



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



In the matter of:

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) ISCR Case No. 24-00500
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Applicant for Security Clearance

Appearances

For Government: John Renehan, Esq., Department Counsel
For Applicant: *Pro Se*

04/23/2025

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On January 24, 2019; and January 24, 2024, Applicant submitted security clearance applications (e-QIPs). On September 27, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR), 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; DoD 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* (AG), effective within the DoD after June 8, 2017.

Applicant answered the SOR on October 7, 2024, and January 8, 2025, and requested a hearing before an administrative judge. The case was assigned to me on March 10, 2025. The Defense Office of Hearings and Appeals issued a notice of hearing on March 21, 2025, and the hearing was convened as scheduled on April 8, 2025. The Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. The Applicant offered eleven exhibits, referred to as Applicant's Exhibits A through K, which were admitted without objection. Applicant called one witness and testified on his own behalf. The record remained open until close of business on April 15, 2025, to allow the Applicant to submit additional supporting documentation. Applicant submitted one Post-Hearing Exhibit, referred to as Applicant Post-Hearing Exhibit A, which was admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on April 18, 2025.

Findings of Fact

Applicant is 36 years old. He is divorced and has two daughters who live with their mother in Tijuana, Mexico. He has a high school diploma, vocational school and a Certificate in Business Administration, and military training. He holds the position of Tab D Lead Manager. He is seeking to obtain a security clearance in connection with his employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information.

The SOR alleges that Applicant failed to file his Federal income tax returns for 2014, 2015, and 2017, as required by law. He failed to file State income tax returns for tax years 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014 and 2015, as required by law. He is also indebted to the Federal Government for delinquent taxes in the amount of \$3,225.94 for tax years 2016 and 2020. Applicant initially admitted each of the allegations set forth in the SOR. (Applicant's Answer to the SOR dated January 8, 2025.) After obtaining a copy of his 2017 IRS transcript, he realized that he has filed his Federal income taxes for 2017. (Applicant's Exhibit C.) IRS Federal Transcripts for the periods 2016 and 2018 through 2023; and State Franchise Tax Board Reports dated July 10, 2024, confirm the allegations set forth in the SOR. (Government Exhibit 5, and Applicant's Exhibit B.)

From 2008 to 2014, Applicant served honorably for six years in the U.S. Air Force Reserves as a Passenger Terminal/Transportation Specialist. His work schedule varied from full time for about three weeks, followed by a week off. In 2011, he was activated for one tour in Afghanistan in support of Operation Enduring Freedom. The

job was considered part-time. During his military service, he received a number of awards and decorations including the Air Force Achievement Medal; the Air Force Outstanding Unit Award; the Air Reserve Forces Meritorious Service Medal with Oak Leaf Cluster; the Global War on Terrorism Expeditionary Medal, the Air Force Expeditionary Service Ribbon with Gold Border; and the National Defense Service Ribbon among others. He has never received any disciplinary action. (Applicant's Post-Hearing Exhibit A.)

Applicant explained that for many years he did not file Federal or State income tax returns because he received bad advice and was under the impression that he did not have to file. One of his peers in the Air Force told him that the tax authorities calculate the taxes he owes and will deduct it from him. He also admits to procrastinating and missing the filing dates. He stated that he did not know that he could file for an extension. (Tr. p. 56.) In addition, he has a history of spreading himself too thin by working all of the time while his other responsibilities suffer. He is currently learning how to balance his life and he is doing a lot of growing up and maturing. Applicant stated that he was young, immature, and not proactive in his earlier years. He received no advice from any senior Airmen or tax classes or counseling from the Air Force regarding his tax filing responsibilities.

From 2014 to 2015, while working at a law firm, Applicant's wages were garnished for the first time for delinquent taxes. (Tr. p. 63.) In 2016, his wages were garnished again for delinquent taxes. After these garnishments, Applicant decided to educate himself about the situation. It was not until 2016 that he learned that the law required him to file annual income tax returns. At that time, he was in his late 20's or early 30's. (Tr. p. 64.)

About two years ago, Applicant realized that his security clearance could be affected by his delinquent tax matters and so he started looking into addressing it. Last year he hired an enrolled agent to assist him in getting some of his income taxes filed, and she has taught him how to access the IRS website; the Franchise Tax Board website; and how to take control of his taxes. Applicant stated that he plans to continue to use tax professionals in the future to file his income tax returns.

