



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 21-01146  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Brian L. Farrell, Esq., Department Counsel  
For Applicant: Troy L. Nussbaum, Esq.

12/29/2022

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**Decision**

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MASON, Paul J., Administrative Judge:

Applicant exercised poor judgment by failing to file federal and state tax returns and pay taxes for several years. He demonstrated good judgment in filing all by one state tax return and all of his federal tax returns. He owes no state taxes and has been paying \$500 a month under a payment plan with the federal tax agency for approximately 18 months. Eligibility for access to a security clearance is granted.

**Statement of the Case**

On January 16, 2019, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. On April 4 and April 11, 2019, he provided personal subject interviews (PSIs) to an investigator from the Office of Personnel Management (OPM). After reviewing the results of a security background investigation, the Department of Defense (DOD) Defense Counterintelligence Security Agency (DCSA) Consolidated Adjudication Services (CAS) could not make the affirmative findings required to grant a

security clearance, and issued Applicant a Statement of Reasons (SOR), dated November 9, 2020, detailing security concerns under financial considerations (Guideline F). The action was taken under Executive Order (E.O.) 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) effective in the DOD on June 8, 2017.

Applicant provided his answer to the SOR on September 9, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 27, 2022, for a hearing on October 26, 2022. I held the hearing on the scheduled date. Three of the Government's four exhibits (GE) 1-3 were entered into evidence without objection. Applicant objected to the fourth exhibit, a December 2019 credit bureau report, averring that the report was irrelevant to the SOR, which addresses only taxes. Department Counsel responded that the report provided a more accurate depiction of Applicant's financial status. I overruled the objection and admitted GE 4 in order to develop a full record. (Tr. 13) Applicant's seven exhibits (AE) A-G were entered into evidence without objection. I granted him additional time to submit post-hearing documentation. His submissions of AE H through AE K, which were submitted before the expiration of the November 10, 2022 deadline, were entered into evidence without objection. DOHA received the hearing transcript (Tr.) on November 9, 2021. The record closed on November 3, 2022.

### **Rulings on Evidence**

During the early portion of the hearing (Tr. 5, 6), the Government moved to amend the SOR with three additional allegations under paragraph 1 of Guideline F as follows:

- c. You are indebted to the Federal Government for delinquent taxes in the amount of \$1,559 for tax year 2014. As of the date of the SOR, the taxes remain unpaid.
  
- d. You are indebted to the Federal Government for delinquent taxes in the amount of \$7,998 for tax year 2015. As of the date of the SOR, the taxes remain unpaid.
  
- e. You are indebted to the Federal Government for delinquent taxes in the amount of \$3,814 for tax year 2016. As of the date of the SOR, the taxes remain unpaid.

I failed to ask Applicant's attorney for his position on the proposed amendments, but his attorney provided a straightforward position by indicating that Applicant has been regularly paying the Internal Revenue Service (IRS) in an active repayment plan for more than a year to address his delinquent federal taxes. (September 2021 answer to SOR; Tr. 10-11, 31, 39, 66-67; AE I) I grant Department Counsel's motion seeking to add the three

proposed amendments, SOR ¶¶ 1.c, 1.d, and 1.e. I admitted the Motion to Amend into evidence as Hearing Exhibit (HE) 1.

### **Findings of Fact**

The September 7, 2021 SOR alleges under SOR ¶ 1.a that Applicant did not file state taxes for 2013 through 2018. In his September 9, 2021 answer, he denied the allegation without explanation. AE E reflects that he did not file the missing state returns until May 2020. Applicant provided documentation of signed state tax returns for tax years 2014 through 2017. For tax years 2013 and 2018, there is documentation that various schedules were filed for those years, but no actual signed income tax returns were included, as with the 2014 through 2017 returns. (However, there is other documentation verifying that the 2018 state tax return was in fact processed by the state tax agency.) (AE C at 21) Applicant's late filing of his 2020 state tax return a week before the hearing was due to his inability to obtain a waiver from the state taxing authority for his wife's Social Security disability benefits. Applicant provided substantial documentation confirming that he has filed all state tax returns and owes no state taxes. (Tr. 31, 35-36) See also, AE C at 21-23; AE E at 40-94.

SOR ¶ 1.b alleges that Applicant failed to file federal tax returns for tax years 2013 through 2017, and he owed \$2,199 in back taxes for federal tax year 2018. In his answer, he admitted he did not file federal tax returns for tax years 2013 through 2017, and he owed federal taxes as alleged for federal tax year 2018. Applicant's response in an attachment to his answer and his hearing testimony constitute admissions to SOR ¶¶ 1.c, 1.d, and 1.e. He mentioned a \$500-a-month payment plan with the IRS. He was willing to increase the amount of payments to repay the debt sooner. His daughter, who lives with him, pays some of the household bills while he pays the mortgage and car insurance on two cars. (Attachment to Applicant's September 2021 answer to SOR; Tr. 31, 39, 66-67)

Applicant is 68 years old. He has been married since 1977, and has five adult-aged children, ages 34 to 45. Also in 1977, he received vocational training for certification as an electrician. He has owned his own home since 1992. He became a United States citizen in 1998. Since December 2018, he has been a maintenance mechanic for a defense contractor. Though he testified that he worked as a cleaner for a different contractor from 1990 to 2012, his January 2019 e-QIP indicates he worked as a maintenance worker for a private employer since March 2000. Additional information that does not appear in his e-QIP is his handy man business that he started in 2012, and he continues to operate on an occasional basis. Applicant contended that he did not provide tax information in his January 2019 e-QIP because he did not remember any question on the form requiring information about taxes. (GE 1 at 8-38; GE 2 at 7, 11; Tr. 23-27)

While Applicant was working for the Government as a cleaner between 1990 and 2012, his taxes were regularly withheld from his earnings. (Tr. 48) When he opened his handy man business in 2012, he did not withhold any taxes and did not report his taxes as he should have because of his unfamiliarity with how the tax system operated for a

self-employed person. Applicant started his own business because he believed that he could make a lot more money than working at his government job. He never set money aside for his tax obligations. He returned to his government job in 2018 because he was not generating enough income to cover his debts, especially with two children attending college. The government job provided more security. (Tr. 25-30, 48-49)

Before tax year 2013, Applicant indicated that he filed his federal tax returns on time with the assistance of a tax preparation business (A) that subsequently closed. In 2014, (tax year 2013), he stopped using them because he thought that he could receive a better deal from a second tax service (B). (Tr. 28) In subsequent testimony, he indicated that he was dissatisfied with tax preparer A's service. (Tr. 51). Tax preparer B generated a draft of the federal return for tax year 2013, but doubled the fee that tax preparer A charged. After seeing the draft return, he realized that he owed taxes for tax year 2013. Unhappy with the larger fee of the tax preparer B, Applicant decided to prepare and file the 2013 federal return himself. He did not know he could apply for an extension to file the 2013 return and did not call the IRS for help. He did not know about filing extensions until 2018 when his daughter began providing help in preparing his returns. (Tr. 50-55) After a hearing recess was taken to consult with his attorney concerning the filing of the 2013 federal tax return, Applicant provided confusing testimony about why he did not file his return for tax year 2013, particularly when he indicated he had the necessary records to file the return. (Tr. 57-59) I find that not having the money to pay for tax services increased Applicant's procrastination, especially when he knew he owed taxes for 2013. He did not file his 2013 federal tax returns on time in 2014. In May 2015, an insurance company (C) prepared and filed his 2013 tax returns. (GE 2 at 10; GE 3 at 5; AE A at 15; Tr. 39-40, 63)

Applicant claimed that his extensive work schedule prevented him from filing his 2014 through 2017 federal returns. According to his tax-account transcripts, the missing federal returns for 2014 through 2017 tax years were filed between February and July 2021. (AE A at 7-14) Applicant transferred about five years of federal tax records, which he stored in ledgers and notebooks, to tax company (D) and paid them about \$1,000 to prepare and file the missing tax returns in 2021. (Tr. 54, 59-63)

