



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



In the matter of: )  
)  
) ISCR Case No. 19-02695  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

09/02/2022

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 6, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on January 8, 2021, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on June 2, 2021, and reassigned to me on August 3, 2021.

After coordinating with Applicant, a notice of hearing was issued on February 18, 2022, scheduling the personal appearance for May 18, 2022. The hearing convened as scheduled on May 18, 2022. Applicant's request for a continuance was denied, but later granted after the Government's motion to amend the SOR was granted. The hearing reconvened on August 18, 2022.

## **Procedural and Evidentiary Rulings**

### **Evidence**

Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified at her initial hearing and reconvened hearing, but she did not submit any documentary evidence at either hearing.

### **Motion to Amend SOR**

Department Counsel's motion to amend SOR ¶¶ 1.a and 1.b by changing "2018" to "2021" was granted over Applicant's objection.

### **Findings of Fact**

Applicant is a 62-year-old employee of a defense contractor. She has worked for her current employer or a predecessor defense contractor since 2011. She has worked on the same military facility since at least 1993. She seeks to retain a security clearance, which she has held for more than 20 years. She is a high school graduate. She has never married, and she has no children.

Applicant has a history of tax issues. She did not file her federal and state income tax returns for tax years 2010 through 2021. She reported her failure to file her tax returns from 2011 to 2014 on a Questionnaire for National Security Positions (SF 86) that she submitted in November 2016. She wrote that she did not file the 2011 returns because she did not have the \$100 that she believed she would owe. She stated that she did not file the later returns because she lost her W-2 forms when she moved, and she did not know where to start to file the returns. She stated that she would need to get replacement W-2 forms. She provided similar information when she was interviewed for her background investigation in August 2018.

Applicant responded to interrogatories in January 2020. She reported that she had not filed federal and state tax returns from 2010 through 2018. The interrogatories informed her how to obtain transcripts from the IRS for 2010 through 2018. She provided IRS wage and income transcripts for those years. The transcripts include Applicant's W-2 wage and tax statements for those years. She wrote: "I do not know how to fill out the 1040 form correctly. I am seeking help for this. It is my hope that there will be someone to help as tax 'season' is approaching soon."

Applicant admitted the SOR allegations in January 2021. She testified during her first hearing that she retained a tax preparer to file the returns, but the preparer did not file them because Applicant did not provide her recent W-2 forms. She had not been in contact with the preparer in some time. She provided additional explanations as to why she has not filed the returns during both hearings. Essentially the process is overwhelming for her, and she cannot afford to pay anyone to help her. She does not believe she owes the IRS or her state any money because she has extra withheld from

her paychecks for the taxes. She was unable to provide any timeline as to when the returns will be filed.

## **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 her 2010 through 2021 federal and state income tax returns. AG ¶ 19(f) is applicable.

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

(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 has not filed federal and state income tax returns for more than a decade. She has been aware since at least 2016 that her taxes were of interest to the

DOD. Her initial explanation was that she did not file the 2011 returns because she did not have the \$100 that she believed she would owe. She then stated that she moved and lost her W-2 forms in a move. She testified during her first hearing that she retained a tax preparer to file the returns, but the preparer did not file them because Applicant did not provide her recent W-2 forms. Her recent explanations were essentially that the process is overwhelming for her, and she cannot afford to pay anyone to help her. After more than a decade, those excuses start to ring hollow. The returns remain unfiled. There are no applicable mitigating conditions.

### **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 Guideline F in my whole-person analysis.

Applicant has not filed federal and state income tax returns for more than a decade. Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, 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. 17-01382 at 4 (App. Bd. May 16, 2018).

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the 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:	Against Applicant
Subparagraphs 1.a-1.b:	Against Applicant

## **Conclusion**

It is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge