



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



In the matter of: )  
)  
) ISCR Case No. 20-03792  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey M. De Angeles, Esq., Department Counsel  
For Applicant: *Pro se*

August 29, 2022

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On September 5, 2018, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On February 5, 2021, 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 (EO), *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 answered the SOR on March 10, 2021, and requested a hearing before an administrative judge. The case was assigned to me on April 12, 2022. The Defense Office of Hearings and Appeals issued a notice of hearing on June 8, 2022, and the hearing was convened as scheduled on June 27, 2022. The Government offered two

exhibits, referred to as Government Exhibits 1 and 2, which were admitted without objection. Applicant offered no exhibits, however he did testify on his own behalf. The record remained open following the hearing, until close of business on July 12, 2022, to allow Applicant the opportunity to submit supporting documentation. Applicant submitted one Post-Hearing Exhibit, admitted into evidence as Applicant's Post-Hearing Exhibit A. DOHA received the final transcript of the hearing (Tr.) on July 7, 2022.

### **Findings of Fact**

Applicant is 61 years old and is unmarried with no children. He has an Associate's degree. He is employed by a defense contractor as an Engineer. 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 identified three allegations. Applicant failed to timely file his Federal income tax returns for tax years 2011 through 2019. He failed to timely file his state (A) income tax returns for those same years. He also failed to timely file his state (B) income tax returns for tax year 2015. Applicant admits each of the allegations set forth in the SOR, and states that he is expecting a refund when they are filed. Applicant began working for his current employer in 1982, and has had continuous employment with his company for 40 years. He applied for his first security clearance about 38 or 39 years ago. (Tr. p. 16.)

In about 1989, Applicant joined a professional group of engineers. In about 1990 or 1991, he was told by an ex-registered agent of the IRS who was in the group that if Applicant had no tax liability, he would have three to five years to file his income tax returns to get his refund back. It was not until Applicant's father passed away in 2001 or 2002 that Applicant began having trouble getting his income taxes filed. He stated that he was overwhelmed with his father's estate, as he was the executor of the will. Applicant just did not have the time to get everything done. Applicant testified that he always understood that he was required to file annual income tax returns regardless of whether he was going to receive a tax refund. (Tr. p. 23.)

Applicant admitted that at least twice in the past, he has taken the time to catch up on his past-due income tax filings when he is forced to fill out a security clearance application during his security clearance renewals. The first time it occurred was in 2013. As part of his security clearance update, Applicant had to complete a security clearance application, and that time he filed his past-due income tax returns for tax years 2011 and 2012, which were filed late, but were filed in 2013. (Tr. p. 25.) This occurred a second time, most recently in 2018. (Tr. p. 25.) Applicant completed

another security clearance application in 2018, and filed his past-due income tax returns for tax years 2013 through 2017 in August 2018. (Tr. p. 26.) Applicant states that he was late filing these returns, depending on the year, because his truck was broken into, his company laptop was stolen, his personal bags were stolen, and his tax information including all W-2's were in his personal bags that were stolen, or he misplaced his paperwork and got busy and forgot to file. (Government Exhibit 2.)

Applicant testified that he has now filed all of the income tax returns in question, namely Federal and state income tax returns for tax years 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018 and, 2019. (Tr. p. 24.) In regard to his Federal and state income tax returns for tax years 2018 and 2019, they were not filed until late 2020. Applicant explained the reason for that delay was because he was helping his mother clean out the family home and moving her into a smaller home. Traveling back and forth took time, and he got overwhelmed. (Tr. p. 27.) In regard to his Federal and state income tax returns for 2020 and 2021, Applicant states that he is working on them. (Tr. p. 27.)

In regard to his failure to file his state (B) income tax return in a timely fashion for tax year 2015, Applicant explained that his company sent him to work in state (B) on six separate trips, for more than 28 days. His employer was not familiar with the tax laws that impacted their employees temporarily working out of state. Applicant researched the matter, and determined that if he was employed for more than 28 days, he and the other employees with him would be entitled to per diem. The company payroll department then had to change the tax withholdings for that period of time. Applicant was in contact with his Human Resources department and informed them of the issue. It took a while for Applicant and the others with him to receive their W-2 Forms. When Applicant finally received all of the documentation necessary to file his income tax return for State (B), it had passed the deadline for filing. (Tr. p. 30.) Applicant has now filed his 2015 income tax return for State (B). Given the extenuating circumstances here, this allegation is found for the Applicant.

Applicant testified that he has never believed in filing for an extension to file his returns, and it did not make sense to him because if you have the time to do that, you have time to prepare them and get them filed. (Tr. p. 28.)

Applicant admits that his failure to file his Federal and state (A) income tax returns on time may go back as far as tax years 2006, 2007, 2008, 2009 and 2010.

Applicant provided copies of his Federal and State (A) income tax filings for tax years 2011, 2012, 2018, 2019, 2020 and 2021. (Applicant's Post Hearing 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. One 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 failed to file his Federal and state (A) income tax returns for tax years 2011 through 2019, in a timely fashion. Not alleged, but important to this matter is the fact that Applicant also failed to file his Federal and state (A) income tax returns for tax years 2020 and 2021 in a timely fashion. 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.

It is understandable that periodically life can bring stressful situations at the most inappropriate time that can distract one from their legal obligations and responsibilities. However, it is not an excuse for developing a chronic pattern and practice of failing to file one's Federal and state (A) income tax returns as required by law. Applicant has not filed his income tax return on time for many years. It appears that he waits until his security clearance update, every five years, and then takes the time to catch up with his past-due income tax return filings. This has happened several times over the years. Applicant conduct shows poor judgment, unreliability and untrustworthiness. Accordingly, mitigating conditions ¶ 20(a), 20(b), 20(d), and 20(g), do not provide full mitigation in this case.

### **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. and 1.b.	Against Applicant
Subparagraph 1.c.	For 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