



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



In the matter of:)	
)	
)	ISCR Case No. 23-02146
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

01/15/2025

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On November 14, 2023, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). He responded to the SOR on December 9, 2023, and requested a hearing before an administrative judge. The case was assigned to me on July 25, 2024.

The hearing convened as scheduled on September 24, 2024. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence. The record was held open for Applicant to submit documentary evidence. He submitted four documents that I have marked Applicant Exhibits (AE) A through D and admitted in evidence without objection.

Findings of Fact

Applicant is a 48-year-old employee of a defense contractor. He served on active duty in the U.S. military from 1995 until he retired with an honorable discharge in 2017. He worked for another defense contractor from 2017 until 2020, and he has worked for his current employer since 2020. He seeks to retain a security clearance, which he has held since at least 1999. He earned an associate degree in 2012, and he has additional college credits. He has never married, and he has no children. (Transcript (Tr.) at 21; GE 1, 2)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in October 2017. He reported that he failed to file his federal and State 1 income tax returns for tax years 2009 to 2016. He estimated that he owed \$1,700 in back taxes. He wrote that he was “[c]urrently filing taxes for all missed years (2009-2016).”

Applicant was a resident of State 1 while he was in the military, even though, from 2009 through 2017, he was stationed and lived overseas or in other states. At least for some period, he incorrectly thought that he did not have to file State 1 income tax returns. State 1 filed a tax lien of \$1,678 against him in June 2014. He paid the taxes, and the lien was released in February 2018. He wrote to State 1 seeking information on the back returns, but he has not received a response, possibly because of the passage of substantial time since the returns were due. The SOR does not allege that Applicant did not file his State 1 income tax returns or pay the taxes due, and that information cannot be used for disqualification purposes. Applicant moved to State 2 in 2017 after his discharge from the military. He then became a resident of State 2 for state income tax purposes. (Tr. at 24-26; GE 1, 2, 6)

Applicant was interviewed for his background investigation in March 2018. He discussed his unfiled federal income tax returns. He stated that, because he was typically owed a refund, he felt no urgency to timely file the returns. He stated that he had not yet filed his back tax returns, but he collected the necessary documents and purchased tax-filing software. He stated that he intended to file all his missing returns within seven days. He stated during the interview that he filed State 1 income tax returns when it was his home of record, but he did not pay all the income taxes owed when they were due. He stated that he paid the State 1 taxes, the tax lien was released, and he did not owe any additional State 1 taxes. (GE 6)

Applicant was interviewed again in April 2018. He indicated that he found documentation that he had filed his 2009 through 2011 federal income tax returns. He also indicated that he had prepared the federal income tax returns for tax years 2012 through 2014 and would mail the returns the following week. He provided copies of the documents, which established that the 2009 through 2011 federal income tax returns had been filed. (GE 6)

Applicant did not file his 2012 through 2016 federal income tax returns until 2021. He provided IRS tax transcripts for tax years 2013 to 2023. He was unable to obtain IRS tax transcripts for tax years 2009 through 2012, but he provided copies of the 2010

through 2012 federal returns that he filed with TurboTax. The federal returns and IRS tax transcripts indicated that he was due refunds of \$1,424 for 2010; \$1,210 for 2011; \$1,230 for 2012; \$1,385 for 2013; \$1,616 for 2014; \$548 for 2015; and \$635 for 2016. Because the 2012 through 2016 returns were not filed within three years of their due date, he forfeited the refunds he would have received for those years. (Tr. at 22-25; Applicant's response to SOR; GE 3, 4; AE B, D)

Applicant submitted another SF 86 in October 2021. He reported that he had filed his 2012 through 2016 federal income tax returns, but he had not filed his 2017 through 2020 federal and state income tax returns. He wrote that he would file those returns within the following two weeks. He added, "Tax burden is expected to be low or none due to an estimated refund being expected for most/all years. It is understood that I will not be eligible for tax refunds for any taxes filed that are older than 3 years." (GE 1)

Applicant was interviewed for his background investigation in December 2021. He stated that he had filed his tax returns up through 2017, but he had not yet filed his 2018 through 2020 federal and state income tax returns. (GE 5)

Applicant responded to DoD interrogatories in March and April 2023. He provided documentation that he had filed his federal and State 2 income tax returns for 2017 through 2022 in March and April 2023. IRS tax transcripts indicated that he was due refunds of \$1,545 for 2017; and \$1,280 for 2018, which the IRS withheld because his returns were not filed within three years of their due date. He received refunds of \$1,189 for 2019; \$3,608 plus tax credit refunds of \$1,200 and \$600 for 2020; and \$3,356 plus a tax credit refund of \$1,400 for 2021. He filed his 2022 federal income tax return on time. He owed \$171, which he paid in March 2023. He filed his 2023 federal income tax on time, and he received a \$5,450 refund. (Applicant's response to SOR; GE 3, 4; AE B, D)

Applicant's State 2 income tax returns and State 2 records indicated he owed \$195 for 2017; \$255 for 2018; and \$18 for 2021. He was due refunds of \$34 for 2019; \$92 for 2020; and \$135 for 2022. He made three payments totaling \$475 to State 2 on April 3, 2023. State 2 certified in September 2024 that Applicant's income tax returns for 2017 through 2023 had been filed, and all his state taxes for the period had been paid. (Applicant's response to SOR; GE 4; AE A, C)

Applicant admitted that he did not take his tax responsibilities as seriously as he should have. He thought he would forfeit his refunds, which did occur. He realized that the longer he procrastinated, the more difficult it was to file the returns. He now fully understands the importance of filing his returns and paying his taxes on time. He filed his 2022 and 2023 federal and state income tax returns on time. He assures that all future returns and taxes will be filed and paid when they are due. (Tr. at 19-20, 26-31, 34)

Applicant deployed to Qatar and Iraq while he was on active duty. He has a 20% disability rating from the Department of Veterans Affairs. (Tr. at 33-34)

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 did not file his federal and state income tax returns when they were due for multiple years. AG ¶ 19(f) is applicable.

SOR ¶ 1.b alleges that Applicant did not file State 2 income tax returns, as required, for tax years 2009 through 2020. Applicant moved to State 2 in 2017, after he was discharged from the military. The Government has not established by substantial evidence that Applicant was required to file State 2 income tax returns before 2017. The language in SOR ¶ 1.b relating to tax years 2009 through 2016 is concluded for Applicant.

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; 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.

Because he was typically owed a refund, Applicant felt there was no urgency to file his tax returns. He was wrong, but he was correct about being owed refunds by the IRS, as he should have received a refund for every year he filed late. He was also correct that he would not receive refunds for returns filed more than three years late. My calculation shows that he forfeited more than \$5,400 in federal refunds. He did owe State 2 for several years, but he paid those back taxes in April 2023. All the returns were filed by June 2022, before the SOR was issued, and all the taxes were paid. AG ¶ 20(g) is applicable, but that does not end the discussion.

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). This is true even when the returns are eventually filed, and the taxes paid.

I accept and I agree with the above Appeal Board jurisprudence, but there is a reason the Security Executive Agent promulgated AG ¶ 20(g), and I cannot ignore it. I found Applicant to be honest and truthful, and I give him mitigation credit for his honorable military service. I am convinced that he has learned a valuable and costly lesson, and that all future returns and taxes will be filed and paid on time. Security concerns about Applicant's finances are mitigated.

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 also considered Applicant's honorable military service.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated 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: For Applicant

Subparagraphs 1.a-1.b: For Applicant

Conclusion

It is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge