



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-00568
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Troy Nussbaum, Esq., Department Counsel  
For Applicant: *Pro se*

11/24/2023

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**Decision**

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DORSEY, Benjamin R., 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 2, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant provided an undated response to the SOR (Answer). He requested a hearing before an administrative judge. The case was assigned to me on July 11, 2023.

The hearing was initially scheduled for October 4, 2023. However, Applicant requested a continuance that I granted without objection. The hearing was convened as rescheduled on November 8, 2023. At the hearing, I admitted Government Exhibits (GE) 1 through 3 without objection. Applicant testified at hearing but did not present any documentary evidence. I received the transcript (Tr.) of the hearing on November 15, 2023.

## Findings of Fact

Applicant is a 67-year-old employee of a government contractor. He has worked for this contractor or a predecessor thereof since January 2012. He was married from 1984 until a divorce in 2018. He has three adult children, one of whom resides with him. He earned a high school diploma in 1974 and took a semester of college courses but did not earn an undergraduate degree. He was on active duty with the Army from 1974 until 1994, when he retired with an honorable discharge. He has held a security clearance since 1974. (Tr. 15-22, 29-32; GE 1, 3)

In the SOR, the Government alleged Applicant's failure to timely file his federal income tax returns for tax years 2013 through 2019, as required (SOR ¶ 1.a). It also alleged that he is indebted to the federal government for at least \$20,000 for delinquent income taxes for tax years 2013 through 2019 (SOR ¶ 1.b). He admitted the SOR allegations. His admissions are adopted as findings of fact. The SOR allegations are established through his admissions and the Government's exhibits. (SOR; Answer, GE 1-3)

Applicant could not confirm whether his 2013 through 2019 federal income tax returns have been filed. He provided no documentary evidence to show that he had filed them. In March 2021, he hired a professional tax company (TC) to file his delinquent income tax returns. He paid them \$10,000. He claimed that he signed a power of attorney to allow the TC to sign income tax returns on his behalf, but he did not provide documentary evidence to substantiate that claim. Part of his contract agreement with the TC referenced his need to "execute" his tax returns after verifying the information therein is correct. He testified that the TC told him that they will be filing all his late income tax returns simultaneously. He assumed that the TC has filed his delinquent income tax returns because he no longer receives any letters or phone calls from the IRS. The TC told him to check his online account drop box for his filed federal income tax returns, but he has not had any documents in this drop box. He last contacted the TC in August 2023. He claimed he does not know whether he should be worried about the TC's possible lack of progress because he has never been in this situation before. The only reason he has not "panicked" is that the letters and phone calls from the IRS have stopped. (Tr. 25-29, 35-39; Answer; GE 1-3)

In his January 2021 Electronic Questionnaires for Investigations Processing (SF 86), Applicant reported that he owed approximately \$20,000 in delinquent federal taxes for the 2013 through 2019 tax years. He could not confirm that he has paid any money towards these delinquent taxes. He provided no documentary evidence to show that he had. He testified that he believes that he actually owes approximately \$60,000 in delinquent income taxes. He does not believe that the \$10,000 he paid to the TC is meant to be used to pay his delinquent taxes. Instead, he believes that this money is meant to be used to file his income tax returns. He claimed that he will use savings in his retirement account to pay his delinquent federal taxes. Any adverse information not alleged in the SOR will not be used for disqualification purposes. I will consider it when assessing the application of mitigating conditions and for the whole-person analysis. (Tr. 24-29, 34-36; Answer; GE 1-3)

For the 2013 through 2017 tax years, Applicant failed to timely file his federal income tax returns because he believed that his ex-wife was filing them as she “always did.” For the 2018 and 2019 tax years, he claimed that he failed to timely file his federal income tax returns because of the marital problems that ultimately led to his divorce. While he knew at the time that he had not timely filed his tax returns for tax years 2018 and 2019, he did not know about the 2013 through 2017 tax years until 2018, when the IRS contacted him. He recognized that he made a mistake and accepts responsibility for it. He plans to follow up with the TC to determine its progress on his tax returns. In March 2021, during his security interview, he told the DoD investigator that he would follow-up with the TC to ensure that his delinquent income tax returns were filed and that he would acquire the documentary evidence to confirm these filings. He has provided the TC with the information it needs to file his income tax returns for the 2020 and 2021 tax years. However, he has not provided the TC with this information for the 2022 tax year. He could not confirm whether his federal income tax returns have been filed for the 2020 through 2022 tax years. (Tr. 19-23, 36-37; GE 2)

Applicant takes home between \$1,700 and \$2,000 per two-week pay period. He also receives about \$1,900 per month from his military retirement. He owns his home, having paid the mortgage on it in about 2008. His expenses consist of his spousal support of about \$480 per month, a car payment of about \$550 per month, and his property insurance and property taxes. A personal financial statement that he submitted in November 2021 did not provide information regarding a monthly surplus or deficit, and he did not provide evidence of this information at hearing. In his November 2021 personal financial statement, he claimed to have \$4,000 in a savings account, \$30,000 in a retirement account, and \$140,000 in real estate equity. (Tr. 16-18, 31; GE 3)

### **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 are potentially applicable in this case:

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

(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 failed to timely file his federal income tax returns as required for the 2013 through 2019 tax years. He also owed about \$20,000 in delinquent federal taxes for these tax years. The above-referenced disqualifying conditions are applicable.

Conditions that could mitigate the 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;

(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;

(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.

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).

Applicant has not provided sufficient evidence that he has filed his federal income taxes for the 2013 through 2019 tax years. He also has not provided sufficient evidence that he has filed his federal income tax returns for the 2020 through 2022 tax years. He has not provided sufficient evidence that he has paid any money towards his federal income tax delinquency. He could not confirm these things when he testified, and he did not provide any documentary corroboration. He has not provided his tax

preparer the information it needs to file his 2022 federal income tax returns. He testified that his delinquent federal income tax balance is now about three times higher than when he submitted his SF 86. He only contacted the TC after he had his security interview. This fact tends to show that he acted because he knew his security clearance was in jeopardy. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019). Finally, he has not provided sufficient evidence to show that he has an arrangement with the IRS to file his late income tax returns or pay his delinquent income taxes.

While he has relied on his ex-wife and the TC to handle filing his federal income tax returns, it is incumbent upon him to insure he is complying with his financial obligations. It is not enough for him to pass the responsibility to someone else and assume they are handling it. His failure to monitor his federal tax situation with both his ex-wife and the TC were within his control. If one were to assume, for the sake of argument, that his divorce, which can be considered beyond his control, caused his failure to file his tax returns for the 2018 through 2022 tax years, he still needs to show that he acted responsibly under the circumstances. Through his lack of attention to his income tax filings and income tax delinquencies before and after he hired the TC, he has not shown responsible or good-faith behavior. None of the mitigating conditions fully apply.

### **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 have also considered his lengthy military service and the significant number of years that he has held a security clearance.

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

Subparagraphs 1.a-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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Benjamin R. Dorsey  
Administrative Judge