



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



In the matter of: )  
)  
) ISCR Case No. 23-01453  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

04/18/2024

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On August 11, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on September 4, 2023, and he elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on November 14, 2023. He was afforded an opportunity to file objections and submit material

in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 4 (Item 1 is the SOR and the answer). Applicant did not submit a response to the FORM or object to the Government's evidence. Items 1 through 4 are admitted in evidence. The case was assigned to me on February 27, 2024.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a and 1.b and denied 1.c and 1.d. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 62 years old. He never married and has no children. He earned bachelor's, master's and doctorate degrees. He has worked for federal contractors since approximately 1994. He has held a security clearance since approximately 2008.

Applicant completed a security clearance application (SCA) in March 2020. In it, under Section 26-Financial Record, he disclosed that he failed to timely file his 2009 and 2010 federal and state income tax returns until November 2011 and December 2011, respectively. He disclosed he owed both federal and state taxes each of those years and paid the amount owed. His explanation for his failure to timely file was "forgot to file." He said he did not owe taxes. (Item 2)

Applicant further disclosed on his SCA that he failed to timely file his federal and state income tax returns for tax years 2013 through 2016. He stated, "Found the information in [s]ummer 2019 and filed late returns." He stated he filed his federal and state tax returns in October 2019 for tax years 2013, 2014, and 2015. He filed his 2016 federal tax return in October 2019 and the state return in June 2020. His explanation for failing to timely file his tax returns was "lost 2013 tax records." He said he did not owe taxes. (Items 2, 3)

Applicant further disclosed on his SCA that he failed to timely file his federal and state income tax returns for tax year 2017 because he lost his 2013 tax records. He said he filed the federal return in October 2019 and the state return in June 2020 after finding the records in the summer of 2019. He further stated, "The IRS lost this one. I haven't heard anything about it in a couple of months so maybe they found it in the meantime." He said he did not owe taxes. (Items 2, 3)

Applicant further disclosed on his SCA that he failed to timely file his federal and state tax returns for tax year 2018 because he lost his 2013 tax records. He found the records in the summer of 2019. When he completed the SCA he stated for both his federal and state returns, "Still need to have the return prepared." He said he did not owe taxes. (Items 2, 3).

Applicant provided additional comments in his SCA regarding his late filings. He said:

I use a tax preparer now so that I won't keep getting behind in filing like I used to. I assume he's filing the necessary extensions since sometimes it take a while to get the needed information for the German accounts, since sometimes I don't think of all the needed information in advance. (Item 2)

In April 2023, Applicant affirmed that the information included in government interrogatories, which included his responses to questions, was accurate. It also included federal tax transcripts for different tax years and other documents provided by Applicant. The FORM submitted by the government included a copy of the summary of his personal subject interview with a government investigator. Applicant did not object to it or make any changes or corrections. (Items 3, 4)

Applicant was interviewed by a government investigator in June 2020. He affirmed the information about filing his federal and state income tax returns late. He could not recall for certain years if he received a refund or it was forfeited because of his late filing, but indicated he did not owe any taxes. (Item 3)

Applicant was asked if he had filed his 2018 federal and state income tax returns. He said he had not and had not contacted his tax preparer due to the quarantine in place for the global pandemic. He stated he would file his state tax returns after filing his federal returns. He again indicated the reason he was filing late was because he had lost his 2013 tax document. He intended to leave his tax documents with his tax preparer and would file his 2019 returns once he collected all of his documentation. He said he was late in filing his 2013 tax returns and subsequent years due to forgetting where he placed his tax paperwork. (Item 3)

In response to government interrogatories, Applicant was asked to provide tax transcripts for tax years 2016 to 2020. He was asked to provide an explanation for his repeated failure to file his income tax returns. He stated:

At the time of the original interview I'd just been procrastinating, and I thought I could get the tax returns taken care of in a few weeks. But I discovered that in order to file my returns, I need information from an investment account in Germany, which haven't been able to obtain yet because of the bureaucracy around the conditions where they give out information. I think it's also because it's not part of their normal procedures and they don't want to be bothered about such a small account. (Item 4)

He was also asked to provide any additional information about facts or circumstances that would be of assistance. He stated:

The examiner originally requested [Name] state tax transcripts in addition to federal transcripts. However, [Name] doesn't have tax transcripts. If I'd been able to get documentation I need from Germany I'd have substituted copies of the tax[] returns.

At the time of the original interview[,] I didn't have concrete information about the German [Bank] account. Since that account has become an issue, I'm attaching the most recent statement I have. (Item 4)

The SOR alleged Applicant failed to timely file his 2018 through 2021 federal and state income tax returns (§§ 1.a and 1.b). It also alleged he failed to pay his 2016 and 2017 federal income taxes and they remain unpaid.

In Applicant's answer to the SOR, he admitted he failed to file his federal and state income tax returns for 2018 through 2021. His response to SOR § 1.a was as follows:

This is because I was told [by] my tax advisor that I can't file these returns without documentation for a German account that I haven't been able to obtain. I think the bank there probably doesn't track all the needed information in one place, and they're reluctant to assign a human to collect it all for such a small account. I assume that if I filed without that documentation, it would be considered to be a false return. (Item 1)

In Applicant's answer to the SOR 1.b, his explanation for failing to file his state income tax returns for tax years 2018 through 2021 was he needed the federal returns in order to file the state returns. (Item 1)

Applicant denied he owed federal income taxes for tax years 2016 and 2017. He provided documents to show he received federal and state refunds for those tax years. (Item 1)

In Applicant's SCA, he disclosed numerous trips to Germany, the last one occurred in September to October 2019 and lasted more than 30 days. He was visiting family and friends. (Item 2)

IRS tax transcripts from November 2022 for tax years 2018 through 2021 indicate no returns have been filed. Letters of notification have been sent to Applicant and all but the 2020 transcript state, "withholding allowances limited-letter sent to employer." Applicant did not provide a response to the FORM or provide any documents to show he has filed his delinquent federal or state tax returns. (Item 4)

I have not considered any derogatory information that was not alleged for disqualifying purposes. I may consider it in the application of mitigation conditions and in my whole-person analysis.

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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(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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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 EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern relating to the guideline 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. 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

(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 2018 through 2021 federal and state income tax returns. They remain unfiled. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 persons 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.

Applicant provided evidence that he does not owe federal or state income taxes for tax years 2016 and 2017. He received a refund for those years, albeit late due to his late filings. I find in Applicant's favor for SOR ¶¶ 1.c and 1.d.

Applicant did not provide evidence that he has filed the delinquent 2018 through 2021 federal and state income tax returns. He has had years to resolve whatever problem he perceives is prohibiting him from filing the tax returns. There is no evidence that he has contacted the IRS to discuss the problem. He failed to provide documentation from his tax advisor explaining why he has been unable to file four years of tax returns. He did not provide any evidence of tangible efforts he has made to file his delinquent returns. He gave no indication when he would file the returns. It is unknown if he believes that because he has had difficulty retrieving a foreign document that he is not required to file his tax returns in perpetuity. He also has a long history of failing to timely file his tax returns that began before 2018.

Applicant's tax problems are ongoing and recent. Based on Applicant's history, I cannot find future issues are unlikely to recur. His conduct casts doubt on his reliability, trustworthiness, and good judgment. Applicant has spent years ignoring his legal responsibilities. I cannot find Applicant's tax issues are beyond his control. He provided minimal evidence of efforts he has made to resolve his failure to comply with the tax rules. He clearly has not acted responsibly. Applicant traveled to Germany numerous times in the past, the last occurring in late 2019 when he stayed for over 30 days. He had an opportunity to address the issue with officers of the bank at that time. There is no evidence of good-faith efforts to resolve the problem. None of the mitigating conditions 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 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

The DOHA Appeal Board has held that:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with these things is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Someone who fails repeatedly to fulfill his or her legal obligations 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. 14-01894 at 5 (App. Bd. August 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

Applicant has not met his burden of persuasion. He has a negative track record of complying with rules and regulations associated with his duty to file his tax returns. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

### **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
Subparagraphs 1.c-1.d:	For Applicant



## **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge