



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-01443
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: George Hawkins, Esq., Department Counsel  
For Applicant: *Pro se*

09/26/2024

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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 August 11, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant provided a response to the SOR (Answer) dated November 21, 2023. He requested a hearing before an administrative judge. The case was assigned to me on May 14, 2024.

The hearing was convened as scheduled on August 8, 2024. At the hearing, I admitted Government Exhibits (GE) 1 through 4 and Applicant Exhibits (AE) A through E without objection. At Applicant’s request, I left the record open until August 30, 2024, for the parties to provide post-hearing documents. The Government timely provided GE 5, which I admitted without objection. Applicant timely provided AE F through K, which I admitted without objection. I received the transcript (Tr.) of the hearing on August 15, 2024.

## Findings of Fact

Applicant is a 58-year-old employee of a government contractor. He has worked for this contractor since 2020. He previously worked for the same contractor or a subcontractor thereof from 2004 until 2014, when he was laid off. He was married and divorced twice. His marriages were from 1986 until 1994 and from 1998 until 2014. He has two adult children, ages 33 and 21. He earned a high school diploma in about 1984 and a bachelor's degree in 2006. He was on active duty with the Air Force from 1984 until 1997, when he earned an honorable discharge. He does not currently hold a security clearance, but he did hold one when he served in the Air Force. (Tr. 27-33; GE 1-4)

In the SOR, the Government alleged Applicant's failure to timely file his federal income tax returns for tax years (TY) 2014, 2017, and 2019, as required (SOR ¶ 1.a). He admitted the SOR allegation with additional comments. 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 did not timely file his TY 2014, 2017, and 2019 federal income tax returns, as required. As of the hearing date, he still did not file any of those income tax returns. He attempted to timely file his 2014 income tax return in 2015. However, the Internal Revenue Service (IRS) rejected his filing within days because he tried to claim one of his sons as a dependent, but his ex-wife had already claimed him. As part of his divorce decree, he was permitted to claim his son as a dependent for TY 2014. As they were not getting along at the time, he was unable to have his wife voluntarily amend her TY 2014 income tax return so that he could claim the exemption. He did not attempt to enforce this provision of his divorce decree through court action. He now has a better relationship with his ex-wife and came to an agreement with her in about 2020, that would allow him to claim his son as a dependent. However, there is no evidence that he or his ex-wife acted on this agreement. (Tr. 23-25, 33-39, 47-54, 57-58, 70, 74-76; Answer; GE 3, 4; AE J, K)

Applicant did not file his TY 2014 income return without claiming his son as a dependent with a plan to amend it if his ex-wife amends hers. He claimed the IRS recently told him that he did not need to file his TY 2014 tax return because he is current on filing and paying his income tax returns for the last six years. However, as he did not file his TY 2019 federal income tax return, he does not meet this alleged allowance to not file for TY 2014. During a phone call after the hearing, an IRS employee told Applicant he could see no reason for Applicant to file his TY 2014 income tax return, but only in the context of receiving a refund or if he owed the IRS money. There is insufficient evidence that Applicant is not or was not required to file his TY 2014 federal income tax return. (Tr. 23-25, 33-39, 47-54, 57-58, 70, 74-76; Answer; GE 3, 4; AE J, K)

In 2014, Applicant was laid off from his job as a government contractor. He borrowed money from his retirement account to support himself. He did not make

regular payments on this loan, so, in 2016, the IRS considered it a payout as opposed to a loan. He claimed he was not aware of the change in the status of his loan because he moved and did not receive a notice. After the IRS imposed late fees and penalties, he owed it about \$10,000 as a result of this payout. He did not become aware of this tax debt until he contacted the IRS sometime in 2020. He made a payment arrangement with the IRS and satisfied that IRS debt. He does not owe any delinquent federal taxes. (Tr. 25-26; Answer; GE 3, 4; AE A, B, F, H)

