



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



In the matter of:	)	
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Applicant for Security Clearance	)	ISCR Case: 23-01253

**Appearances**

For Government:  
Adrienne Driskill, Esquire, Department Counsel

For Applicant:  
Vanessa G. McKinnon, Esquire  
McKinnon Law Firm

07/23/2024

**Decision**

ROSS, Wilford H., Administrative Judge:

**Statement of Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on August 17, 2021. (Government Exhibit 1.) On September 20, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective within the Department of

Defense on June 8, 2017. Applicant submitted an answer to the SOR dated October 27, 2023, and requested a hearing before an administrative judge. (Answer.)

The Government was ready to proceed on November 17, 2023. The case was assigned to me on December 5, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 12, 2024. The hearing was convened as scheduled via TEAMS on March 11, 2024. The Government offered Government Exhibits 1 through 7, which were admitted without objection. Applicant testified on his own behalf, called one additional witness, and submitted Applicant Exhibits A through Z. DOHA received the transcript of the hearing (Tr.) on March 22, 2024. Applicant requested the record remain open for receipt of additional information. Applicant submitted Applicant Exhibits aa through ll in a timely fashion, and they were also admitted without objection. The record then closed.

### **Rulings on Procedure**

Based on the evidence presented at the hearing Department Counsel made a motion to amend the SOR in accordance with Directive, Additional Procedural Guidance, ¶ E3.1.17. Applicant's counsel had no objection to the proposed amendments, and I granted the motion to amend the SOR. (Tr. 76-82.)

The amendments are as follows:

1.a. You failed to file, as required, Federal income tax returns for tax years, 2011, 2012, 2015, 2016, 2018, 2019, 2020, 2021, and 2022. As of the date of this Statement of Reasons, the tax returns remain unfiled.

1.b. You failed to file, as required, State [A] income tax returns for tax years, 2011, 2012, 2015, 2016, 2018, 2019, 2020, 2021, and 2022. As of the date of this Statement of Reasons, the tax returns remain unfiled.

1.c. You are indebted to the Federal Government for delinquent taxes in the approximate amount of \$56,000. As of the date of the Statement of Reasons, the taxes remain delinquent.

1.d. You are indebted to the State of [A] Franchise Tax Board for delinquent taxes in the approximate amount of \$7,500. As of the date of the Statement of Reasons, the taxes remain unpaid.

1.e. Withdrawn by Department Counsel.

## **Findings of Fact**

Applicant is 60 years old and married with two children. He and his wife have been separated at various times since 2004. They have reconciled, but still live apart. He has an associate degree and has been employed by a defense contractor since 2016 as a Program Planner. (Government Exhibit 1 at Sections 12, 13A, 17, and 18; Tr. 49-50, 82-83, 102-104.)

### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleged in this paragraph that Applicant is ineligible for clearance because he has failed to meet his financial obligations and is therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted allegations 1.a through 1.d in the SOR with explanations. As stated, allegation 1.e has been withdrawn. He denied allegations 1.f through 1.k with explanations. He also submitted additional information to support the granting of national security eligibility.

1.a and 1.b. These allegations concern Applicant's failure to file nine years of Federal and State A tax returns in a timely fashion. Specifically, as of the date of the SOR, Applicant had not filed either Federal or State A tax returns for tax years 2011, 2012, 2015, 2016, 2018, 2019, 2020, 2021, and 2022.

Applicant stated that there were several reasons for his dilatoriness. One of the reasons was the fact that he and his wife were separated since 2004 and contemplated divorce in 2010. They have since reconciled, though they still live apart. He also had a series of medical issues that required various surgeries, which cost him money, a job, and time. There were also other financial issues that he felt impacted his ability to resolve his tax situation. Furthermore, he had to help his children financially. He also admitted that as time passed, he got scared and simply kept pushing his tax returns onto the back burner. (Tr. 50-59, 71, 84-88, 94-98.)

Applicant stated that he had begun trying to resolve his tax situation in 2023 before he received the SOR. Once he received the SOR he realized that he needed help to resolve the issue. He obtained the services of a tax attorney, who has been working with Applicant to resolve these tax issues. The attorney testified about his representation of Applicant, including his contact with the Federal and State A tax authorities, and his filing Applicant's delinquent tax returns. (Applicant Exhibit A; Tr. 23-46, 109-111.)

With regard to his Federal tax returns, Applicant submitted documentation from the IRS confirming that all of the subject tax returns have now been filed. The last returns to be filed were those from 2011 and 2012. They were filed on March 11, 2024, the same day as Applicant's hearing. His 2023 Federal income tax return was filed in a timely fashion. He stated that he will file his future tax returns in a timely fashion. (Applicant Exhibits A, R, S, U, ff, hh, jj and kk; Tr 72-73, 88-89.)

With regard to his State A tax returns, Applicant submitted documentation from the State A Franchise Tax Board (FTB) confirming that all of the subject tax returns have now been filed. The last returns to be filed were those from 2011 and 2012. They were filed on March 11, 2024, the same day as Applicant's hearing. He stated that he will file his future tax returns in a timely fashion. (Applicant Exhibits A, G, R, T, gg, ii, and ll; Tr. 72-73, 88-89.)

1.c. Applicant admitted that he owed a considerable amount of money to the IRS for back taxes. He recently entered into an installment agreement with the IRS and had made two monthly payments of \$1,012 under that agreement as of the date the record closed. His payments are being automatically withdrawn from his bank account. As of March 11, 2024, he owed \$61,032 in back Federal taxes. He expressed an intent to continue making regular monthly payments until this debt is resolved. (Applicant Exhibit kk; Tr. 26-27, 61-62, 88-89.)

1.d. Applicant admitted that he owed a considerable amount of money to the State A FTB for back taxes. He recently entered into an installment agreement with the FTB and had made the first of his monthly payments of \$225 under that agreement as of the date the record closed. His payments are being automatically withdrawn from his bank account. As of March 11, 2024, he owed \$7,466 in back State A taxes. He expressed an intent to continue making regular monthly payments until this debt is resolved. (Applicant Exhibit ll; Tr. 26-27, 61-62, 88-89.)

1.e. Withdrawn.

1.f. Applicant denied that he owed \$945 to a college for past-due tuition. He submitted documentation from the college's collection agent confirming that the debt had recently been paid. This debt has been resolved. (Applicant Exhibit Z; Tr. 62-63.)

1.g, 1.h, 1.j, and 1.k. Applicant denied that he owed several past-due medical debts to a collection agency in the total amount of \$1,626. He stated that he believed his insurance should have covered all the costs of his treatment. He paid all of his debt with this creditor on March 6, 2024. The total amount he paid was \$4,313.72, which is higher than the amount alleged in the SOR. These debts are resolved. (Applicant Exhibits X and ee; Tr. 63-67.)

1.i. Applicant denied that he owed a past-due medical debt in the amount of \$184. Once again, he believed that his insurance should have paid this debt. He paid this debt in the amount of \$201.45 on March 6, 2024. This debt is resolved. (Applicant Exhibit Y; Tr. 67-68.)

## **Mitigation**

Applicant stated that his current financial situation is stable. He presented documentation concerning his income, as well as that of his wife. Those documents show he has a steady work income, as well as significant investments. He has taken a credit counseling class. He also has a budget. (Applicant Exhibits F, H, I, J, K, L, M, V, W, aa, bb, and cc; Tr. 68-72.)

Applicant is a respected and successful employee. His most recent evaluation gave him a rating of “High Meets.” That is defined as, “Employee fully meets and often exceeds goals and expectations.” (Applicant Exhibits N, O, P, and Q.)

Applicant also submitted letters of recommendation from work associates, including a program manager. He is described as a person of integrity who is dependable, trustworthy, and reliable. The writers recommend him for a position of trust. (Applicant Exhibits B, C, D, and E.)

## **Policies**

When evaluating an applicant’s national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Paragraph 1 (Guideline F, Financial Considerations)**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
  
- (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 Federal, state, or local income tax as required.

Applicant failed to timely file Federal and State A income tax returns, as required, for tax years 2011, 2012, 2015, 2016, 2018, 2019, 2020, 2021, and 2022. He also owes a considerable amount of money in delinquent taxes to the Federal Government and State A. He only recently filed the subject tax returns and begun making payments when confronted with losing his security clearance eligibility. He also had past-due debts to several creditors. These facts establish *prima facie* support for the foregoing disqualifying conditions and shift the burden to Applicant to mitigate those concerns.

The guideline includes several conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's failure to timely file tax returns:

(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, or 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.

Turning first to Applicant's past-due consumer debts found in allegations 1.f through 1.k. He has paid all of these consumer debts, albeit after issuance of the SOR. AG ¶ 20(d) applies to these debts, but its overall weight is lessened by the lateness and motivational circumstances of his conduct.

Regarding his taxes, Applicant failed to abide by Federal and state tax laws by not filing his Federal and state tax returns for nine tax years between 2011 and 2022. His failure to act in a timely manner shows a defect in responsibility and trustworthiness. Circumstances beyond his control may have distracted him from filing his annual income tax returns. They have been considered. Applicant did not file for an extension to accommodate his circumstances, nor did he contact anyone to help him file his returns on time until he was faced with this proceeding. Instead, he ignored the situation until it

became an imminent threat to his employment. He has not acted responsibly under the circumstances. There is no justification for his failure to file his income tax returns on time. He has failed to mitigate this violation of tax laws. This misconduct further demonstrates a lack of judgment and reliability.

As long as Applicant is gainfully employed and earning sufficient monies, he is required to file annual income tax returns on time. Voluntary compliance with rules and regulations is essential for protecting classified information. If he cannot follow the tax laws, he very well may not be able or willing to follow the rules required to protect classified information. It was only when his tax delinquencies were an impediment to his security clearance eligibility that he took action to get his income tax returns filed and established payment plans with the Federal and State A tax authorities. Those plans have barely begun. There is virtually no track record of him fulfilling his tax responsibilities in a timely and consistent fashion. His actions do not amount to a good-faith effort at this time. None of the mitigating conditions apply to his tax situation. Guideline F is found against Applicant.

### **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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant has not provided sufficient evidence to show that he has resolved his tax issues, and that they will not recur in the future. The potential for pressure, exploitation, or duress has not been resolved at the present time. Overall, the evidence does create substantial doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. Applicant has not met his burden to mitigate the security concerns arising under the guideline for financial considerations.



## **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	Against Applicant
Subparagraph 1.e:	Withdrawn
Subparagraphs 1.f through 1.k:	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 interest to grant Applicant national security eligibility and a security clearance. Eligibility for access to classified information is denied.

Wilford H. Ross  
Administrative Judge