



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



In the matter of: )  
)  
) ISCR Case No. 22-00865  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Dan O’Reilly, Esq., Department Counsel  
For Applicant: Carl Anthony Marrone, Esq.

07/11/2023

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 20, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on June 30, 2022, and requested a hearing before an administrative judge. The case was assigned to me on April 6, 2023.

The hearing convened as scheduled on June 15, 2023. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified, called two witnesses, and submitted Applicant Exhibits (AE) A through U (AE A through P were attached to the SOR, and Q through U were offered at the hearing), which were admitted without objection. The record was held open for Applicant to submit additional documentary evidence. He submitted AE V and W, which were admitted without objection.

## Findings of Fact

Applicant is a 64-year-old employee of a defense contractor, for whom he has worked since December 2020. He comes from a military family. He served in the U.S. military from 1978 until he retired with an honorable discharge in 1998. His son also served honorably in the U.S. military. He earned a bachelor's degree in 1985 and a master's degree in 1993. He married for the second time in 2012 after his first marriage ended in divorce. He has three adult children from his first marriage, and he adopted his wife's child. (Transcript (Tr.) at 17, 31-38, 75-77; Applicant's response to SOR; GE 1, 2; AE H-J)

Applicant has a history of tax problems, including not filing his federal income tax returns when they were due and not paying his federal income taxes. His tax issues started in about 2013 when he was working overseas. His second wife was a foreign national, and he supported her and her family throughout the immigration process. He had health issues, his mother passed away, and he was laid off a job in 2013. He withdrew about \$30,000 from his 401(k) retirement account for his mother-in-law's surgery and about another \$80,000 for living expenses. He did not properly account for the tax consequences. He was overwhelmed and did not file his tax returns. (Tr. at 37-50, 56-60, 81-82, 91; GE 1) Individual tax years are addressed below.

### 2012

Applicant's and his wife's adjusted gross income for 2012 was \$240,962, and their taxable income was \$217,662 (hereinafter I will just refer to Applicant even though the taxes involve him and his wife). His tax liability was \$57,884, and \$55,110 was withheld from his pay leaving \$2,774 in unpaid taxes, before penalties and interest were added for late filing and late payment.

The IRS received Applicant's 2012 income tax return in March 2017. He established an installment agreement in September 2017. He made payments totaling \$3,433 from November 2017 through February 2018 to pay all federal taxes, penalties, and interest owed for 2012. (GE 2; AE C)

### 2013

Applicant's adjusted gross income for 2013 was \$316,137, and his taxable income was \$307,450. His tax liability was \$92,639. He was credited \$2,196, and \$43,711 was withheld from his pay, leaving \$46,732 in unpaid taxes, before penalties and interest were added for late filing and late payment.

The IRS received Applicant's 2013 income tax return in June 2017. He established an installment agreement in September 2017, but there is no evidence that any payments were made toward this tax year, and he was no longer in the installment agreement as of July 2018. In June 2022, he owed \$92,777 in federal taxes, penalties, and interest for 2013. (GE 2; AE C)

## **2014**

Applicant's adjusted gross income for 2014 was \$271,944, and his taxable income was \$247,694. His tax liability was \$71,577, and \$45,460 was withheld from his pay, leaving \$26,117 in unpaid taxes, before penalties and interest were added for late filing and late payment.

The IRS prepared a substitute income tax return in October 2016. Applicant's 2014 income tax return was received by the IRS in June 2017. He established an installment agreement in February 2018, but there is no evidence that any payments were made for this tax year, and he was no longer in the installment agreement as of March 2018. In June 2022, he owed \$50,619 in federal taxes, penalties, and interest for 2014. (GE 2; AE C)

## **2015**

Applicant's adjusted gross income for 2015 was \$140,109, and his taxable income was \$115,509. His tax liability was \$20,741, and \$18,016 was withheld from his pay, leaving \$2,725 in unpaid taxes, before penalties and interest were added for late filing and late payment.

The IRS received Applicant's 2015 income tax return in June 2017. He established an installment agreement in September 2017. He made payments of \$666 in February 2018 and \$1,025 in March 2018. He was no longer in the installment agreement as of July 2018. He paid \$348 per month for seven months from December 2018 through June 2019 and a final \$56 payment in August 2019, which essentially paid the taxes, penalties, and interest for 2015. (GE 2; AE C)

## **2016**

Applicant's adjusted gross income for 2016 was \$143,763, and his taxable income was \$119,013. His tax liability was \$21,296, and \$17,122 was withheld from his pay, leaving \$4,174 in unpaid taxes, before penalties and interest were added for late payment.

Applicant timely filed his 2016 income tax return. He established an installment agreement in September 2017, but there is no evidence that any payments were made for this tax year, and he was no longer in the installment agreement as of July 2018. He made payments of \$362 in September 2019 and again in October 2019. In June 2022, he owed \$5,491 in federal taxes, penalties, and interest for 2016. (GE 2; AE C)

## **2017**

Applicant's adjusted gross income for 2017 was \$190,485, and his taxable income was \$165,635. His tax liability was \$34,915, and \$26,005 was withheld from his pay, leaving \$8,910 in unpaid taxes, before penalties and interest were added for late filing and late payment.

Applicant's request for an extension to file his 2017 federal income tax return was granted to October 15, 2018. The IRS received the 2017 return in December 2019. In June 2022, he owed \$15,280 in federal taxes, penalties, and interest for 2017. (GE 2; AE C)

## **2018**

Applicant's adjusted gross income for 2018 was \$113,984, and his taxable income was \$89,858. His tax liability was \$4,285, and \$1,931 was withheld from his pay, leaving \$2,354 in unpaid taxes, before penalties and interest were added for late filing and late payment.

The IRS received Applicant's 2018 income tax return in December 2019. In June 2022, he owed \$3,929 in federal taxes, penalties, and interest for 2017. (GE 2; AE C)

## **2019**

Applicant's adjusted gross income for 2019 was \$185,938, and his taxable income was \$161,538. His tax liability was \$25,255, and \$4,651 was withheld from his pay, leaving \$20,604 in unpaid taxes, before penalties and interest were added for late filing and late payment.

Applicant's request for an extension to file his 2019 federal income tax return was granted to October 15, 2020. The IRS received the 2019 return in March 2021. In June 2022, he owed \$27,530 in federal taxes, penalties, and interest for 2019. (GE 2; AE C)

## **2020**

Applicant's adjusted gross income for 2020 was \$197,063, and his taxable income was \$172,263. His tax liability was \$27,502, and \$26,869 was withheld from his pay, leaving \$663 in unpaid taxes before interest was added for late payment. The IRS granted \$2,900 in credits and issued a \$2,900 refund in May 2020 based on those credits. He made an \$86 payment in July 2021.

Applicant's request for an extension to file his 2020 federal income tax return was granted to October 15, 2021. The IRS received the 2020 return on October 20, 2021. In June 2022, he owed \$599 in federal taxes, penalties, and interest for 2020. (GE 2; AE C)

Applicant was interviewed for his background investigation in December 2019. He stated that he forgot to file his 2012 income tax return, and the IRS contacted him in 2014 about his taxes. He stated that he hired tax professionals (Tax Company) in 2014 to assist in filing his returns and paying his taxes. He told the investigator that his payments were \$1,000 per month, which were taken out of his military retirement pay. He stated that he was unemployed in 2017 and fell behind on his payments. He also withdrew about \$30,000 from his 401(k) retirement account to pay for his mother-in-law's surgery. He did not file his 2017 and 2018 returns because he wanted to work with

Tax Company to help him solve his tax issues. He acknowledged at his hearing that he was probably mistaken about the year, and it was likely 2017 that he retained Tax Company and made payments. (Tr. at 50-54, 87-88; GE 2; AE C)

Applicant reported tax issues on a Questionnaire for National Security Positions (SF 86) that he submitted in January 2021. He wrote that he was working with Tax Company to file the overdue returns and pay the back taxes. (GE 1)

Applicant entered into an installment agreement with the IRS in July 2022 for back taxes owed for tax years 2013, 2014, 2016, 2017, 2018, 2019, and 2020. The balance owed was \$196,868. He agreed to pay \$2,800 per month, beginning in September 2022. He paid \$2,800 in September 2022 and \$14,000 in October 2022. He then paid \$2,800 every month from November 2022 through May 2023. His payments total \$36,400. The most recent information available indicates that Applicant owes a total of \$159,750 for tax years 2013, 2014, 2017, 2018, 2019, and 2020. He owes an additional \$5,036 for tax year 2021, bringing the total owed to \$164,786.<sup>1</sup> (Tr. at 72-74, 80, 90; AE D, E, R, T, W)

Applicant timely filed his tax return for 2021. He stated that he has learned from the experience, and all future returns will be filed on time. He also asserted that he would continue with the installment plan until his back taxes are paid. (Tr. at 64, 73-75, 79; AE S)

Applicant called two witnesses, and he submitted documents and letters attesting to his excellent job performance and strong moral character. He is praised for his judgment, trustworthiness, professionalism, loyalty, honesty, leadership, dependability, dedication, reliability, and integrity. He is recommended for a security clearance. (Tr. at 15-26; AE K-O, V)

## **Policies**

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

When evaluating an applicant's suitability 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 to be used in evaluating an applicant's eligibility for access to classified information.

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<sup>1</sup> The SOR did not allege that Applicant owed taxes for 2021. Any matter that was not alleged in the SOR cannot be used for disqualification purposes. It may be considered in the application of mitigating conditions and in the whole-person analysis.

These 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(c), 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."

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 the applicant or proven by Department Counsel." The applicant 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.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following is potentially applicable in this case:

(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.

Applicant did not file his 2012, 2013, 2014, 2015, 2017, 2018, and 2019 federal income tax returns when they were due. AG ¶ 19(f) is applicable to those tax years. Applicant's request for an extension to file his 2020 federal income tax return was granted to October 15, 2021. The IRS received the 2020 return on October 20, 2021. For security clearance purposes, that is not late. The language in SOR ¶ 1.a referring to tax year 2020 is concluded for Applicant.

Applicant did not pay federal income taxes when they were due for tax years 2013, 2014, 2016, 2017, 2018, 2019, and 2020, resulting in a tax debt in June 2022 of about \$196,000. AG ¶ 19(f) is also applicable based on the unpaid taxes.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following is potentially applicable:

(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 issues started in about 2013 when he was working overseas. His second wife was a foreign national, and he supported her and her family throughout the immigration process. He had health issues, his mother passed away, and he was laid off a job in 2013. He withdrew about \$30,000 from his 401(k) retirement account for his mother-in-law's surgery and about another \$80,000 for living expenses. He did not properly account for the tax consequences. He was overwhelmed and did not file his tax returns.

Applicant is credited with filing all of the past-due returns. He has an installment agreement, and since September 2022, he has paid a total of \$36,400, reducing the total owed to \$164,786. AG ¶ 20(g) is applicable, but that does not end the discussion.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those

granted access to classified information. See, e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018). This is true even when the returns are eventually filed, and the taxes paid.

In 2017, Applicant paid the IRS about \$2,050, which went toward his 2012 taxes. In 2018, he paid about \$3,423, which went toward his 2012 and 2015 taxes. In 2019, he paid about \$2,872, which went toward his 2015 and 2016 taxes. That means from 2017 through 2019, he paid about \$8,345 toward his 2012, 2015, and 2016 taxes. The 2012 and 2015 tax years are paid. Those numbers sound good, but while he was making those payments, his tax liability was increasing because he was not paying all of the taxes due for those years. Even without accounting for penalties and interest, he underpaid his 2017 taxes by \$8,910; his 2018 taxes by \$2,354; and his 2019 taxes by \$20,604, for a total of about \$31,868.

Applicant did not make any payments toward his back taxes from November 2019 through August 2022. After being interviewed for his background investigation in December 2019, he did not file his 2019 federal income tax return until March 2021, and he did not pay his 2019, 2020, and 2021 taxes when they were due.

Applicant's failure to fulfil his duty to file his income tax returns and pay his taxes on time continues to raise doubts about his judgment, reliability, and willingness to follow rules and regulations. The mitigation provided by the filed returns and paid taxes is insufficient to overcome the years of Applicant shirking his responsibility to file his tax returns and pay his taxes when they were due. Financial considerations security concerns are not mitigated.

### **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 have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's honorable military service and favorable character evidence.



Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

### **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 (except 2020, which is found for Applicant)
Subparagraph 1.b:	Against Applicant

### **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge