



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



## Appearances

For Government: Brian Farrell, Esq., Department Counsel  
For Applicant: *Pro se*

12/15/2025

## Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Clearance is denied.

## Statement of the Case

Applicant submitted a security clearance application (SCA) on October 30, 2023. On March 27, 2025, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DCSA acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

Applicant answered the SOR on May 1, 2025, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on May 14, 2025. A complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on July 10, 2025, and did not respond. The case was assigned to me on December 2, 2025.

## **Findings of Fact**

In Applicant's answer to the SOR, he admitted the single allegation in the SOR. His admission is incorporated in my findings of fact.

Applicant is a 43-year-old heavy equipment mechanic employed by a defense contractor since May 2019. He married in January 2005 and divorced in April 2013. He has a 23-year-old daughter. He has never held a security clearance.

Applicant served on active duty in the U.S. Army from February 2004 to January 2009 and received an honorable discharge for medical (non-combat) injuries after a deployment to Iraq. He attended technical schools from May to July 2010 and October to November 2011 but did not receive a diploma or degree. He worked as a welder for a non-federal employer from September 2013 to March 2014. He worked as an independent truck driver from December 2014 to June 2016 and was fired after being involved in a verbal confrontation with another employee. He worked as an independent truck driver for another company from June 2016 to May 2018 and was fired for failure to come to work on time. While he was employed as an independent truck driver, federal and state taxes were not withheld from his pay. He was unemployed from May to September 2018. He worked as a dock manager for a non-federal employer from September 2018 to March 2019. He was unemployed from March to May 2019, when he was hired for his current job.

The SOR alleges that Applicant failed to file, as required, federal income tax returns for tax years 2014, 2015, and 2016 (SOR ¶ 1.a) and state tax returns for the same tax years (SOR ¶ 1.b). Applicant admitted both allegations. He stated that he was unprepared for the transition to civilian life, that he lived paycheck to paycheck, and made some mistakes. He stated that he had "corrected those mistakes," was working with federal and state tax authorities, and had paid all federal and state taxes and penalties. He stated that since 2019 he had "learned a lot and matured substantially."

Applicant's SCA reflects that he applied for a security clearance in July 2019 but that no action was taken on this SCA. In an interview with a security investigator in March 2024, he explained that no action was taken on this SCA because he had not provided documentation of actions to file the past-due returns for tax years 2017 and 2018. (GX 4 at 9)

In September 2022, Applicant hired a professional tax service to assist him. In his October 2023 SCA, he stated that he did not file his tax returns because he "did not have the extra money to file," and that he had a monthly payment plan in effect. (GX 3 at 31-32) During his March 2024 security interview, he told the investigator that his "tax

attorney" advised him that the return for 2016 was outside the statute of limitations. (GX 4 at 15) In his response to DOHA interrogatories dated February 24, 2025, he stated that he had not filed his federal returns for 2014, 2015, and 2016 because his "tax attorney" advised him that he needed only to file returns for 2017 and 2018 to be "tax compliant." (GX 4 at 5)

There is no evidence in the record reflecting that Applicant received advice from a tax attorney. His contract with the tax service company specifically states in bold print: "Company is not a law firm and does not provide legal, tax law, or investment advice." (GX 8 at 2)

Federal tax transcripts for 2017 and 2018 reflect that the return for 2017 was not filed until September 2023 and the return for 2018 was not filed until August 2023. The federal tax transcript for 2016 states specifically that the return for that tax year has not been filed. There is no evidence that the returns for tax years 2014 and 2015 were filed.

In Applicant's response to the February 2025 DOHA interrogatories, he stated, "Per my tax attorney I did not have to file to back state tax." (sic) A letter from the state tax authority states: "This letter certifies that [Applicant] has no outstanding tax liabilities with the [state tax authority]." (GX 4 at 7) The letter from the state tax authority does not address whether state tax returns were required or filed.

Applicant's supervisor submitted a letter stating that he has "proven capable and trustworthy at every opportunity," and that he has recently been placed in a position where he was leading a team of technicians applying enhancements on combat vehicles. His supervisor states that working remotely alongside soldiers is assigned only to proven reliable and trustworthy personnel. He describes Applicant as "the guy I trust to do the right thing." (Attachment to SOR Response)

## Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan* at 531. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019). It is “less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan* at 531.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern under this guideline 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. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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).

Applicant's admissions and the evidence in the FORM establish the following disqualifying conditions under this guideline:

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(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.

The following mitigating conditions are potentially relevant:

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;

AG ¶ 20(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;

AG ¶ 20(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; and

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's failures to timely file tax returns were recent and frequent. The 2017 return was not filed until September 2023 and the return for 2018 was not filed until August 2023. There is no evidence that the returns for tax years 2014 through 2016 have been filed. He did not address the problem until he learned that his failure to file tax returns was an impediment to obtaining a security clearance. Failure to timely file tax returns suggests that an applicant has a difficulty complying with

well-established governmental rules and systems. A clearance adjudication is not directed at inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. See ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008).

The fact that Applicant has filed some of his past-due returns "does not preclude careful consideration of Applicant's security worthiness based on longstanding prior behavior evidencing irresponsibility." ISCR Case No. 12-05053 (App. Bd. Oct. 30, 2014). Applicant has a history of irresponsible behavior. He was fired from two jobs in June 2016 and May 2018. He submitted an SCA in July 2019 and learned that his failure to file tax returns raised security concerns. He did not hire a professional tax service to assist him until September 2022. He did not file the tax returns for 2017 and 2018 until August and September 2023. He has not filed returns for 2014 through 2016.

AG ¶ 20(b) is not established. While Applicant's lack of income was a condition largely beyond his control, it did not prevent him from timely filing his returns.

AG ¶¶ 20(c) and 20(d) are not fully established. Applicant has received advice from a professional tax service, but he has not filed his federal tax returns for 2014 through 2016.

## **Whole-Person Analysis**

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. An administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has

not mitigated the security concerns raised by his failure to timely file his state and federal income tax returns.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a and 1.b: Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge