



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



In the matter of: )  
)  
) ISCR Case No. 20-02941  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Carroll Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

01/19/2023

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**Decision**

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MURPHY, Braden M., Administrative Judge:

Applicant did not file annual Federal and state income tax returns on time, as required, for tax years 2017-2019, when he was working overseas. He has filed all his past-due tax returns, and no tax debt resulted. His tax filing issues are unlikely to recur and no longer cast doubt on his current judgment, trustworthiness and reliability. He provided sufficient documentary and whole-person evidence to mitigate the financial security concerns. Applicant’s eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on April 10, 2018. On March 16, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The CAF took the action under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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* (AG), effective June 8, 2017.

When Applicant answered the SOR, he requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record. In an e-mail dated October 27, 2021, he indicated that he had changed his mind, and was requesting a hearing. (Applicant’s Exhibit (AE) A). The DOHA Hearing Office received the case on November 3, 2021, and I was assigned as the administrative judge on May 20, 2022.

After clarifying the status of Applicant’s sponsorship for a clearance as well as his travel schedule, DOHA issued the hearing notice on September 20, 2022 for an in-person hearing on September 27, 2022. Applicant requested an expedited in-person hearing because he was moving for a new job days later and was uncertain about his technical availability for a video-teleconference hearing once he moved. (Tr. 7, 10-11)

Applicant’s in-person hearing convened as scheduled. Department Counsel offered Government’s Exhibits (GE) 1 and GE 2. Applicant testified and offered AE A through AE I. All of the exhibits were admitted without objection. After the hearing, I initially held the record open until October 31, 2022, to provide Applicant the opportunity to submit additional information. Before that date, Applicant submitted two letters from references. They were marked as AE J and AE K and admitted without objection. Applicant did not submit further documents by the deadline, and the record closed. However, on December 10, 2022, Applicant submitted additional documents for consideration. These exhibits, regarding five years of his state income taxes (2017-2021), are marked as AE L through AE P, and admitted without objection. The record closed on December 16, 2022. DOHA received the hearing transcript (Tr.) on October 5, 2022.

**Amendment to the SOR**

During the hearing, it became apparent that the first sentence of SOR ¶ 1.a contained a typographical error, noted in bold below:

1.a: You failed to file, as required, Federal income tax returns for the tax years 2017 **through and** 2019.

The error was cured through an amendment to the SOR deleting the word “and.” The amendment was accepted without objection. (Tr. 64-66)

**Findings of Fact**

Applicant admitted the two SOR allegations (SOR ¶¶ 1.a and 1.b). His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 77 years old. He has been married twice and has a longtime cohabitant. After college, he served as a U.S. Naval officer from 1969-71, with a security clearance. He later earned a master's degree. He has also had a clearance since 2004, through various federal contractor jobs. Applicant lived overseas from June 2015 to December 2017, working for State Department contractors. He submitted his SCA in April 2018, for a job in the U.S. with a defense contractor, a job with an \$89,000 annual salary. (GE 1 at 15; Tr. 41-42, 46-48) Shortly before his hearing, he accepted a new position with another defense contractor, one that would require him to move across the country, which he did shortly after his hearing. His new job has an annual salary of \$200,000. (AE A; GE 1; Tr. 41-52, 69-70)

The SOR concerns Applicant's unfiled state and federal income tax returns from tax years 2017-2019 (SOR ¶¶ 1.a, 1.b). Applicant's tax issues began in 2017 when he was working for a State Department contractor at a U.S. Embassy overseas. He typically utilized a well-known tax preparation software program to prepare his taxes. The program developed technical difficulties he was not able to cure at the time and he was not able to complete or file his 2016 tax returns. Things "snowball[ed]" from there, as he said he needed to complete his 2016 tax returns before turning to later years. (GE 2 at 7; Tr. 35-36, 41-43) He had not had tax filing issues before then. (Tr. 71)

Applicant did not declare any tax issues on his April 2018 SCA, (which he filed days before the April 15, 2018 federal tax filing deadline for tax year 2017). However, he disclosed his unfiled returns in his October 2018 background interview. He also noted that his recuperation from an operation also impacted the filing of his 2017 taxes in 2018. (GE 2 at 7; Tr. 35-36, 41-43)

Applicant authenticated his background interview with a government investigator (with some edits and margin notes) in February 2021. At that time, he also reported that his 2017 taxes had been filed, but not 2018 or 2019. He provided no supporting documentation, as requested. (GE 2) Applicant recalled speaking with the investigator during his background interview about his tax returns, and recalled speaking with a Department Counsel about them as well, about a year before his hearing. (Tr. 58-61)

Applicant testified that his tax issues were not due to deliberate action, and he did not intend to defraud the government. He knew his tax issues were "hanging over [his] head. (Tr. 19-20, 40-41) He accepted responsibility for his inaction, and asserted that he was now "back on track" and his issues would not be repeated. (Tr. 49-50, 75)

Applicant filed his 2016 federal tax returns on October 17, 2019. He received a refund of \$7,445. (AE E; Tr. 43-44) (This late filing was not alleged). He did not offer an explanation for why he did not then address his other unfiled returns more promptly. He does his taxes through a well-known software program rather than through an accountant. (Tr. 52-55)

Applicant filed his 2017 federal tax returns on April 1, 2020. He received a refund of \$14,810. (AE B, AE E; Tr. 44, 55) He believes he filed his 2017 state tax return at the same time. (Tr. 55-56)

Applicant filed his 2018 federal tax returns on November 18, 2021. He received a refund of \$445. (AE C; AE E; Tr. 44) He believed he filed his 2018 state tax return at the same time but was not certain. (Tr. 56-58)

Applicant filed his 2019 federal and state tax returns on September 26, 2021, the day before the hearing. He owed \$1,051 in federal taxes, before calculation of any penalties. (AE E, AE G, AE H; AE I; Tr. 37-38, 44)

Applicant filed his 2020 federal tax returns on June 12, 2021. He received a refund of \$1,734, later reduced by a small penalty for late filing. (AE D; Tr. 44) He acknowledged that he prioritized his 2020 returns before finalizing and filing his 2019 returns, which he did in September 2021. (Tr. 61) (This was not addressed at hearing, but the April 15 federal tax deadline for tax year 2020 was extended by a month due to the COVID-19 pandemic).

At the time of his hearing, in September 2022, he had yet to file his 2021 federal tax returns, though he had filed an extension until October 2022, and intended to file his returns. (Tr. 44-45)

Post-hearing submissions from state tax authorities concern Applicant's state taxes for 2017-2021. They each contain a stamp from the state department of taxation dated November 15, 2022. Applicant's name does not appear but his social security number is listed on the documents. (AE L – AE P)

The document from tax year 2017 from state tax authorities reflects that \$4,029 was withheld from Applicant's income. No tax is listed. Documentation is listed as having been "received with return." (AE L)

The document from tax year 2018 from state tax authorities reflects a tax of \$2,106, and that \$3,012 was withheld from Applicant's income. (This suggests a refund of \$906). Documentation is listed as having been "received with return." (AE M)

The document from tax year 2019 from state tax authorities reflects that \$3,737 was withheld from Applicant's income. The line item for tax owed is not listed on the document. Documentation is listed as having been "received with return." (AE N) His 2019 state income tax return reflects a \$786 refund. (AE I)

The document from tax year 2020 from state tax authorities reflects that documentation is listed as having been "received with return," but no financial data is provided. (AE O)

The document from tax year 2021 from state tax authorities reflects that \$4,156 was withheld from his income. The line item for tax owed is not listed on the document. (AE P)

Two colleagues submitted references for Applicant. Mr. C has known Applicant as a friend and work colleague since 2004. They worked on a classified State Department project together. Applicant fulfilled his duties in an exemplary manner, and took steps to avoid compromise. He is a “good person” who “will uphold the laws and requirements of our nation.” (AE J)

Ms. V worked with Applicant more recently, in 2021 and 2022. He was essential to the project, and showed vital diligence and attention to detail. He has an excellent work ethic and she is sorry to lose him from her team. He has always endeavored to show the “ethical and trustworthy behavior necessary for a security clearance.” (AE K)

### **Policies**

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

When evaluating an applicant’s eligibility 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 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, 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. 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.

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.” 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 not drawn 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 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.

## **Analysis**

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

The financial considerations security concern 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 sets forth several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

(c) a history of not meeting financial obligations; and

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

Applicant had a duty to file his annual state and Federal income tax returns in a timely manner, and the fact that he did not do so for several years is a security concern. As the Appeal Board has held, in ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016):

Failure to file tax returns suggests that an applicant has a problem 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 towards 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.

Applicant failed to timely file his Federal and state income tax returns for several tax years, including 2017-2019, as alleged. This establishes AG ¶ 19(f) specifically, as well as, more generally, AG ¶ 19(c).

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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;

(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 tax filing issues began when he was working overseas, in about 2017. He typically uses a well-known tax preparation software program, and he had technical difficulties accessing the program from overseas. Rather than limit his tax filing issues to a single year, his issues snowballed, because, he believed, subsequent tax filings were contingent upon curing previous filing deficiencies.

Applicant volunteered his tax issues in his 2018 background interview, but still took several years to cure his delinquent filings. Generally, for the tax years at issue (2017-2019), Applicant filed his federal returns about three years late. He filed his 2020 federal return (not alleged) about a month after the filing deadline. Applicant also documented that his State 1 tax returns for the years at issue have also been filed, though it is not clear from his post-hearing documents when he did so. Applicant had little to no resulting federal or state tax debt, as he appears to have received refunds for most years.

In weighing Applicant's responsibility under the circumstances, I must consider the timing of his actions. The Appeal Board has consistently held that timing of an applicant's resolution of his tax-filing problems is relevant in evaluating mitigation. An applicant who resolves financial or tax problems only when his clearance might be imperiled raises questions about his willingness to follow the sometimes complex rules governing classified information when his personal interests are not at stake. See ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017). The Appeal Board has also held that an applicant cannot simply adopt a position of "no harm, no foul" or "all's well that ends well." See ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

Applicant disclosed his tax issues voluntarily during the security clearance process. He began addressing his late returns after his SCA and interview but before the SOR was issued, though his efforts continued up to the time of his hearing. Given the timing of Applicant's actions, he gets some, but not full, credit for good-faith efforts under AG ¶ 20(d).

However, Applicant's past-due tax filings are now resolved. AG ¶ 20(g) applies. The origin of his tax issues is largely attributable to technical issues with tax preparation software that occurred when he was overseas. He is now no longer in that situation. His tax issues are limited to a few years, and he had no prior history of prior issues over his long career. His tax filing issues occurred under circumstances that are unlikely to recur, and they no longer cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) applies.

### **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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.



I had ample opportunity to evaluate Applicant's demeanor at the hearing and to form an opinion of his credibility. He was intelligent, well spoken, and respectful, and he treated the process seriously. I found him to be a credible witness. I also credit his long career as a DOD, State Department, and Government contractor, in cleared positions. When balanced against that long and honorable service to the country, his tax issues are more of an anomaly than an ongoing risk. I also believe that Applicant has learned his lesson through this experience, and is unlikely to find himself in this position again. He has mitigated the financial considerations security concerns. In reaching this conclusion, I considered not only Applicant's credibility, but the record evidence as a whole. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility for access to classified information.

### **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.b:	For Applicant

### **Conclusion**

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

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Braden M. Murphy  
Administrative Judge