his August 2017 e-QIP, he earned a bachelor's degree in May 1989. However, he indicated in his August 2018 personnel subject interview (PSI) that he received the degree in 1982. (Item 5 at 14) He avers that he received a master's degree in business administration in March 1989. (Item 3 at 11-12) He was awarded an associate's degree in logistics management in 2011. (Item 5 at 14) He has been employed in supply management for a defense contractor since April 2016. From August 2013 to April 2016, he was working overseas in the same department for the same contractor. Before brief employment with another contractor in early 2013, He worked as a logistics engineer for his present employer from 1983 to 2013. He has worked over 36 years for his present employer.

Applicant was on active duty in the United States Air Force (USAF) from March 1977 to June 1986. He was in the USAF Reserve from June 1986 until his honorable discharge in June 2011. (Item 5 at 10) He has held a security clearance since he was on active duty in the USAF. (Item 3 at 70) He married in August 1979 and divorced in January 2003. (Item 3 at 21-38)

SOR 1 ¶ - Applicant filed a Chapter 13 Bankruptcy Petition in August 2008. A major reason for the petition was an inability to pay his condominium mortgage as he could not rent the dwelling due to a major crack in the foundation. (Item 5 at 14) Following Applicant's successful completion of the Chapter 13 payment plan in October 2014, the petition was discharged. (Item 6 at 6) One of the delinquent debts Applicant had to repay was \$2,834 in delinquent taxes to the Internal Revenue Service (IRS) for tax year 2006. (Item 6 at 63, 67)

SOR ¶1.b – The allegation reads that Applicant failed to file his 2014 through 2017 federal tax returns. As of February 19, 2020 (date of SOR), his 2015 federal tax return remained unfiled.

Applicant indicated in his August 2017 e-QIP that he had not filed his 2015 and 2016 federal tax returns because he was working in a foreign country. He planned to file the returns by October 2017. (Item 3 at 72) Then he stated in his August 2018 PSI that he could not file his returns because he was unable to produce the correct tax documents to the company-provided tax service. He was also swamped by work-related activities. He intended to file the missing 2015 and 2016 returns by September 2018. (Item 5 at 17)

In his June 2019 response to interrogatories, Applicant stated that he filed his 2015 and 2016 federal returns and he had a tax credit of \$26,963. The IRS tax transcript for 2015, dated May 10, 2019, reflects that no return had been filed for tax year 2015. (Item 4 at 4) The IRS notice to Applicant dated May 20, 2019, posts \$26,963 as representing a credit to Applicant's account for tax year 2015, but the IRS again indicated that no tax return had been filed for tax year 2015. (Item 4 at 5) He revealed for the first time in his October 2019 response to interrogatories that he did not file his 2014 tax return until January 2017. (Item 5 at 2)

In his March 2020 answer to the SOR, Applicant claimed he filed his 2015 tax return and all federal taxes were paid. The attachments to his answer show late tax returns filed for 2017 and 2018. However, there are no records showing the filing of a 2015 tax return.

SOR ¶ 1.c – The allegation indicates that Applicant is indebted to the IRS in the amount of \$8,156 for tax year 2016. In his June 2019 responses to interrogatories, he furnished his tax transcript for tax year 2016, showing that his tax return was received by the IRS in March 2019. Applicant claims that he filed the federal return in February 2019, and owed \$11,687, which he claims that he paid. Though his 2016 tax return was filed, he provided no proof that he paid any taxes for 2016, neither the \$8,156 as required in the IRS documentation, nor \$11,687, as he claims in his October 2019 responses to interrogatories. (Item 4 at 6, 9; Item 5 at 2-3)

SOR ¶ 1.d – The allegation indicates that Applicant did not file his state tax return for tax year 2017. In his October 2019 responses to interrogatories, he indicated that he lived in two states for portions of tax year 2017. He explained that he filed two 2017 state tax returns in July 2019, and owed no taxes to the state agencies. However he provided no documentary evidence to support his claims. (Item 5 at 3).

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are flexible rules of law, apply together with common sense and the general factors of 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 applicant or proven by Department Counsel. ” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

## **Analysis**

### **Financial Considerations**

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 sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other public trust issues 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 trustworthiness concern insofar as it may result from criminal activity, including espionage.

Paying voluntarily-incurred debt in a timely fashion shows good judgment and reliability. Filing federal and state tax returns, and paying taxes on time also shows good judgment, while manifesting an applicant’s acknowledgement of his legal obligation to

comply with well-established rules and regulations, a key factor for those seeking security clearance eligibility.

AG ¶ 19. The disqualifying condition relevant in this case are:

- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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.

When Applicant did not pay his federal income taxes in 2006, he exercised poor judgement by not fulfilling his tax obligations as required by law. The record reflects that he did not resolve the 2006 income tax issues until October 2014, when the Chapter 13 petition was discharged upon completion of the payment plan. (SOR ¶ 1.a) He failed to timely file his federal tax returns for tax years 2014 through 2017. He filed his 2016 and 2017 returns late, and he still has not filed his 2015 federal tax returns. (SOR ¶ 1.b) Finally, he has produced no documentation to prove that he paid \$8,156 in taxes for 2016. (SOR ¶ 1.c) His claims of having filed the 2017 state tax returns and paid state taxes for 2017 are unsupported by independent evidence. (SOR ¶ 1.d) AG ¶¶ 19 (b), (c), and (f) apply.

Applicant's 2017 e-QIP, his 2019 responses to interrogatories, and his March 2020 answers to the SOR establish the Government's case under the financial considerations guideline. Applicant has the ultimate burden of persuasion of producing evidence that rebuts or mitigates the Government's case and meets his burden of demonstrating he warrants security clearance eligibility.

AG ¶ 20. Conditions that could mitigate security concerns include:

- (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; 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 issues would have been mitigated by the passage of time had no similar adverse tax issues emerged since then. However, his tax issues

reappeared when he failed to timely file his federal tax returns from 2014 through 2017. He compounded his tax problems with unsubstantiated claims of having filed 2015 federal returns, and paying all his taxes to both the federal and state authorities. The absence of critical supporting tax documentation to validate his assertions continue to cast doubt on Applicant's current reliability, trustworthiness and good judgment. AG 20(a) does not apply.

AG ¶ 20(g) provides mitigation where an applicant provides proof that he has made arrangements with the proper tax authority to file returns, and if necessary, pay the taxes owed, thereby demonstrating compliance with those arrangements. Despite Applicant's claims that he filed his 2015 return and paid all taxes, the record evidence shows no proof that he filed a federal return for tax year 2015, or that he paid any taxes for tax year 2016, or that he filed a state return for tax year 2017.

### **Whole-Person Concept**

I have examined the evidence under the guideline for financial considerations in the context of the nine general factors of the whole-person concept 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 public trust position must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

I have carefully evaluated the disqualifying and mitigating conditions in the context of the entire record. Applicant is 63 years old and has worked for his employer for more than 36 years in the United States and overseas. He is highly educated, having received a bachelor's degree, a master's degree, and an associate's degree in logistics management. He has held a security clearance since his active duty in the USAF from 1977 to 1986. He received an honorable discharge in June 2011 following 15 years of service in the USAF Reserve.

On the other side of the equation are Applicant's recurring tax issues following his successful Chapter 13 discharge in 2014. Even though he knew he had a duty to file federal and state returns, he stopped filing his federal returns in a timely manner in 2014. Though his overseas employment may have complicated the filing of his tax returns for the years at issue, he had ample time to resolve the tax return problems. His current employer provided tax services for him to use, which he did not because he could not assemble the correct documents for filling. Failing to independently substantiate his assertions in his March 2020 answer to the SOR that he filed his 2015 federal tax return, and that he paid his 2016 federal taxes, and that he filed his 2017 state return, he has failed to mitigate the continuing security concerns raised in the SOR.

### **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.d:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the security interests of the United States to grant Applicant a security clearance.

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Paul J. Mason  
Administrative Judge