



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01390
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Sakeena Farhath, Esq., Department Counsel  
For Applicant: *Pro se*

08/30/2023

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On August 11, 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 November 3, 2022, and requested a hearing before an administrative judge. The case was assigned to me on April 19, 2023.

The hearing convened as scheduled on June 14, 2023. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A through C, which were admitted without objection. The record was held open for Applicant to submit additional documentary evidence. He submitted emails that I have marked AE D and admitted without objection. He did not submit any other documentary evidence.

## Findings of Fact

Applicant is a 49-year-old employee of a defense contractor. He has worked for his current employer since 2020. He earned a bachelor's degree in 2001. He is twice divorced, with his second marriage ending in 2019. He married his current wife in 2021. He has three children and a stepchild. (Transcript (Tr.) at 23-24; Applicant's response to SOR; GE 1, 3)

Applicant did not file his federal income tax returns for tax years 2019 through 2021 when they were due, and he did not file his state income tax returns for tax years 2020 and 2021 when they were due. He was not required to file a state tax return for 2019 because he lived in a state that did not have state income taxes. (Tr. at 24-26, 39-40; Applicant's response to SOR; GE 1-3; AE A-C)

Applicant partially attributed his tax-filing lapses to his divorce. During his separation and divorce, some of his tax documents were delivered to his ex-wife. He believes she threw away some of the documents. His company sent him temporarily to another state in 2019. He remained in the state and accepted his current position in 2020. His employer was late in sending his W-2 forms. He had back surgery, the COVID-19 pandemic hit, and a hurricane damaged his home in 2021. He also admitted that he should have been more diligent about his taxes, but his personal life was in turmoil, and he just kept putting off filing the returns. (Tr. at 20, 24, 26-29, 32-40; GE 1-3)

Applicant reported his failure to file his federal and state tax returns on a Questionnaire for National Security Positions (SF 86) that he submitted in January 2022. He indicated that he had obtained his missing documents, and he was working with a certified public accountant (CPA) to file the returns. He provided similar information during an interview for his background investigation in February 2022. (GE 1, 3)

Applicant filed his 2019 through 2021 federal income tax returns and 2020 and 2021 state income tax returns in June 2022. He owed the IRS for back taxes, penalties, and interest. In September 2022, he paid the IRS \$4,435 for tax year 2019; \$2,736 for 2020; and \$355 for 2021 to pay all the taxes, penalties, and interest owed for those tax years. His state does not have an equivalent to IRS tax account transcripts, but he credibly testified that the state tax returns have been filed and all taxes paid. (Tr. at 17-20, 33-34, 41; AE A-D)

Applicant now fully understands the importance of filing his returns and paying his taxes on time. He assures that all future returns and taxes will be filed and paid when they are due. (Tr. at 21-22, 41)

## 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.

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 all his federal and state income tax returns when they were due. AG ¶ 19(f) is applicable.

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 went through a tumultuous period. He separated and divorced, moved to a new state, had back surgery, and went through the COVID-19 pandemic. Then a hurricane damaged his home. He also admitted that he should have been more diligent about his taxes, but his personal life was in turmoil, and he just kept putting off filing the returns. All the returns were filed in June 2022, before the SOR was issued, and all the taxes were paid. 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.

I found Applicant to be honest and truthful. I am convinced that he has learned a valuable and costly lesson, and that all future returns and taxes will be filed and paid on time. Security concerns about Applicant's finances are 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.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated 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:	For Applicant
Subparagraphs 1.a-1.b:	For Applicant

## **Conclusion**

It is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge