



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-00197
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Patricia Lynch-Epps, Esq., Department Counsel  
 For Applicant: *Pro se*  
 09/08/2022

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant did not mitigate the financial considerations security concern. He failed to file Federal and state income tax returns for multiple years and he has an unresolved tax delinquency. He has failed to provide supporting documentation to demonstrate any good-faith efforts to remedy this matter. National security eligibility for access to classified information is denied.

**History of the Case**

Applicant submitted a security clearance application (SCA) on July 28, 2020. (Item 3) On September 21, 2021, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). (Item 1) On December 1, 2021, Applicant provided an answer to the SOR, and requested a decision based upon the administrative record (Answer). (Item 2)

A copy of the file of relevant material (FORM), dated January 28, 2022, was provided to Applicant by letter on January 31, 2022. Department Counsel attached as evidence to the FORM Items 1 through 4. Applicant received the FORM on February 11, 2022, and he was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. He did not respond to the FORM. On April 12, 2022, the case was assigned to me.

## Findings of Fact

Applicant is 44 years old. He has been married since 1999, and has no children. He received a high school diploma in 1994, and attended some college classes in 2015. He enlisted in the U.S. Marine Corps in December 1994. He completed his active duty service with an honorable discharge in April 2000. He has worked for defense contractors since at least 2010, and he has worked for his current employer, as a non-destructive testing (NDT) quality specialist, since April 2020. He has held a DOD security clearance since approximately 2000. (Item 3; Item 4)

The SOR alleges that Applicant owes delinquent Federal income taxes for tax year 2014 in the amount of \$11,386.07 (SOR ¶ 1.a), and he failed to file Federal and State A income taxes for tax years 2016, 2017, 2018, and 2019. (SOR ¶¶ 1.b and 1.c) He admitted all SOR allegations and stated this situation developed due to him not considering this matter to be a priority and procrastination. In his response to the SOR he stated that he was in the process of remedying this matter. (Items 1-4)

Applicant completed an interrogatory on April 15, 2021, concerning the accuracy of a report of his background interview conducted on August 25, 2020, and questions about his Federal and state income taxes. He verified that the report of his interview with an authorized DOD investigation was accurate. He had reported to the investigator that he had not filed any income tax returns for 2016, 2017, 2018, 2019. In the interrogatory, however, he listed that he had filed both a Federal and State A income tax return for 2016, but he had not yet filed his 2020 Federal income tax return. He was asked to provide supporting documentation with the interrogatory. Applicant provided IRS transcripts for tax years 2014, 2017, 2018, and 2019. The IRS tax transcripts showed he had not filed federal income tax returns for tax years 2017, 2018, and 2019. He did not provide any State A income tax documentation. He provided no proof of payments or an established payment plan with any tax authority, or that he had recently filed any of the Federal or State A income tax returns alleged in the SOR. (Item 4)

## 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 concern under Guideline F (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 . . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The record evidence of Applicant's delinquent Federal tax debt and unfiled 2016, 2017, 2018, and 2019 Federal and State A income tax returns establishes the following disqualifying conditions under AG ¶ 19:

(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.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

(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;

(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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis or provides evidence or actions to resolve the issue.

Applicant bears the burden of production and persuasion in mitigation. He attributed his failure to pay and file Federal and state income tax returns for multiple years due to it not being a priority and procrastination. He has failed to provide supporting documentation to demonstrate his good-faith efforts to remedy this matter. There is insufficient information to determine the amount of additional Federal or state tax debt he

may owe, if any. He failed to take responsible action to resolve his unfiled Federal and State A income tax returns for multiple years and pay his tax delinquency. Access to classified and protected information requires faithful adherence to the rules and regulations governing such activity. A person who fails to address concerns, even after having been placed on notice that his or her access or security clearance is in jeopardy, may lack the willingness to follow rules and regulations when his or her personal interests are at stake. Financial considerations security concerns are not 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 considered Applicant's lengthy career as a Defense contractor and 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 in my whole-person analysis. I conclude Applicant has not met his burden of proof and persuasion. He did not mitigate the financial considerations security concerns or establish his eligibility for a security clearance.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.c:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson  
Administrative Judge