



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-01617
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

02/15/2024

**Decision**

GARCIA, Candace Le'i, Administrative Judge:

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

**Statement of the Case**

On August 1, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on August 3, 2023, and elected to have his case decided on the written record in lieu of a hearing. The Government's written case was submitted on September 27, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on October 30, 2023. His response was due on November 29, 2023, but he did not submit one. The case was assigned to me on

February 2, 2024. The Government's documents, identified as Items 1 through 6 in its FORM, are admitted in evidence without objection.

### **Findings of Fact**

In his Answer, Applicant denied the sole SOR allegation. He is 42 years old, he has never married, and he does not have any children. He worked as a part-time clerk for a music company from August 2012 to January 2017. Since April 2016, he has worked as a part-time, self-employed, music instructor. He has also worked as a part-time janitor for his employer, a DOD contractor, since July 2022, and as a part-time music instructor for a nonprofit organization since August 2022. He has never held a security clearance. (Items 1, 3-4, 6)

The SOR alleges that Applicant failed to file his federal income tax returns for tax years (TY) 2015 through 2019, as required, and that they remained unfiled as of the date of the SOR. (SOR ¶ 1.a) The allegation is established by Applicant's admission in his Answer, October 2022 security clearance application (SCA), May 2023 response to interrogatories, and November 2022 background interview with an authorized DOD investigator. (Items 1, 3-6)

Applicant was unsure why he did not file his federal income tax returns for TY 2015 and 2016. He stated in his 2023 response to interrogatories that he would have received a refund for these tax years "since I was still a W2 employee, and paid taxes for those years." The record does not contain any documentation reflecting that he filed his federal income tax returns for TY 2015 and 2016. (Item 5)

Applicant attributed his failure to file his federal income tax returns for TY 2017 through 2019 to financial distress, poor planning, and bad judgment. Having decided to change careers to focus on being a music instructor, he earned \$13,525 in 2017. He chose to wait until his earnings increased to file his federal income tax return for that tax year because he needed to live off his savings. He stated in his SCA, "It wasn't until well after the deadline that I realized I hadn't filed, and [I] decided to wait to be contacted by the IRS." (Items 4-6)

In 2018, Applicant earned \$19,636. Still struggling financially, he was worried about what he owed from the previous year. He stated in his SCA, "[a]fter much procrastination, the date to file had passed and I decided to take care of everything at a later date." (Item 4-6)

In 2019, Applicant earned \$27,377. With his increased earnings, he intended to file his income tax returns in 2020 and pay for any taxes owed with the money he was able to save. When the COVID-19 pandemic caused him to instantly lose 60% of his students, he "[w]orried that the lock down would last until a vaccine was available, I had to live off what savings I had, so I decided to postpone filing my federal taxes again." He indicated during his background interview that he should have elected to have taxes taken out of his pay quarterly to keep from acquiring a tax bill that he could not afford to

pay. The record does not contain any documentation reflecting that he filed his federal income tax returns for TY 2017 through 2019. (Item 4-6)

In 2020, Applicant earned \$19,483. He timely filed his federal income tax return for that tax year in March 2021. He owed \$713 and had an \$1,800 credit, so he was issued a refund of \$1,087. In August 2022, the IRS notified him that a third party reported that he had earned more than \$19,483 in 2020, and he consequently owed an additional \$2,740 in federal income taxes for that tax year. He disputed the IRS's determination in September 2022. In his response to interrogatories, he stated that the IRS denied his dispute and, "[o]nce I finish paying that amount off, I plan on filing all missing years." (Items 4-6) As Applicant's outstanding federal taxes for TY 2020 was not alleged in the SOR, it may not be an independent basis for revoking Appellant's clearance. However, I may consider it for the limited purposes of evaluating Applicant's evidence of extenuation, mitigation, or changed circumstances; to decide whether a particular provision of the Adjudicative Guidelines is applicable; or to provide evidence for the whole-person analysis.

Applicant timely filed his federal income tax return for TY 2021 and he had a zero balance for that tax year as of an IRS tax account transcript from March 2023. (Item 5) Documentation from the state tax authority reflects that Applicant did not have a state income tax filing requirement for TY 2015 through 2017, and he filed his state income tax returns but did not have a tax liability for TY 2018 through 2020. He was contacted by the state tax authority in the summer of 2021 regarding his outstanding state taxes, which he paid as of October 2021. (Items 4-6)

Applicant indicated during his background interview that he sets aside money from his pay to ensure that he has enough saved at the end of the year to pay any taxes owed. He does not intend to repeat the same mistakes he previously made. He intends to work with the IRS to establish a payment plan to resolve his outstanding taxes. (Item 6)

## **Policies**

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 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 access to classified information 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. 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 10865 provides that 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F: Financial Considerations**

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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. Affluence that cannot be explained by known sources of income is also a

security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. I considered as relevant 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.” Applicant failed to file his federal income tax returns for TY 2015 through 2019, as required. AG ¶ 19(f) applies.

Of the mitigating conditions under AG ¶ 20, I have determined the following to be relevant:

(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;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(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.

Conditions beyond Applicant’s control did not contribute to his failure to timely file his relevant federal income tax returns. He has not provided documentation showing that he has filed his federal income tax returns for TY 2015 through 2019, or that he has made arrangements to resolve or has resolved his outstanding federal income taxes for TY 2020. There is no evidence that he has received financial counseling. There are not clear indications that his financial problems are being resolved or are under control. I find that Applicant’s ongoing financial problems continue to cast doubt on his current reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(g) are not established.

## **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 the 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 with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that 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

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Candace Le'i Garcia  
Administrative Judge