



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



In the matter of: )  
 )  
XXXXXXXXXXXXX ) ISCR Case No. 22-00861  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

01/17/2023

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**Decision**

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KATAUSKAS, Philip J., Administrative Judge:

Applicant has not provided evidence sufficient to mitigate the national security concern arising from his delay in filing his federal income tax returns for tax years 2018, 2019, and 2020. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted his security clearance application (SCA) on June 2, 2021. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on May 17, 2022, detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant submitted an answer to the SOR (Answer) on June 2, 2022 and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). Department Counsel submitted the Government’s file of relevant material (FORM) on June 26, 2022, including documents identified as Items 1

through 4. DOHA sent Applicant the FORM on July 7, 2022, and he received it on July 14, 2022. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM. The SOR and the Answer are the pleadings in the case. (Items 1S and 1A, respectively.) Items 3 through 4 are admitted without objection. The case was assigned to me on October 3, 2022.

### **Findings of Fact**

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact:

Applicant is 65 years old, married (since 1977), with two adult sons. He earned his bachelor's degree in 2002. He has owned his home since 1996. He has been employed by his corporate clearance sponsor since February 1986. He currently holds a secret clearance, granted in June 2011. He has never been denied a clearance. He has no financial delinquencies or defaults, other than the failure to file three years of federal tax income tax returns, as alleged below. (Item 2.)

Under Guideline F, the SOR alleged that Applicant failed to file federal income tax returns for tax years 2018, 2019, and 2020. (Item 1S.) He admitted that allegation with a detailed text explaining why he is tardy filing his tax returns. (Item 1A.) The following is a synopsis in his words of the salient points of his Answer.

#### **Non filing of returns for 2018, 2019, and 2020**

I have listed procrastination as the reason . . . More correctly I should have called this, "Not enough time to get it all done". . . My unfiled taxes are not the greatest priority for the following reasons. I always have greater withholding done from my income so that I am guaranteed a sizable refund . . . I do not ever come up short on taxes paid so I do not ever incur a shortage of tax already paid, or interest and penalties. For me, the IRS is always a savings account that pays me back my money when I do get around to filing taxes.

These are some things that occupy my time and do not allow me to do things I would prefer to be getting done, like taxes, in a timely manner.

**Work schedule at [my employer]** demands from me to work 50-60 (and sometimes more) hours each week. A lot of work and not enough people are the main reason for this. I was not able to take the vacation this year that I wanted to because . . . management [could] not let me go because of schedule demands. I finally did get approval for one week this year. Because of this I had to forfeit 140 hours of vacation . . . and have it paid out to me . . . .

**Death of two family members,** Father-in-Law 2016 and Aunt 2018. I was made executor of both of their estates . . . trustee of . . . [father-in-law's] trust. My wife is

incapable of handling her father's financial affairs due to her mental abilities (more on that later). So it was left to me to get [it] done. My wife has no siblings . . . It takes a lot of time To do this, especially if you have never done this type of thing before . . . [Y]ou must locate the required documentation which is the biggest use of time.

**Care of disabled wife.** In 1999 my wife suffered from a brain tumor the size of a golf ball. She had three brain surgeries and extensive radiation treatments. She survived this and is still alive, despite her doctors saying she would not live past two years. Well, thank God, she is still alive, but at the cost of diminished mental capacity, making her 100% disabled. She used to be a very smart [professional], but now, she is not. She was doing reasonably well considering what she went through, but now twenty years later, her mental abilities are going further downhill. She has . . . an infection where the bone in her skull has died off in a several inches square area. This is because the radiation treatment back in 1999 and now the infection defies treatment . . . After seeing several . . . specialists . . . , she was referred to [a hospital] for surgery that her doctor here says is going to be a big deal (his words) and will require a multi-discipline surgery team to cut out the dead, infected bone, and now at a later date, replace it with a titanium plate. She was finally scheduled . . . for brain surgery. Every time I take her to the doctor, I must make up the time at my job because schedules here wait for no one . . . I was lucky to receive two weeks of FMLA from my employer . . . My wife has now undergone the surgery to cut out the dead infected bone from her head on Feb. 25, 2022. She was on the neurosurgery floor . . . for 7 days. When she returned home, I as her caregiver had to swap out the IV bag and change the IV infusion lines that delivered antibiotics into her body via an IV pump, to stop the infection in her head, every day for six weeks. Except for the two weeks of FMLA leave, I had to work and at the same time perform the medical care for my wife . . . to fight the infection.

Now another medical problem for my wife. She is scheduled to undergo surgery for her colon on June 15<sup>th</sup> at 6:00 AM because of severe diverticulitis. She will be in the hospital for four days and she may end up with a colostomy . . . The faster I go, the behinder [*sic*] I get.

**I have 20 acres of property to maintain.** [Here, Applicant explained that he alone maintains his property. His two sons have moved away with their families to pursue their own careers.]

I assure you I will file my tax forms and get my tax refunds, for overpayment, as soon as I can muster up the time to do so. Not doing my taxes is a time problem and not an ability to pay taxes problem. I have paid my taxes. I have just not filed and gotten the refund I will be entitled to when I do get around to filing. (Emphasis in original.) (Item 1A.)

In his Personal Subject Interview, Applicant stated: "I usually do several returns in batch mode once I get into the mode of doing taxes and I do not ever come up short on taxes paid, and I do not ever incur a shortage of tax already paid or interest and for me the IRS is always a savings account that pays me back my money when I do get around to filing my taxes." (Item 3.)

Applicant's IRS Account Transcripts for tax years 2018, 2019, and 2020 show no tax balances owed or refunds due for those years. That is likely, however, because he has not filed returns, which would show income earned and applicable deductions. (Item 4.)

## **Law and Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(a), 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. A2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an 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.

## **Analysis**

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

The security concern relating to Guideline F 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Guideline F notes conditions that could raise security concerns under AG ¶ 19. The following condition is the only one applicable in this case:

- (f) failure to file . . . annual Federal, state, or local income tax returns . . . as required.

The SOR's alleged unfiled federal income tax returns are established by Applicant's admissions. AG ¶19 (f) applies. The next inquiry is whether any mitigating conditions apply.

Guideline F also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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; and
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., . . . unexpected medical emergency . . .), and the individual acted responsibly under the circumstances).

Applicant's challenges began in 1999, when his wife developed a brain tumor that was diagnosed to be fatal within two years. With additional surgeries and radiation treatments over the years, she survived. And she is alive today. The price she and her family paid was her diminished mental capacity, far from being the smart professional she

once was. That price is still being paid. The latest is that a portion of her skull has died because of an infection caused by years of radiation treatment. She had serious surgery in February 2022 to remove the infected bone from her skull. More surgery will likely be needed.

The medical care Applicant's wife needed from him after that surgery and his own work demands stole time from everyday issues like filing tax returns. He functioned as an in-home nurse and prioritized household needs as best he could. Having shepherded his wife through her latest brain surgery, he had to face another medical problem with his wife. She needed colon surgery in June 2022 and was hospitalized for four days.

In addition to handling his wife's medical problems, Applicant was confronted by two deaths in the family. His father-in-law died in 2016, and an aunt died in 2018. He was named the executor of their estates and the trustee of his father-in-law's trust. Having never served in those capacities before, Applicant expended a great deal of time with these tasks, losing time that he could have spent on his own household chores like preparing tax returns. He summed it up in his Answer: "Not enough time to get it all done."

I have considered mitigating condition AG ¶ 20(a). Applicant's wife was diagnosed with her brain tumor in 1999, a diagnosis and consequences that she and Applicant have lived with ever since. Sadly, the consequences of that diagnosis are likely to recur. Applicant's perseverance over the years is commendable. It seems, however, that over those years, he has developed a practice of doing his tax returns late and in "batches" once he gets into "the mode of doing taxes." That practice of doing his taxes when he gets around to them is what is also likely to recur. And that practice raises security concerns. I find that AG ¶ 20(a) does not mitigate Applicant's failure to file federal income tax returns for tax years 2018, 2019, and 2020.

I have considered mitigating condition AG ¶ 20(b). There is no question that Applicant confronted conditions "largely beyond his control." The next inquiry is whether he acted "responsibly" in light of those conditions. For the reasons stated under the AG ¶ 20(a) discussion, his practice of doing his tax returns when he gets into the "mode" of doing taxes is not responsible conduct under his admittedly adverse circumstances. I find that AG ¶ 20(b) does not mitigate Applicant's failure to file federal income tax returns for tax years 2018, 2019, and 2020.

I find against Applicant on SOR ¶ 1.

### **Whole Person Concept**

Under AG ¶ 2(a), 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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with questions about his eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has not provided sufficient evidence to mitigate the security concerns arising under Guideline F, 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:	AGAINST APPLICANT
Subparagraph 1.a :	Against Applicant

### **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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Philip J. Katauskas  
Administrative Judge