

KEYWORD: Financial; Personal Conduct

DIGEST: Applicant did not timely file federal and state taxes for the years 2001, 2002 and 2003 until April 2007. Applicant's failure to file his federal and state tax return has been mitigated due to his wife's serious health conditions, his diagnosis of cancer, and his move. Applicant has maintained a security clearance for more than thirty years without incident. Under the whole person analysis, he has mitigated the financial considerations security concern and the personal conduct security concern. Clearance is granted.

CASENO: 06-09519.h1

DATE: 08/30/2007

DATE: August 30, 2007

In re:)	
)	
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SSN: -----)	ISCR Case No. 06-09519
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
NOREEN A. LYNCH**

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Dustin N. Thomas, Esq.

SYNOPSIS

Applicant did not timely file federal and state taxes for the years 2001, 2002 and 2003 until April 2007. Applicant's failure to file his federal and state tax return has been mitigated due to his wife's serious health conditions, his diagnosis of cancer, and his move. Applicant has maintained a security clearance for more than thirty years without incident. Under the whole person analysis, he has mitigated the financial considerations security concern and the personal conduct security concern. Clearance is granted.

STATEMENT OF THE CASE

On April 18, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant.¹ The SOR alleges security concerns under Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued. The SOR detailed reasons why DOHA could not make the preliminary finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On May 2, 2007, Applicant submitted a notarized response to the SOR allegations, and elected to have his case decided at a hearing. On June 18, 2007, the case was assigned to me. A Notice of Hearing was issued on July 12, 2007. At the August 1, 2007 hearing, the Government introduced Government Exhibits (GX) 1-4 into evidence without objections. Applicant testified and introduced Applicant Exhibits (AX) A-D into evidence without objections from Department Counsel. DOHA received the transcript on August 10, 2007. At Applicant's request, I held the record open until August 8, 2007. Applicant timely filed a packet of documentation. This submission was marked and entered into the record as AX E. Department Counsel had no objection.

FINDINGS OF FACT

Applicant admitted all allegations in his SOR response under Guideline F. He denied the allegation under Guideline E.² After a complete review of the evidence in the record and upon due consideration, I make the following findings of fact:

Applicant is a 75-year-old employee of a defense contractor. After graduation from college, he served in the military from 1953 until his honorable discharge in 1973. While in the military, he had a top-secret security clearance. Applicant received a graduate degree in business in 1972. He has worked for his current employer since January 2002. Applicant is married with two adult children.³ On December 19, 2003, he completed his security clearance (SF 86) application.⁴

Applicant worked for a number of defense companies throughout his career, spanning more than thirty years. He maintained a security clearance throughout the years with no problems. In 2001

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

²Applicant's Answer to SOR, dated May 2007.

³GX 1 (Application for Security Clearance (SF 86), dated December 19, 2003).

⁴*Id.*

Applicant left his employment and moved to another state.⁵ Since that time, he has worked for his current employer as a project manager.⁶

Applicant did not timely file his federal and state taxes for the years 2001, 2002 and 2003. In 2000, his wife developed a serious blood condition.⁷ In 2001, she also fell and broke her wrist. She then had surgery and developed an infection. She has had more medical problems since then in 2003, 2004 and 2005. After unsuccessful eye surgery, she was blind in one eye. She was in a nursing home for some time because Applicant could not attend to all her medical needs.⁸ She is living at home but is not ambulatory.

When Applicant moved in 2001, he needed time to sort out his files and papers after they arrived in January 2002.⁹ His computer files contained his financial information, but the computer hard drive failed and he lost that data in 2002. He normally prepared his own taxes using a computer program. That same year, Applicant was diagnosed with prostate cancer.¹⁰ However, he continued to work part-time. He is presently on medication for the cancer.¹¹

In 2002, Applicant was gathering his financial records in order to complete his federal and state taxes. He filed for several extensions, and paid \$2,000 in 2002. His wife's health continued to deteriorate and he spent a great deal of time attending to her needs. In 2004, he then consulted a CPA to assist him with the filing of the taxes. However, Applicant was diverted due to his wife's medical condition. During this time Applicant's wife was hospitalized for pneumonia. She remained hospitalized for a period of time and then entered rehabilitation. For several months in 2005, she was in a nursing home. She developed fevers and her health worsened. During Hurricane Katrina, she was in the hospital for approximately one month.

An agent investigated Applicant as part of the security investigation. He was open with them about his situation and the fact that he was still in the process of getting things in order to file the federal and state taxes. He explained that when his wife became ill, he stopped and did not attend to the paperwork. Not only did the 2001 and 2002 medical problems impact his organizational abilities, but Hurricane Katrina (2005) hindered his ability to collect his financial papers and

⁵Tr. 32.

⁶*Id.*

⁷At that time, Applicant also was dealing with his 2000 taxes and a tax lien. He owed the IRS an unspecified amount. He paid the taxes.

⁸AX A (Chronology - Medical history)

⁹Tr. 56; 57.