Applicant does not know for sure if he owes anything to the State tax authorities because in 2013, they garnished his wages. (Tr. p. 89.) He believes that garnishment may have taken care of what he owed. (Tr. p. 90.)

The SOR alleges the following delinquent debts of security concern:

1.a. Applicant failed to file Federal income tax returns for tax years 2014, 2015, and 2017, as required by law. He filed his Federal and State income tax returns for tax years 2016 through 2023 in 2024. (Tr. p. 71.) He has not yet filed his Federal income tax returns for tax years 2014 and 2015.

1.b. Applicant failed to file State income tax returns for tax years 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, and 2015 as required by law. He filed his State income tax returns for tax years 2016 through 2023 in 2024. He has not yet filed his State income tax returns for tax years 2007 through 2015.

1.c. Applicant is indebted to the Federal government for delinquent taxes in the amount of \$3,225.94 for tax years 2016 and 2020. He stated that it was not until his security clearance investigation that he learned that he owed taxes to the Federal Government for tax years 2016 and 2020. He admitted that the amount of Federal tax he owed for tax year 2016 and 2020 has increased to more than \$4,000. (Tr. p. 78.) He has set up a payment plan to pay \$51 monthly towards the debt. He explained that he is expecting a refund from his 2024 income tax returns of \$1,600 from the State, and \$1,900 from the Federal Government. He believes that some of the Federal refund will be applied towards his Federal tax liability.

An Account Manager, who is Applicant's supervisor, and who holds a security clearance, testified that Applicant is an outstanding and exemplary employee with no issues or negative history. He is aware that Applicant took bad advice from someone and neglected to file his income tax returns for various years. He knows that Applicant has been working to resolve his tax issues and is trying to get current with his financial obligations to the Federal Government. Knowing what he knows about the Applicant's tax problems, it does not change his opinion that Applicant is suitable for a security clearance. (Tr. pp. 23-30.)

Letters of recommendation from various colleagues, fellow employees, and friends, who have either served in the Air Force with the Applicant, know him well otherwise, or have in the past, or are currently working with him, attest to aspects of his outstanding job performance, sound judgment, effective communication skills, high standards of professionalism, responsibility, and ethical conduct. Applicant is said to work in a coveted and critical position which requires quality controlled tested individuals to maintain extreme vigilance and possess the capability to multitask on a continuous basis. Applicant performs his duties flawlessly and beyond reproach. Applicant is also well liked and respected. Collectively the writers believe Applicant is well qualified to access classified information. (Applicant's Exhibits D, E, F, G, H, I, J and K.)

Policies

When evaluating an applicant's suitability for a security clearance, 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 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 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 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. 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 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 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 as to 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. 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness 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 annual Federal, state, or local income tax as required.

Applicant failed to file his Federal and State income tax returns as required by law. He also remains indebted to the Federal Government in excess of \$4,000 for tax years 2016 and 2020. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under the Financial Considerations guideline are potentially applicable under AG ¶ 20.

- (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), 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;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(f) 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 has been gainfully employed for many years. Either from bad advice, procrastinating, or not considering it a priority, he did not file his Federal and State income tax returns. He stated that in 2016, he learned that the law required him to file. But even after 2016, he did nothing about his taxes until last year. Last year, he hired a professional to assist him in filing his annual income tax returns. He has made some progress and has filed some of his Federal and State income tax returns, but except for his Federal return for 2017, he has not filed any of the returns alleged in the SOR. He has not filed his Federal income tax returns for tax years 2014 and 2015 as required by law; nor has he filed his State income tax returns for tax years 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, and 2015. He stated that he has set up a payment plan with the IRS to pay \$51 monthly towards his debt in excess of \$4,000 owed to the Federal Government for tax years 2016 and 2020, but it currently remains owing. For many years he has simply ignored his legal responsibility to file annual income tax returns, and they are still not filed. His conduct shows a history of financial irresponsibility. His inaction for so long casts doubts on his current reliability, trustworthiness, and/or good judgment. His conduct shows poor judgment and unreliability. Under the particular facts, the mitigating conditions do not establish full mitigation.

Overall, there is insufficient evidence in the record to show that the Applicant has carried his burden of proof to establish mitigation of the government security concerns under Guideline F.

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. Although Applicant has made some effort to file some of his income tax returns, he has not addressed the concerns set forth in the SOR. His conduct shows a pattern of poor judgment and untrustworthiness, and he is not found to be sufficiently reliable to properly protect and access classified information.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated the Financial Considerations security concern.

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
Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against 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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge