



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



In the matter of: )  
)  
) ISCR Case No. 21-02686  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne M. Driskill, Esquire, Department Counsel  
For Applicant: *Pro se*

January 19, 2023

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**Decision**

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GLENDON, John Bayard, Administrative Judge:

**Statement of Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on March 2, 2021. On June 28, 2022, the Department of Defense Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective within the Department of Defense (DoD) on June 8, 2017. Applicant submitted an answer to the SOR dated July 25, 2022, and requested a hearing before an administrative judge. (Answer.)

The Government was ready to proceed on September 22, 2022. The case was assigned to me on September 26, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 11, 2022, scheduling the hearing for December 2, 2022. Applicant subsequently requested a postponement due to illness, and I rescheduled the hearing for December 12, 2022. The hearing was convened as rescheduled via the TEAMS videoconferencing application. Department Counsel offered Government Exhibits (GE) 1 and 2, which I admitted without objection. Applicant testified on his own behalf. He provided no documents. DOHA received the transcript of the hearing (Tr.) on December 19, 2022. (Tr. at 9-11.)

### **Findings of Fact**

Applicant is 63 years old and has been married and divorced twice. His second marriage ended in 2012. He has no children. Applicant has earned a bachelor's degree and a master's degree. He has been employed by a defense contractor as an engineer since November 2020. He is a first-time applicant for a security clearance. (Tr. at 17-19; GE 1 at 7, 13-14, 22-24, 41-43.)

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

The Government alleged in the SOR that Applicant is ineligible for access to classified information because he failed to meet his financial obligations and is therefore potentially unreliable and untrustworthy. Specifically, the SOR alleged that Applicant failed to timely file his Federal tax returns for the last ten tax years (TYs), *i.e.*, TYs 2012 through 2021 (SOR ¶ 1.a); and failed to timely file his state tax return for at least TY 2020 (SOR ¶ 1.b). In the Answer, Applicant admitted both allegations and provided additional information.

The underlying facts and the status of the matters set forth in the SOR are as follows:

1.a. Failure to timely file Federal tax returns for TYs 2012 through 2021. Applicant and his second wife separated at the end of 2011. He described the separation as "unexpected." They divorced in 2012. The termination of what had been a ten-year relationship with six years as a married couple was difficult for Applicant and affected him greatly. Applicant took time off in 2011 and took an extended vacation for most of 2011. He began working as a senior engineer in November 2011. He worked with that employer until February 2014. (Tr. at 8, 32; GE 1 at 18; GE 2 at 3.)

Applicant did not file his Federal tax returns for TYs 2012 and 2013. He claimed that his failure to file was due to his emotional turmoil following his divorce. He lived in State A at that time, which had no state income tax. Accordingly, no state tax filing was required. (Tr. at 8-9, 12-14, 22-23, 32-33.)

In early 2014, Applicant accepted a position to work in Canada for a Canadian company (Company 1). He relocated from State A to a nearby location in Canada that was about 15 miles across the border of State A in February 2014 and began his new position as a senior engineer. From February 2014 until February 2016, he was an employee of Company 1. In February 2016, he began working as a contractor for a second Canadian firm (Company 2). His Canadian work permit expired in 2018, and he returned to the United States and continued working for Company 2 remotely. He completed his work responsibilities in November 2019 and needed to look for a new job. He earned the equivalent of about USD 60,000 per year while working for Companies 1 and 2. (Answer; Tr. at 13-14, 19-22, 26, 34; GE 1 at 16-18, 23.)

Applicant began a job search in the United States. Shortly thereafter, the COVID-19 pandemic shutdown began, making it difficult to find a job. In November 2020, he was hired by Company 3, a DoD contractor and his clearance sponsor, and began working in State B. He was unemployed from November 2019 until November 2020. (Tr. at 27.)

His first Canadian employer, Company 1, withheld taxes for Canadian income tax purposes. As noted, Applicant worked for Company 2 as a contractor. Company 2, which withheld no Canadian taxes, and Applicant was responsible for paying his own Canadian taxes for TYs 2016 to 2019 when he worked as a contractor. Applicant paid no estimated taxes to the U.S. Government while working for either Canadian company. (Tr. at 22-24, 26, 34.)

Applicant did not file U.S. Federal income tax returns for the tax years when he was living in Canada, *i.e.*, TY 2014 through TY 2018. He explained that though he knew that he needed to file tax returns in the U.S. while he was living in Canada, he did not know how to do so and did not know whom to contact for help. In addition, he filed no income tax returns with the Canadian authorities during the years that he worked in Canada and paid no taxes to the Canadian Government other than the taxes withheld from his paychecks by Company 1. (Tr. at 22.)

In 2020, Applicant worked for Company 3 for a couple of months. Applicant retained a tax attorney in January 2021 to help him file his TY 2020 U.S. and state returns and his delinquent U.S. tax returns. He claimed at the hearing that he was determined to resolve this long-standing problem. However, his attorney advised that she would not file any returns until he provided her with all of the necessary tax information for all of the tax years since TY 2012. Applicant claimed that he has made considerable efforts to obtain the documentation required by the attorney, but he has encountered serious difficulties due to the number of years involved. One significant problem he faces is that Company 1 is no longer in business, and he is unable to obtain any income information. (Tr. at 8-9, 14-16, 29-30.)

In June 2022, Applicant received from the IRS Account Transcripts for TYs 2012 through 2021. The transcripts confirm that he has filed no tax returns for the past ten tax years. The transcripts provide all of Applicant's income, withholding and related tax

information from his U.S. employers contained in his W-2s for TY 2012 through 2014, 2020, and 2021. Applicant was not specific as to whether he needed any additional information for those tax years to provide his tax attorney with the information she needed to file returns for those years. He testified that his returns in the past were very simple and could be filed using the IRS's simplified Form 1040 EZ with his income and withholding information. He believed that his U.S. taxes when he was living and working in Canada were complicated and he could not prepare them himself as he had done in the past. He could not find a tax preparer in Canada who could help him with his U.S. tax returns. (Tr. at 24-28; GE 2 at 39-51, 71-77.)

Applicant expressed frustration with his tax attorney and her unwillingness to file Federal tax returns for TYs 2020 and 2021 covering the income he earned in the United States while working at his current job. He had all of the necessary documents. He does not understand why the two most recent Federal returns have not been filed, though he admitted he has never asked his lawyer that question. He believes that even though he paid her for her services, it may be necessary for him to find a new tax advisor to prepare his recent returns. He admitted that she has not done anything for about two years. (Tr. at 27-30, 38-40, 44.)

At the hearing, Applicant was unaware about how the U.S. Government taxes foreign-earned income of U.S. citizens who live and work in another country. His attorney has not explained to him how the U.S. foreign-earned income tax exclusion works and how that exclusion would significantly reduce or eliminate his U.S. tax liability for the years he lived and worked in Canada. He believes he owes about \$40,000 in back taxes to the IRS for the four years he worked for Company 2 as a contractor (TYs 2016-2019), exclusive of interest and penalties. He presently has about \$51,000 in savings available to pay his delinquent taxes. (Tr. at 31, 34-36; GE 2 at 15.)

1.b. Failure to timely file state income tax return for at least TY 2020. Applicant wrote in the Answer that he intends to file his TY 2020 tax return in State B in 2022. As of the hearing date, he had not yet filed either his TY 2020 or his TY 2021 state returns for the same reasons he has not filed his Federal tax returns for those years. (Answer at 1; Tr. at 42.)

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the

factors listed in AG ¶ 2 describing 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 applicable guidelines in the context 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, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

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

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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 Federal, state, or local income tax as required.

Applicant failed to file his Federal income tax returns, as required, for TYs 2012 through 2021. He also failed to timely file his state income tax returns in State B for TYs 2020 and 2021. The extensive record evidence of Applicant's procrastination also establishes that he has been unwilling to address his delinquent tax filings. These facts establish the foregoing disqualifying conditions and shift the burden to Applicant to mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's failure to timely file tax returns:

- (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, or 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.

AG ¶¶ 20(a) and (b) are not established. Applicant's behavior occurred over a number of years up to the filing deadline for TY 2021, and is therefore recent and frequent. Applicant's failure to file his Federal and state returns for the last two tax years undercuts the limited record evidence in support of his financial responsibility. His conduct regarding his tax filings casts doubt on his current reliability, trustworthiness, and judgment.

Although Applicant's divorce was a condition beyond his control, his tax-filing obligations persisted. Applicant's voluntary decision to move to and work in Canada similarly did not relieve him of his tax-filing obligations. There is no evidence that he took any steps to address and resolve his unfiled taxes until January 2021. Applicant's failure to address and file his tax returns for TY 2012 and TY 2013 at some point over a subsequent number of years was not responsible under the circumstances. His failure to file his U.S. tax returns for the following eight tax years is further evidence that Applicant has not acted responsibly.

AG ¶ 20(c) is only partially established. Although Applicant did not seek professional tax counseling to address his unfiled U.S. tax returns until January 2021, which was after he was hired by a DoD contractor, he ultimately sought tax advice. For the remainder of 2021 and through December 2022, when the record closed, Applicant filed no tax returns. He claims that his attorney refused to file any tax returns until all of Applicant's tax records were before her and that he has done his best to obtain the records. However, he knew that Company 1 was out of business and would not be able to produce any tax or income records. As a result, no tax returns have been filed over the last two years, not even the returns for TYs 2020 and 2021 when he resided in the United States. There is no clear indication that the problem is being resolved.

AG ¶¶ 20(d) and (g) are not established. Applicant's failure to hire a tax advisor willing to assist him in filing even his most recent two years of tax returns evidences a lack of good-faith efforts to resolve his tax obligations. The same applies for the other two periods of his tax-filing delinquencies, TYs 2012 and 2013 and TYs 2014 through 2019. Also, Applicant has not made arrangements with the applicable tax authorities to file his ten years of delinquent Federal tax returns and his TY 2020 state tax return.

### **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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and the factors in AG ¶ 2(d) in this whole-person analysis. Applicant's inaction over a period of about ten years in addressing his tax-filing obligation evidences an unwillingness to comply with Federal rules and regulations and raises serious questions about his willingness to comply with Federal rules relating to safeguarding national security information. Also, the potential for pressure, exploitation, or duress has not been resolved. Overall, the evidence creates substantial doubt as to Applicant's judgment, eligibility, and suitability for a security clearance.

### **Formal Findings**

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

Paragraph 1, Guideline F:

**AGAINST APPLICANT**

Subparagraphs 1.a and 1.b:

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 interest to grant Applicant national security eligibility and a security clearance. Eligibility for access to classified information is denied.

John Bayard Glendon  
Administrative Judge