



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



In the matter of: )  
)  
) ISCR Case No. 21-00729  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

09/19/2022

**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 July 22, 2021, 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 August 24, 2021, and requested a hearing before an administrative judge. The case was assigned to me on May 4, 2022.

The hearing convened as scheduled on August 24, 2022. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibit (AE) A, which was admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that I have marked AE B through E and admitted without objection.

## Findings of Fact

Applicant is a 57-year-old employee of a defense contractor. He has worked for his current employer since 1998. He seeks to retain a security clearance, which he has held since at least the 1990s. He attended college for a period without earning a degree. He has never married, and he has no children. (Transcript (Tr.) at 20-21; GE 1)

Applicant has a history of tax issues. He did not file his federal and state income tax returns for tax years 2006 through 2019 when they were due. His father passed away in late 2006, and Applicant was named his executor. Applicant was working long hours and put off filing the returns. His long hours continued into the following years. He did not receive booklets from the IRS and his state, and the whole thing just “snowballed.” (Tr. at 21-23; Applicant’s response to SOR; GE 1-3)

Applicant reported his failure to file his federal and state tax returns from 2011 to 2017 on a Questionnaire for National Security Positions (SF 86) that he submitted in March 2019. He wrote “I have not filed a tax return since 2006. If you check my personnel file you will see I pay both federal and state an extra \$625 (\$25 per pay check) and with standard deductions they would both owe me money.” (GE 1)

When he was interviewed for his background investigation in May 2019, Applicant stated that he did not file his tax returns from 2006 to 2018 because of laziness and procrastination. He stated that after he did not file the 2006 returns, he stopped receiving tax booklets and it became more difficult to file the returns. He stated that he intended to file his 2017 and 2018 returns by December 31, 2019, and then start filing the older returns. (Tr. at 24; GE 2)

The DOD sent interrogatories to Applicant requesting information about his tax returns. He received the interrogatories on August 20, 2020. He was requested to provide copies of his “TAX ACCOUNT TRANSCRIPTS” for tax years 2006 through 2018. He was provided the information on how to obtain the transcripts. He was told not to provide other documents in lieu of the tax account transcripts, including tax return transcripts. (GE 3)

After an extension request was granted, Applicant responded to the interrogatories in January 2021. He indicated that he still had not filed the returns. He submitted copies of tax return transcripts, not tax account transcripts, as requested. This was simply a mistake on Applicant’s part and not an attempt to hide anything from the DOD. He reiterated that he did not owe any taxes because he had an extra \$25 per paycheck withheld from his pay. (GE 3)

Applicant responded to the SOR on August 24, 2021, after receiving the SOR the month before. He still had not filed the returns, but he indicated that he retained a tax professional and sent his tax information to the professional the previous day to file the returns.

Applicant's documentation is less than ideal, but I am satisfied that the tax professional filed Applicant's federal and state tax returns for tax years 2015 through 2020 in about October 2021. Applicant did not file the tax returns for the earlier years because he was told to only go back six years. Information from the tax professional indicates that Applicant would have been due refunds for 2015 (\$306-IRS and \$1,326-state); 2016 (\$1,366-IRS and \$1,635-state); 2018 (\$1,135-IRS and \$1,726-state); and 2020 (\$2,649-IRS and \$1,877-state). He owed additional federal taxes for 2017 (\$1,227) and 2019 (\$390). He was due refunds from the state for 2017 (\$1,232) and 2019 (\$1,573). (Tr. at 16-19, 24, 27-30; Applicant's response to SOR; AE A, B)

Applicant submitted documentation that he paid the IRS \$1,227 (tax year 2017) and \$390 (2019) in October 2021. That same month, he received refunds of \$831 and \$2,649 from the IRS; and 1,573, \$1,726, and \$1,877 from the state. He paid the IRS \$2,590 and \$2,983 in June 2022. He received a refund of \$2,990 from the IRS for tax year 2017 in July 2022. (Tr. at 16; AE A-D)

Applicant credibly stated that he never intended to shirk his responsibility to pay his taxes. He provided copies of an uncashed refund check of \$593 he received from the state in May 2006, and an uncashed refund check of \$887 he received from the IRS in October 2007. He stated that he was working so much, he never got around to cashing the checks. (Tr. at 16, 24, 28-30; Applicant's response to SOR; GE 1-3; AE E)

Applicant filed his 2021 federal and state income tax returns. He owes the IRS, but he has the assets to pay the taxes. His finances are otherwise in good shape, with more than \$800,000 in investments and retirement accounts and no delinquent debts. (Tr. at 26-27; GE 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 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 2006 through 2019 federal and state income tax returns 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 is potentially applicable:

(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 was named his father's executor after he passed away in late 2006. He worked long hours and put off filing the returns. He also admitted that he did not file the returns because of laziness and procrastination.

Applicant knew that his unfiled returns were an issue when he submitted his SF 86 in March 2019; when he was interviewed in May 2019 and stated that the returns would be filed by December 31, 2019; and when he responded to interrogatories in January 2021. He did not file the returns until after he received the SOR. I believe Applicant likely lost more money in forfeited refunds than he owed. But we will never know for certain because the returns from 2006 through 2014 have never been filed. AG ¶ 20(g) is applicable to the filed income tax returns, but that does not end the discussion.

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). This is true even when the returns are eventually filed.

The timing of ameliorative action is a factor that should be brought to bear in evaluating an applicant's case for mitigation. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019).

Applicant's failure to fulfil his duty to file income tax returns for more than a decade continues to raise doubts about his judgment, reliability and willingness to follow rules and regulations. The mitigation provided by the filed returns is insufficient to

overcome the many years of Applicant shirking his responsibility to this country to file his tax returns. 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 have incorporated my comments under Guideline F in my whole-person analysis.

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