For TY 2017, Applicant's taxable earnings were \$15,642. He claimed that he researched the threshold amount of taxable earnings that would require him to file a federal income tax return for TY 2017. He claimed that he researched the issue sometime in 2019 or 2020 and determined that he had to make at least \$20,800 in taxable earnings for TY 2017 to be required to file an income tax return. He did not use the IRS website as a reference. He provided a post-hearing screenshot of a Google search of income requirements for that tax year. Notably, this screenshot referenced the IRS website as a source for checking to see if an income tax return filing was required. The Government provided IRS Publication 501 for 2017 that reflected that the threshold taxable earnings requiring the filing of an income tax return for TY 2017 was \$10,400 for someone who is single, \$13,400 for head of household, and \$20,800 for married, filing jointly. Applicant was not married during TY 2017, and he made more than the threshold taxable income for filing as head of household for that tax year. Therefore, he was required to file a TY 2017 federal income tax return. He sought and received a six-month extension from the IRS, but he passed the extension deadline without filing his income tax return. (Tr. 26, 54-57, 70-71, 77-79; Answer; GE 3-5; AE I)

For TY 2019, Applicant wanted to claim an exemption for an electric vehicle he purchased so he might receive a tax rebate. He claimed he could not obtain the information he needed for the rebate, so he did not file an income tax return. He claimed he is currently working on obtaining that rebate information. Despite knowing he could do so by 2020, he did not file his TY 2019 income tax returns return and then amend it after he receives the rebate information. (Tr. 26-27, 57-58, 71-73; Answer; GE 3, 4)

From 2019 until 2020, for some portion of his tax advice, Applicant relied upon a work colleague who he knew offered to help people file their income tax returns. He can only remember this person's first name. Applicant does not believe that this colleague is a CPA but does not know the specifics of his qualifications. The colleague advised Applicant that he probably did not owe back taxes through TY 2020 because of the amount in taxes that he had already paid, and because the colleague thought the IRS would have tried to collect from him if he owed. The colleague may have made this claim after reviewing Applicant's income from 2014, 2016, 2017, and part of 2019. Applicant spoke with this colleague because he was getting ready to restart a job with the government contractor who laid him off in 2014, so he thought it would be a good time to get his taxes in order. (Tr. 58-70, 76-79; Answer; GE 4).

Applicant acknowledged that he should have filed the income tax returns for TY 2014, 2017, and 2019. In addition to the aforementioned reasons for not doing so, he stated that his ex-wife normally took care of filing their income tax returns, and that he

“never sought to become good at this.” He also claimed that his lack of income contributed to his failure to timely file these income tax returns. Finally, he claimed that, for his TY 2019 income tax return, he lacked information about mileage and travel expenses that he could have used for deductions. He has filed his federal income tax returns for all other tax years that have been required. Available credit reports show he has no delinquent accounts. (Tr. 72-73; Answer; GE 3, 4; AE G, H)

## **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 failed to timely file his federal income tax returns, as required, for TYs 2014, 2017, and 2019. The above-referenced disqualifying condition is established.

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 filed his federal income tax returns for TYs 2014, 2017, and 2019. His excuses for not doing so, while potentially holding some merit initially, ring hollow after these many years. For example, it is no longer reasonable or responsible to wait on information about an electric car rebate that he purchased about five years ago. It is no longer reasonable or responsible for him to wait for his wife to file an amended income tax return to file his TY 2014 income tax return that was due nine years ago. This sentiment is especially true given the fact that it has been at least four years since she again agreed to do so. It was not reasonable or responsible to come to the incorrect conclusion that he did not have to file an income tax return in 2017 without asking the IRS or visiting its website.

Applicant should have filed these income tax returns by now, but he has not. His failure to follow these basic and well-established government rules is ongoing, and his efforts to rectify them were not responsible or made in good faith. He gets some credit for resolving a federal tax debt that was not alleged in the SOR, so AG ¶¶ 20(b) and 20(g) have some applicability. However, that applicability does not extend to his unfiled income tax returns.

### **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 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
Subparagraph 1.a:	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