



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



In the matter of: )  
)  
) ISCR Case No. 22-00183  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel  
For Applicant: *Pro se*

06/02/2022

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant successfully mitigated the security concerns regarding financial considerations. Eligibility for a security clearance is granted.

**Statement of the Case**

On July 6, 2021, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On November 19, 2021, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued him a set of interrogatories. On December 12, 2021, he responded to those interrogatories. On February 11, 2022, the DCSA CAF issued him a Statement of Reasons (SOR) under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), effective June 8, 2017.

The SOR alleged security concerns under Guideline F (Financial Considerations) and detailed reasons why the DCSA adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On February 14, 2022, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by DOHA on March 9, 2022, and he was afforded an opportunity after receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, he was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. He received the FORM on March 14, 2022. His response was due on April 13, 2022. Applicant chose not to respond to the FORM, for as of May 6, 2022, no response had been received. The case was assigned to me on May 19, 2022. The record closed on April 13, 2022.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted, with comments, the factual allegation (SOR ¶ 1.a.). Applicant's admissions and comments are incorporated herein. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is a 21-year-old employee of a defense contractor. He has been serving as a tank tester with his current employer since November 2020. He previously worked for fast-food restaurant as a kitchen lead trainer (June 2017 – October 2020). He is a 2019 high school graduate, having been home-schooled. He has never served with the U.S. military. He has never held a security clearance. He has never been married, and he has no children. He resides with his parents.

### **Financial Considerations**

Applicant self-reported in his SF 86 that he had not filed his federal income tax return in 2020. While he referred to 2020, he intended to report that he failed to file the federal income tax return for the tax year 2019 that was due in 2020. He explained that in previous years, his parents filed his federal income tax returns, and that on this occasion, they did not do so, and they failed to inform him of that fact. He estimated that he would receive a refund of about \$500. He reported that he was trying to obtain the necessary information from the Internal Revenue Service (IRS) to resolve the issue. He accepted full responsibility for the matter. (Item 5 at 24-25)

On September 2, 2021, Applicant was interviewed by an investigator from the U.S. Office of Personnel Management (OPM), and he repeated the reasons for his failure to file his federal income tax return for the tax year 2019. Because his parents had always handled his income tax filings in the past, he thought they would do so again, but they didn't, and they never explained why they thought this time it would be different.

Nevertheless, since it was his responsibility, he accepted full responsibility for the failure to file. He never received any notification regarding the unfiled income tax return. He first learned about the unfiled federal income tax return in July 2021, and attempted to contact someone at the IRS, but he never received a response. He has continued his efforts to resolve the matter. Other than this one unfiled year, he has never failed to timely file his income tax returns. (Item 7 at 3)

On December 12, 2021, in response to the interrogatories issued to him by the DCSA, he repeated the background for his failed filing. Once again, he referred to a miscommunication between his parents and himself, and he again accepted full responsibility for the issue. He also repeated that he has personally done his taxes in recent years and will continue to do so in the future. He added that he is great with his finances; has great credit for an individual his age; and he has always paid his bills on time. (Item 6 at 5) Applicant's Response to the SOR was consistent with his previous explanations. (Item 4)

The SOR alleged only that Applicant had failed to timely file, as required, federal income tax returns "for at least tax year 2019." Since Applicant's sole failure to timely file a federal income tax return was related to the tax year 2019, and the OPM investigator cleared up the erroneous 2020 issue, there is no evidence that there were any other tax years in which Applicant failed to timely file his federal income tax returns. Accordingly, the allegation, as it refers to "at least," is without any evidence to support it.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)) As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.)

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.” “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)) “Substantial evidence” is “more than a scintilla but less than a preponderance.” (See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994))

The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005))

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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. Furthermore, “security clearance determinations should err, if they must, on the side of denials.” (*Egan*, 484 U.S. at 531)

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” (See Exec. Or. 10865 § 7) Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to the guideline 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 a condition that could raise security concerns under AG ¶ 19:

(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 admittedly failed to timely file his federal income tax return for the tax year 2019. AG ¶ 19(f) has been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties 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, 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.

AG ¶¶ 20(a) and 20(b) apply. Applicant attributed his financial issue to a miscommunication between his parents and himself, and he repeatedly accepted full responsibility for the issue. Because his parents had always handled his income tax filings in the past, he thought they would do so again, but they didn't, and they never explained why they thought this time it would be different. He also repeated that he has personally done his taxes in recent years and will continue to do so in the future. He added that he

is great with his finances; has great credit for an individual his age; and he has always paid his bills on time.

The DOHA Appeal Board has observed:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. *See, e.g.*, ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* A person who fails repeatedly to fulfill his or her legal obligations 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. 14-01894 at 5 (App. Bd. Aug. 18, 2015). *See Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). *See* ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

The Appeal Board clarified that even in instances where an applicant has purportedly corrected his or her federal tax problem, and the fact that the applicant is now motivated to prevent such problems in the future, does not preclude careful consideration of an applicant's security worthiness in light of his or her longstanding prior behavior evidencing irresponsibility including a failure to timely file federal income tax returns. (See ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. June 15, 2016) (characterizing "no harm, no foul" approach to an Applicant's course of conduct and employed an "all's well that ends well" analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR).

If this is a proceeding aimed at evaluating an applicant's judgment and reliability – as declared by the Appeal Board – Applicant's age and the isolated instance, under the circumstances described by him, are significant. In this instance, the Appeal Board's commentaries are instructive. The facts are that at the time of Applicant's isolated – not repeated – failure to timely file his federal income tax return for the tax year 2019, he was 19 years old and still residing with his parents. He had been working since he was 16 years old, and his parents had previously filed his federal income tax returns, and he mistakenly thought they would do so again, but they didn't, and they never explained why they thought this time it would be different. The failure to timely file was due to a circumstance – an apparent miscommunication between his parents and himself – that was without his knowledge, and as such, was beyond his control. When he found out about the issue, he was honest and candid in reporting the issue in his SF 86, to the OPM investigator, in his answer to the interrogatories, and in his Answer to the SOR. Despite

the allegation, and his admission to it, there is zero evidence that Applicant has a problem with complying with well-established governmental rules and systems. Under the circumstances, while his failure to timely file a federal income tax return is definitely a security concern, in this instance the concern has been substantially minimized. Applicant's honesty, candor, maturity, and the explanation and efforts to resolve the tax issue, as well as the fact that he has taken full responsibility for the failure to file, under the circumstances no longer cast doubt on his current reliability, trustworthiness, and good judgment. (See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).)

### **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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. (See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See *also* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006))

There is some disqualifying evidence under the whole-person concept. Applicant failed to timely file his federal income tax return for the tax year 2019.

The mitigating evidence under the whole-person concept is simply more substantial. Applicant is a 21-year-old employee of a defense contractor. He has been serving as a tank tester with his current employer since November 2020. He previously worked for fast-food restaurant as a kitchen lead trainer (June 2017 – October 2020). He is a 2019 high school graduate, having been home-schooled. At the time of his isolated – not repeated – failure to timely file his federal income tax return for the tax year 2019, he was 19 years old and still residing with his parents. He had been working since he was 16 years old, and his parents had previously filed his federal income tax returns, and he mistakenly thought they would do so again, but they didn't, and they never explained why they thought this time it would be different. The failure to timely file was due to an apparent miscommunication between his parents and himself, that was without his knowledge, and

as such, was beyond his control. When he found out about the issue, he was honest and candid in reporting the issue. While his failure to timely file a federal income tax return is definitely a security concern, in this instance the concern has been substantially minimized. Applicant's honesty, candor, maturity, and the explanation and efforts to resolve the tax issue, under the circumstances no longer cast doubt on his current reliability, trustworthiness, and good judgment.

Overall, the evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has successfully mitigated the security concerns arising from his financial considerations. See SEAD 4, App. A, ¶¶ 2(d) (1) through AG 2(d) (9).

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as amended, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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ROBERT ROBINSON GALES  
Administrative Judge