¹⁰Tr. 34.

¹¹Tr. 39.

complete the process.¹² He told the investigators that he needed a bit more time to complete the filings.

Applicant filed his federal and state taxes for 2001, 2002 and 2003 in April and May, 2007.¹³ His CPA prepared his federal taxes for the year 2001. Applicant prepared the taxes for 2002 and 2003. He filed his federal and state taxes for 2005 in May of 2006. He paid his taxes in 2007.¹⁴ His returns reflected that he owed \$6,602 and \$5,656. His 2003 filed return resulted in a refund for Applicant.

Applicant acknowledged that he was embarrassed by his not filing his taxes in a timely fashion. He understands his responsibility and obligation to do so. However, he was honest in detailing the events that slowed him down and prevented him from filing sooner. He even acknowledged that part of this involved some procrastination on his part. He was candid in the fact that he was less than totally organized given the medical condition of his wife, the move and his own medical condition.¹⁵

POLICIES

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”¹⁶ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in ¶ 6.3 of the Directive, and AG ¶ 2(a).

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance.”¹⁷ An administrative

¹²Applicant’s wife was in the hospital during Katrina for a few weeks. Due to the disruption in daily life after the devastation, his wife could not return to the nursing home because it was filled with hurricane victims. Applicant had to find a place for her where her acute needs could be met. This caused more upheaval in his life.

¹³AX E (Federal and State Tax Returns for 2001, 2002, and 2003).

¹⁴Tr.49.

¹⁵Tr. 52.

¹⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

¹⁷ Directive, ¶ E2.2.1.

judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.¹⁸ An administrative judge should consider the following factors: (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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.¹⁹

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.²⁰ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.²¹ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²² Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.²³

The scope of an administrative judge’s decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determinations as to Applicant’s allegiance, loyalty, or patriotism.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. I reach the following conclusions regarding the allegations in the SOR.

Guideline F: Financial Considerations

*Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.*²⁴

¹⁸ Directive, Revised Adjudicative Guidelines (AG) 2 (a)(1)-(9).

¹⁹ *Id.*

²⁰ Directive, ¶ E3.1.14.

²¹ Directive, ¶ E3.1.15.

²² ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²³ Directive, ¶ E2.2.2.

²⁴ AG ¶ 18.

Based on all the evidence, Financial Considerations Disqualifying Condition (FC DC) 19(a) (*inability or unwillingness to satisfy debts*), FC DC 19(c) (*a history of not meeting financial obligations*), and FC DC 19(g) (*failure to file annual federal, state, or local income tax returns as required or the fraudulent filing of the same*) apply in this case. Applicant did not timely file his federal and state tax returns for 2001, 2002, and 2003, and did not pay his required taxes for 2001 and 2002 until 2007.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. I considered the Financial Considerations Mitigating Condition (FC MC) 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*), FC MC 20(b) (*the conditions that resulted in the behavior 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*), FC MC 20 (c) (*the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or under control*), and FC MC 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant filed his federal and state taxes for 2001, 2002, and 2003 in 2007. Applicant indicated the failure to file timely was partly due to the myriad medical problems that his wife has had beginning in 2000 until the present and his financial records being disrupted during the 2001 move. He also admitted some procrastination on his part. However, his computer hard drive failed during that period, and he also was diagnosed with cancer. He sought out his CPA to help him. The combination of events that occurred were beyond his control. He was slow in his tax filings but asked for extensions and paid \$2,000 in 2002. He acknowledged that after the move, it took him awhile to get everything together and start the process. In some cases, Applicant was owed a refund.

The issue is whether Applicant has presented sufficient evidence of extenuation, mitigation or changed circumstances to warrant a favorable security determination. Applicant has mitigated the government's concerns under Guideline F for the reasons stated above.

Guideline E: Personal Conduct

*Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.*²⁵

Personal conduct is always a security concern because it asks the central question does the persons's past conduct justify confidence the person can be trusted to properly safeguard classified information. Not filing taxes in a timely fashion is the type of personal conduct which causes security concerns.

²⁵ AG ¶ 15.

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability that reflects good judgment, reliability and trustworthiness in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. Having found for Applicant as to the financial considerations concern, I find for Applicant as to personal conduct.

Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the "whole person" in evaluating Applicant's security clearance determination. Applicant served his country for 20 years, and during that time he maintained a top secret clearance. His entire civilian career was devoted to the defense industry. He has never had any difficulty maintaining his clearance. A combination of events occurred in 2001 that conspired to slow Applicant down, and thus, he did not focus completely on filing taxes. He has now paid his taxes.

Applicant was completely cooperative and responsive in the security process. It is clear from Applicant's demeanor and actions that he takes this matter seriously and strongly desires to put this behind him. Applicant has now filed his federal and state taxes for 2001, 2002, and 2003. He is current with all tax payments. Significantly, he took action to resolve the issue before the initiation of this action. It is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2. Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant's request for a security clearance. Clearance is granted.

Noreen A. Lynch
Administrative Judge