



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 21-01918
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Patricia Lynch-Epps, Esq., Department Counsel  
 For Applicant: *Pro se*  
 03/31/2023

**Decision**

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on June 7, 2019. On October 21, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAF acted under Executive Order (EO) 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 the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

On November 2, 2021, Applicant responded to the SOR (Answer) and requested a hearing before an administrative judge. The Government was ready to proceed on December 10, 2021. The case was assigned to me on July 21, 2022. The hearing was delayed at Applicant's request for good cause. On September 8, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that his hearing would be held on September 26, 2022. I convened the hearing, as scheduled, via video conference.

I admitted Government Exhibits (GE) 1 and 2 without objection. I appended to the record correspondence the Government sent to Applicant as Hearing Exhibit (HE) I. Applicant testified and submitted Applicant Exhibits (AE) A and B, which I admitted without objection. DOHA received the transcript (Tr.) on October 5, 2022. I left the record open until October 24, 2022. Applicant provided additional documents on October 25, 2022, which I admitted as AE C, without objection. For good cause and without objection, I reopened the record on December 19, 2022, and on February 23, 2023, and received additional exhibits from Applicant. I admitted them as AE D through H without objection. The record closed on March 21, 2023.

### **Findings of Fact**

Applicant, age 45, has been married since 2019 to his wife with whom he had cohabited since 2008. He received his bachelor's degree in 1999. He worked as a journalist for the same publication for 20 years; a job he began one week after graduating college. He held various positions as the publication became a subsidiary of several companies over the years until December 2018, when his position was eliminated. He was unemployed until June 2019. He decided to pursue a new career path and has been employed as a communications specialist by a defense contractor since June 2019. This is his first application for a security clearance. (GE 1; GE 2 at 6; Tr. at 9, 26-28, 29, 37, 43)

Applicant failed to timely file his federal and state income tax returns for tax years (TY) 2012 through 2020. As of the date of the SOR, he had filed his TY 2017 returns and the other returns remained unfiled. Since then, he has filed all delinquent returns with the help of a professional tax preparer. Tax account transcripts confirmed that the Internal Revenue Service (IRS) received his TY 2017 returns on May 28, 2021; TY 2019, 2020, and 2021 on September 19, 2022; TY 2013 and 2018 on September 27, 2022; and TY 2014 and 2016 on September 28, 2022. Although the IRS had not yet confirmed receipt, he credibly testified that he filed paper returns for TY 2015 on September 15, 2022; and TY 2012 on October 3, 2022. Additionally, he was unable to obtain confirmation from the state; however, he credibly testified that he filed his state returns with his federal returns. (AE B-H; Tr. at 61)

On his June 7, 2019 SCA, Applicant attributed the delay in filing his returns for TY 2012 through 2018 to unemployment and having "missed [the] deadline." He explained,

I need to consult a tax advisor to file back income taxes; have been unable to do so without funds . . . I am very much aware that my lack of filing income taxes is a severe issue that I need to address ASAP and will be doing so immediately upon regaining employment. I have not, in any way, been contacted by either the [Internal Revenue Service (IRS)] or [state] for owing of taxes and believe I do not currently owe state or federal income tax as I claimed no exemptions with my employers since 2001. (GE 1)

During his July 24, 2019 security clearance interview (SI), Applicant explained that he was in the process of searching for professional help with filing his delinquent TY 2012

through 2018 returns. He reiterated that he did not believe that he owed any taxes for the years he failed to file his returns, because he was claiming zero tax deductions from his paychecks. He asserted that he was willing to repay any tax debt owed. He anticipated that once he successfully obtained a professional to assist him, he would be able to file the delinquent returns. He asserted that he would never file late again. (GE 2 at 4)

In his September 20, 2021 response to DOHA-issued interrogatories, Applicant stated that he had been working with a professional tax preparer. However, due to the COVID-19 pandemic, the process was taking longer than he originally anticipated. At the hearing, he explained that it was not until he received the interrogatories that he realized the potential negative impact on his security clearance. (GE 2 at 7; Tr. at 25)

Applicant attributed his delayed filings to the “snowball” effect of him missing the deadline to file his TY 2012 returns. He had successfully filed his returns using an online tax software program prior to TY 2012. For reasons he could not explain or recall, he missed the deadline for TY 2012 and “did not think to file late.” Then, the software would not allow him to input data for TY 2013 without the data for TY 2012, which he did not have. He did not make any further efforts to file his TY 2012 or 2013 returns until after he completed his SCA in June 2019. (GE 1; GE 2 at 7; Tr. at 16, 39, 41, 43)

Applicant accepted full responsibility for what he called a “very stupid, very foolish mistake” in failing to timely file his returns and to initiate action to resolve the delinquent returns sooner. With respect to reasons for his persistent delays, he stated, “I am not making any excuse for my actions whatsoever,” and “[t]here’s nothing that I am going to say that does not sound stupid.” He acknowledged that he did not “take it seriously enough” until “finally getting smacked by having to find another job.” He explained that when he saw the question on the SCA asking whether he had timely filed his tax returns, he realized the repercussions of failing to do so. Prior to seeing that question, he understood that he had a requirement to file his returns. However, he had not prioritized doing so because he did not anticipate owing any taxes. In all the years that he filed income tax returns, he only ever owed taxes one time in the amount of about \$178 in about 2004 or 2005, due to an error his employer made on his tax-withholding form. He assumed that the IRS or state would reach out to him if he owed any money. He never received any notices or communications about his missing returns and never followed up with either the IRS or his state. (GE 2 at 7; Tr. at 16-17, 23, 31, 40, 43-44)

After Applicant completed his SCA and before his SI, he conducted internet searches to see what needed to be done to rectify his delayed filings. Although he did not recall the specific dates, he attempted reaching out to his wife’s tax preparer prior to hiring her in May 2021. However, the COVID-19 pandemic impaired their ability to connect, because she was only working with current clients at the time. He wanted to hire the same tax preparer that his wife (filing separate returns) and her parents used. (GE 2 at 4; Tr. at 33, 51-54, 64-66)

Applicant attributed his lack of action to resolve his delinquent returns between the time he completed his SCA and when he initially reached out to his tax preparer to a lack of funds and COVID-19-related delays. While he was not sure how much it would cost to

hire a tax preparer, he assumed it was more than he could afford, because his wife had routinely paid about \$100 per year for filing her separate returns. Once he became employed in 2019, he prioritized getting caught up on bills that had fallen behind during his period of unemployment. He also wanted to build a “financial cushion.” (GE 2 at 4; Tr. at 33, 51-54, 64-66)

Before being laid off, Applicant earned \$59,000 annually. After he was laid off in September 2018, the unemployment compensation and the monthly installments he received as part of his \$9,000 severance package were insufficient to meet his expenses. Although he could not recall exactly how much the monthly installments were, he estimated that they were just about enough to pay his mortgage and nothing else. He ended up paying \$1,000 to the tax preparer in one lump sum via his wife’s credit card, because he and his wife could not afford to pay cash. He did not want to borrow from his 401k due to excessive taxes he would incur. He preferred not to pay the tax preparer in installments. As of the hearing, he had about \$1,000 in savings and earned an annual salary of \$61,000. His wife earned about \$55,000 annually. He explained that they generally do not have funds left over after paying two car payments, their mortgage, and groceries. (Tr. at 37-38, 47, 64-72)

Applicant hired the tax preparer on May 11, 2021, at which time he also delivered all the necessary tax information for her to file his TY 2012 through 2020 returns. That same day, she was able to prepare and file his TY 2017 returns. She anticipated that she would be able to turn her attention to the remaining returns in “about a month or two.” However, that timeline was delayed because “she had fallen severely ill.” They connected again in August 2021, but she was further delayed due apparently to some inattention on her part and the nature of the task. Because he believed she was doing him a “huge favor” in remedying his voluminous late filings, he felt it would be “rude” to rush her. However, once he found out that he would be having a hearing, he contacted her, at which time she apologized for the delay, and “then she put her foot on the gas and got everything squared away [sic] she possibly could.” (GE 1; GE 2 at 7; Tr. at 32, 53-57)

Applicant delivered his TY 2021 information to the tax preparer in a timely manner, but she delayed filing it to finalize earlier returns and then filed them together. He currently has no outstanding federal or state tax debt. After filing all his returns, TY 2014 was the only year in which he owed any income taxes. Immediately upon receipt of a \$62 bill from the IRS for TY 2014, he paid it in November 2022. Then, in March 2023, \$408 of his \$1,505 TY 2022 refund was applied to the balance owed for TY 2014 penalties and interest. He filed his TY 2022 return early. He plans to continue using the same tax preparer to ensure that his returns are timely filed in the future. (AE B-H; Tr. at 54, 61, 72-73, 85)

Applicant understands the importance of filing his returns on time. He loves his country and enjoys serving and promoting the military through his work. He described himself as an honest and trustworthy person. With respect to his delayed filings, he asserted that he “never consciously thought that I’m going to pull one over on the Government. I never did this maliciously.” He also asserted, “I understand and realize wholeheartedly that my initial actions were neglectful, but I have taken action that will

ensure I never, ever find myself in an even remotely similar position again.” His direct supervisor wrote a letter praising his trustworthiness and work performance. She confirmed that he self-reported his delayed tax return filings and his efforts to resolve them. (AE A, B; Tr. at 24, 42, 84-85)

### **Policies**

“[N]o 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.” (*Egan* at 527). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” (EO 10865 § 7). Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. (*Egan* at 531). “Substantial evidence” is “more than a scintilla but less than a preponderance.” (*See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994)). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016). Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. (Directive ¶ E3.1.15). An applicant has the burden of proving a mitigating condition, and the burden

of disproving it never shifts to the Government. (ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005))

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002)). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” (*Egan* at 531; AG ¶ 2(b))

## Analysis

### Guideline F: Financial Considerations

The concern under this guideline 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 a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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).

Applicant's failure to timely file his federal and state income tax returns for TY 2012 through 2020 establishes the following disqualifying condition under this guideline: 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).

Having considered all the factors set forth in AG ¶ 20 that could mitigate the concern under this guideline, I find the following relevant:

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;

AG ¶ 20(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

AG ¶ 20(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 filed his TY 2017 returns before the SOR was issued. He filed his TY 2015, 2019, 2020, and 2021 returns before the hearing. He filed his TY 2012, 2013, 2014, 2016, and 2018 returns within a week after the hearing. Immediately upon receipt of a bill from the IRS, he paid \$62 in November 2022 for TY 2014. He currently has no outstanding federal or state tax debt. AG ¶ 20(g) is established.

Applicant's inaction in the five years between 2013 and when he lost his job was a serious error in judgment, which is particularly problematic in the context of evaluating his security worthiness. This willingness to place his own self-interest above his legal obligation over so many years raised doubts as to whether he may also act similarly in the context of his security obligations. His period of unemployment and the COVID-19-pandemic were circumstances beyond his control and provide mitigation for his inaction from December 2018 forward. However, procrastination and avoidance surrounding his tax obligations played a more significant role in his filing delays. AG ¶ 20(b) is not established.

Applicant did not prioritize filing his tax returns before 2019 because he did not anticipate owing any taxes. This widely held belief that not owing taxes somehow excuses either non-filing or belated filing of tax returns is not a viable factor to mitigate the security concerns under this Guideline. However, in this case, there are other factors that weigh in his favor.

This was Applicant's first security clearance application and first experience with the defense industry. Once he realized the error of his mistaken belief, he took action to find solutions to remedy his delinquent returns. While he may have been better served by engaging another tax preparer sooner, it was not unreasonable for him to wait to hire the same person used by his wife and her parents. He engaged a professional tax preparer to remedy his delinquent returns before the SOR was issued and before he realized the potential impact on his security clearance. Thereafter, he filed his delinquent returns within a reasonable period, considering the voluminous nature of the task, the COVID-19 pandemic, and delays attributable to his tax preparer. He was forthcoming with his supervisor about this issue. He credibly and candidly testified about the circumstances surrounding his failure to timely file his tax returns. He offered no excuses and accepted full responsibility for his error in judgment and his prior inaction. He demonstrated a commitment to ongoing compliance with his tax obligations by timely providing his TY 2021 tax information to his tax preparer and by filing his TY 2022 return early. His previous inaction was not motivated by a willful violation of his legal obligations and can reasonably

be attributed to circumstances unlikely to recur. I have no lingering doubts about Applicant's reliability, trustworthiness, or judgment. AG ¶¶ 20(a) and 20(g) are established to mitigate the Guideline F concerns alleged in the SOR.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common-sense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). Applicant was forthright about his error in judgment. Once the security clearance process with which he had no prior experience opened his eyes to the reality of his years of inaction, he demonstrated the good judgment, reliability, and trustworthiness required of those granted access to classified information. After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concerns raised by his failure to timely file federal and state tax income tax returns. Accordingly, Applicant has carried his burden of showing that it is clearly consistent with the interests of national security to grant him eligibility for access to classified information.

### **Formal Findings**

Formal findings 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**

I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Clearance is granted.

Gina L. Marine  
Administrative Judge