



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



In the matter of:	)	
	)	
	)	ISCR Case: 12-09719
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

01/12/2016

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**Decision**

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DAM, Shari, Administrative Judge:

Applicant failed to timely file federal and state income tax returns for the years 2009 through 2011. He did not provide sufficient evidence to mitigate the financial security concerns raised by the Government. Eligibility for access to classified information is denied.

**Statement of Case**

On March 23, 2012, Applicant submitted a security clearance application (SF-86) for re-investigation. On April 26, 2015, the Department of Defense (DoD) 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the DoD after September 1, 2006.

Applicant answered the SOR on June 1, 2015, and requested that his case be

decided by an administrative judge on the written record without a hearing. (Item 3.) On August 14, 2015, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing seven Items was mailed to Applicant on August 26, 2015, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM and timely returned the receipt to the Defense Office of Hearings and Appeals (DOHA), along with additional information, which consisted of a response to the Department's FORM and 16 exhibits. I marked the response as Applicant Exhibit (AE) A, and the 16 documents as AE 1 through 16, and admitted them into the record without an objection from Department Counsel. DOHA assigned the case to me on October 15, 2015.

### **Findings of Fact**

In his Answer to the April 2015 SOR, Applicant admitted the allegations contained in SOR ¶¶ 1.a and 1.b. He denied the allegation in SOR ¶ 1.c. (Item 3.) His admissions are accepted as factual findings.

Applicant is 61 years old and married for 38 years. He served in the armed forces from 1977 until 1988, at which time he began a position with his current employer. He performs volunteer work at the local federal prison. (AE A.)

When Applicant completed his March 2012 e-QIP, he disclosed to the Government that he had not filed his 2009, 2010, and 2011 federal and state tax returns. (GE 4.)

In his Answer to the SOR, Applicant admitted that he failed to timely file federal income tax returns for tax years 2009 through 2011. He also admitted that he failed to timely file state income taxes for those same years. (Item 3.) He attributed those omissions to his negligence and difficulty in filing them without professional assistance. (AE A.)

Applicant filed his 2009 federal income tax return in June 2012, three months after submitting his e-QIP. (AE 7.) He filed his 2010 federal income tax return in March 2014, two years after submitting his e-QIP. (AE 8.) He filed his 2011 federal income tax return in February 2014, almost two years after submitting his e-QIP. (AE 9.) He did not owe money for these three tax years. (AE 13.)

Applicant filed his 2012 and 2013 federal tax returns in July 2015, well over the tax deadline. (AE 10, 11.) He timely filed his 2014 federal tax return in June 2015, having received an extension. (AE 12.)

Applicant filed his 2009, 2010, and 2011 state income tax returns in June 2015. (AE 1, 2, 3.) He also filed his 2012, 2013, and 2014 state income tax returns in June 2015.<sup>1</sup> (AE 4, 5, 6.) All of those state returns, except 2014, were filed late. He does not owe money to the state for any tax year. (AE 15.) Applicant previously resolved and paid a state tax lien of \$983 for tax years 1997 and 1998 in June 2002. (AE 14.)

In September 2015 Applicant engaged a debt solution company to help him improve his financial situation. He participated in financial counseling with the company and established a budget. He and his wife have a net monthly income of \$5,000. After paying routine expenses and making payments to credit card companies and on student loans, he has about \$2,700 remaining. (AE 16.) He apologized for his negligence in not timely filing his returns. (AE A.)

### **Policies**

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 (AG) 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, these guidelines are applied 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. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 access to classified information 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. Directive ¶ E3.1.15 states that "[t]he 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, and has the

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<sup>1</sup> The SOR did not allege security concerns related to his failure to timely file his 2012 and 2013 state and federal income tax returns. Hence, these facts will not be considered in an analysis of disqualifying conditions. However, they may be considered in an analysis of mitigating conditions and whole-person.

ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 protect or 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.

## **Analysis**

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

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

(c) a history of not meeting financial obligations; and

(g) failure to file annual federal, state or local income tax returns as required.

Applicant’s financial problems, specifically filing tax returns late, began in 2009 and extended through the tax years for 2010 and 2011. Until July 2015 he had been unwilling to fully resolve his tax obligations. The evidence raises the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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;
- (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 is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.

In June and July 2015, Applicant completed filing all of his delinquent federal and state tax returns. Because he failed to timely file returns for five consecutive years, 2009 to 2013, and only recently filed some of them, he did not demonstrate that such problems are unlikely to recur. His reliability and trustworthiness in managing his income taxes remain a concern. The evidence does not support the application of AG ¶ 20(a).

Applicant did not provide any evidence that circumstances beyond his control contributed to his delinquent filings. In fact, he admitted that his omission was due to his negligence. AG ¶ 20(b) does not provide mitigation. In September 2015 Applicant participated in financial counseling and sought professional assistance with his finances. Based on his recent five-year history of failing to timely file required tax returns, there are minimal indications that his tax problems are under control; thus, AG ¶ 20(c) has little application. He provided some documentation to demonstrate that he made a good-faith effort to file delinquent returns, albeit quite recently for all of his state returns. Given his history of delinquent filings, AG ¶ 20(d) has little application as to the allegations regarding his failure to timely file tax returns. However, said mitigating condition does have application to the allegation regarding the unpaid tax lien. He paid that over 13 years ago. There is no evidence to support the application of AG ¶ 20(e).

## **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(a):

(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.

According to 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 considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is 61 years old. He has been employed by a defense contractor since 1998. His wife also works. For some inexplicable reason, he chose to file all of his federal tax returns for the years 2009 through 2013 more than a year late, and in some instances three years late. He filed all of his state tax returns for 2009 to 2013 in June 2015, essentially two months after he received the SOR and significantly past their deadline. While Applicant is apologetic for his conduct, I am not convinced that he would have filed any of his delinquent tax returns had his security clearance re-investigation not been initiated. Having truthfully disclosed his tax problems to the Government, it nonetheless took him months and years to correct the situation. The likelihood that similar problems will continue is significant.

Overall, the record evidence leaves me with substantial doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

## **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:  
Subparagraph 1.c:

Against Applicant  
For 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM  
Administrative Judge