Applicant testified that he decided to file the missing (state) returns in May 2020 because he told the investigator in April 2019 that not filing tax returns for several years would be an issue. (Tr. 64-66; AE A at 1-12; AE C at 21-23; AE E at 40-94) Applicant did not want to give the impression to the investigator that he was not going to file his returns, so he filed them all. (Tr. 64-65) After he replied to GE 3 with answers to his federal and state tax issues, and attached federal tax transcripts in May 2020, he filed the missing federal returns with tax preparer D in 2021. (Tr. 64-66; AE A at 1-12) Though he claimed the May 2020 interrogatories from the Government (GE 3) were not the primary reason why he filed the returns, and that he was going to file them anyway, the established fact is that in May 2020, the missing federal returns were at least four years delinquent when tax preparer D filed them in 2021. Applicant filed his federal tax returns for 2018 through 2021 on time. (Tr. 36; AE A at 1-6)

Regarding the back taxes that Applicant owes the IRS, he telephoned the agency in April 2021, and set up a payment plan of \$500 a month. After an initial payment of over \$1,400, he has been making regular payments of \$500 a month since. The IRS sends him a monthly payment voucher and he returns the voucher with a \$500 check. As of November 2, 2022, Applicant owed \$12,949 to the IRS. (Tr. 67-69; AE I at 1-6; AE J at 1-3)

To avoid tax problems in the future, Applicant has employed a certified public account (CPA) to prepare all his future tax returns. This CPA prepared Applicant's 2020 state tax returns. Applicant knows that the only way to avoid tax problems in the future is to file his tax returns and pay his taxes. His wife and children will remind him to prepare and file his tax returns, and pay his taxes. (Tr. 37, 41, 72-73; AE F at 96; AE K)

### **Character Evidence**

Applicant's son submitted a character statement about Applicant, his father. The son served in the United States Marines for 15 years and became proficient at handling military travel claims. He believes that Applicant has plenty of experience in home improvement and office repair. Though he may not have an extensive background in computers, he has provided a work-ethic example for his five children to follow. (AE D at 24-25)

Applicant's oldest daughter respects him for his dedication to hard work to enhance the family's security. He has always demonstrated a willingness to help those people who are down on their luck. (AE C at 36)

A friend, who has known Applicant for 30 years, believes that he is dedicated to his family, church, and friends in the neighborhood community. (AE D at 26)

Six friends met Applicant as coworkers and have become close friends. They consider Applicant responsible, honest, trustworthy, and unselfish. A friend and coworker for the past 10 years, has found Applicant to be a skilled employee who is conscientious and dependable. Two customers are clearly impressed with the repairs that Applicant has made to their homes. (AE D at 26-29, 34, 35, 37)

A friend of 25 years considers Applicant a loyal friend who is knowledgeable in home repair. In the last 21 years of their friendship, another friend and Applicant have attended church on a regular basis. Another friend lauds Applicant's work ethic and professionalism. Another friend commends his leadership and problem-solving abilities, coupled with his poetic eloquence. (AE C at 30-33)

Applicant's supervisor since December 2018 has observed Applicant's accommodating personality enhance his company's customer relations and overall success. (AE C at 38)

Based on 30 years of observation, this character reference believes Applicant is an outstanding property manager accomplished in home repair. He demonstrates quality leadership and team player capabilities. (AE C at 39)

During the hearing, Applicant recited a poem from his second book of poems entitled "A Second Look at Poetry." (Tr. 42-43) He wrote the poem to memorialize his appreciation for the advantages and opportunities of living and working in the United States. (Tr. 43-44) In a two-page salutary statement, Applicant thanked his two sisters and brothers for sponsoring him for immigration to the United States in 1987. He brought his oldest daughter with him, hoping that she could obtain needed medical treatment that was unavailable in his home country. Due to a delay in the immigration process, she was unable to get the proper medical attention. Nonetheless, he is still certain he made the right decision to come to America. (AE G)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines should be applied with common sense and the general factors of 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(d) 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

### **Analysis**

#### **Financial Considerations**

The security concerns of the guideline for financial considerations are set forth 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.

An applicant who seeks a security clearance with the Government must demonstrate good judgment and trustworthiness. A gauge of his judgment and trustworthiness is how he manages his personal affairs. An applicant who has a history of financial irresponsibility in not filing or paying his federal and state taxes in a timely manner may also demonstrate the same irresponsibility in failing to comply with rules and regulations for safeguarding sensitive or classified information. The timing by an applicant in filing his tax returns and paying his taxes is critical to a whole-person assessment of his reliability and trustworthiness.

AG ¶19 describes conditions that could raise security concerns and may be disqualifying include:

- (a) inability to satisfy debts;
- (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 tax as required.

The SOR alleges that Applicant's failure to file federal and state tax returns and pay his federal and state taxes invokes security concerns under the financial considerations guideline. By not consistently fulfilling his legal obligation to file returns, an applicant shows poor judgment and unreliability that can disqualify him from security clearance eligibility. See, 14-01894 at 5 (App. Bd. Aug.18, 2015) AG ¶ 19(c) applies because Applicant has a history of not meeting delinquent federal and state income taxes between 2013 and 2018. AG ¶ 19(f) applies because of his failure to file federal and state tax returns for 2013 through 2018 and pay the corresponding taxes in a timely manner.

The pertinent mitigating conditions under AG ¶ 20 are potentially applicable:

- (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

(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's federal and state tax problems began in 2014 (federal tax year 2013) when he stopped using tax preparer A. He did not make documented efforts to correct the state tax issues until May 2020. While he filed his 2013 federal return in 2015, he did not file the other listed federal returns until 2021. Though he owes no state taxes, he still owes \$12,949 in federal taxes. Only limited mitigation is available to him under AG ¶ 20(a).

AG ¶ 20(b) does not apply to the circumstances of this case because there were no unanticipated events leading to Applicant's financial problems. His decision to leave his government job to open a handy man business in 2012, believing he could earn more money than his government job, was a decision within his control. His decision to prepare his own taxes in 2014 (for tax year 2013) was another decision within his control. When Applicant discovered he owed taxes for 2013, he did not act responsibly to fulfill his tax obligations. Instead of becoming proactive in filing his state and federal tax returns, he did nothing until May 2020. Neither prong of AG ¶ 20(b) is available to Applicant.

Applicant began to put his tax issues in order when he learned from his daughter in 2018 that he could seek an extension to file his tax returns. With her assistance, Applicant filed his 2018 through 2021 federal tax returns in a timely manner. Though there is no evidence of financial counseling, the daughter's help in restoring Applicant's tax responsibilities deserves limited mitigation under AG ¶ 20(c).

Both AG ¶¶ 20(d) and 20(g) apply based on Applicant's conduct in setting up a payment plan in April 2021, and making regular monthly payments under the plan since then.

### **Whole-Person Concept**

I have examined the evidence under the specific guideline (financial considerations) in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is 68 years old and has been married since 1977. He has five adult-aged children. Applicant's coworkers and friends describe him as a reliable and trustworthy person with impressive leadership credentials. He is widely respected for his expertise in home management and repair. Because of his engaging personality, Applicant's supervisor lauds Applicant's effective interaction with customers.

I am convinced that Applicant does not want to relive the serious tax problems that he incurred when he opened his own business without considering the tax ramifications. Applicant recognizes that he must: (1) regularly file his state and federal tax returns; (2) when necessary, obtain an extension for additional time to file; and, (3) pay state and federal taxes as required. Considering the evidence as a whole, Applicant's evidence in mitigation overcomes the adverse evidence presented under the guideline for financial considerations.

### **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:	FOR APPLICANT
Subparagraphs 1.a-1.e:	For Applicant

### **Conclusion**

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

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Paul J. Mason  
Administrative Judge

