



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



In the matter of: )  
)  
) ISCR Case No. 19-03577  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: Brittney Forrester, Esq.

06/10/2022

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the personal conduct and financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On January 6, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). Applicant responded to the SOR on January 22, 2021, and requested a hearing before an administrative judge. The case was assigned to me on April 1, 2022.

The hearing was convened as scheduled on May 12, 2022. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) A through N, which were admitted without objection.

## Findings of Fact

Applicant is a 58-year-old engineer working for a defense contractor. He has worked for his current employer since 1998. He served in the U.S. military or the military reserve from 1984 to 1997. He served about eight years on active duty. All periods of service ended with an honorable discharge. He seeks to retain a security clearance, which he has held since his time in the military. He has a bachelor's degree that he earned in 1993. He has never married, and he has no children. (Tr. at 9-11, 30; Applicant's response to SOR; GE 1, 3; AE F, K)

Applicant did not file his federal and state income tax returns when they were due for tax years 1996 through 2006 and 2009 through 2018. He filed his federal and state income tax returns for 2007 and 2008 on time. He received federal refunds of \$2,724 for 2007 and \$2,573 for 2008. (Tr. at 12, 20-21, 24-27; Applicant's response to SOR; GE 2, 3)

Applicant stated that he did not realize that he had to file the returns if he was due refunds. Since he had more than enough withheld from his paychecks to pay his taxes, he incorrectly believed he was not required to file the returns. He planned to file the returns and receive the refunds, but he just never got around to it. (Tr. at 12-13, 22-26, 36; Applicant's response to SOR; GE 2, 3)

Applicant used to file his own returns. He realized it was easier to put it in the hands of a professional, and he retained the services of a tax professional to prepare the returns. He filed his federal and state income tax returns for 2017 in January 2019. He filed the 2009 through 2018 returns in January and February 2020. The IRS received his 2006 return in September 2020. He was due federal refunds each year, in amounts ranging from \$1,242 to \$3,673. Because the IRS does not pay refunds from returns more three years old, Applicant forfeited almost \$18,000 in federal refunds for tax years 2006 and 2009 through 2015. He stated that he forfeited at least \$10,000 in refunds from his state during the same period. The IRS would not provide W-2s from before 2010, and Applicant no longer had information for tax years before 2006. (Tr. at 15-19, 32-34; Applicant's response to SOR; GE 2; AE C, D, J)

With the assistance of the tax professional, Applicant filed his federal and state income tax returns for 2019, 2020, and 2021 on time. He received refunds each year. His state certified that he is in good standing. (Tr. at 33-34; GE 2; AE C, D, H-J)

Applicant accepted responsibility for his tax failures and poor judgment. He has a good job with a stable income. He completed a financial counseling course. His finances are currently in good shape, and he is aware that neglecting his tax obligations in the future could jeopardize his security clearance and his job. He found the process of using a tax professional easy, and he is no longer forfeiting thousands of dollars in refunds. He credibly stated that he has learned a valuable and costly lesson, and all future tax returns will be filed on time. (Tr. at 17-19, 32-35; Applicant's response to SOR; GE 3, 4; AE G)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in January 2018. He did not report his failure to file federal and state tax returns under the question that asked: “**In the last seven (7) years** have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?” He credibly denied intentionally providing false information. As addressed above, he did not realize that he was required to file tax returns if he was due refunds. Therefore, he thought he provided the correct answer. He discussed his tax situation during his background interview in January 2019. (Tr. at 17-18, 28, 31-32, 36; Applicant’s response to SOR; GE 1, 3) After considering all of the evidence, including Applicant’s age, education, experience, and credible testimony, I find he did not intentionally falsify the SF 86.

Applicant called a witness, and he submitted documents and letters attesting to his moral character and excellent job performance. He is praised for his honesty, trustworthiness, judgment, dedication, work ethic, and diligent handling of classified information. (Tr. at 36-43; GE 2; AE A, E, L)

### **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 federal and state income tax returns for multiple tax years 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 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;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; 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 foolishly but honestly believed he did not have to file income tax returns if he would receive a refund. The IRS and his state benefitted from his ignorance as he forfeited almost \$18,000 in federal refunds for tax years 2006 and 2009 through 2015 and at least \$10,000 in refunds from his state during the same period. All of the returns since 2006 have now been filed, with the returns for the last three years filed on time. Returns from 2005 and earlier no longer have any security significance.

Applicant accepted responsibility for his tax failures and poor judgment. He now utilizes a tax professional, which he finds easier and saves him thousands in refunds. The above mitigating condition is applicable, but that does not end the discussion. Applicant's failure to file his tax returns when required raises questions about his judgment and willingness to abide by rules and regulations. I found Applicant to be honest and truthful, but lax about his legal requirement to file his tax returns in a timely manner. I am convinced that he has learned a valuable and costly lesson, and that all future returns will be filed on time. Security concerns about Applicant's finances are mitigated.

### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant did not intentionally provide false information about his taxes on his 2018 SF 86. AG ¶ 16(a) is not applicable. SOR ¶ 2.a is concluded for Applicant.

Applicant's failure to file his federal and state income tax returns when due is cross-alleged under Guideline E. That conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. It also created vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(c) and 16(e) are applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

The discussion above under financial considerations applies equally here. I find the conduct is unlikely to recur, and it no longer casts doubt on Applicant's reliability, trustworthiness, or good judgment. AG ¶¶ 17(c), 17(d), and 17(e) are applicable. 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 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 Guidelines E and F in my whole-person analysis. I also considered Applicant's honorable military service and favorable character evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the personal conduct and 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:	For Applicant
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a-2.b:	For Applicant

## **Conclusion**

It is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge