



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-02925
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

04/23/2015

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 12, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on October 6, 2014, and requested a hearing before an administrative judge. The case was assigned to me on February 27, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 4, 2015, scheduling the hearing for March 31, 2015. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without

objection. Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) A through F, which were admitted without objection. DOHA received the hearing transcript (Tr.) on April 6, 2015.

### Findings of Fact

Applicant is a 57-year-old employee of a defense contractor. He has worked consistently for federal contractors since at least 1989. He seeks to retain his security clearance, which he has held for many years. He attended college for two years, but he did not obtain a degree. He has been married for more than 35 years. He has four adult children and an adult stepchild.<sup>1</sup>

The SOR alleges a delinquent debt of \$1,140, unpaid judgments of \$9,038 and \$5,000, and that Applicant failed to file his federal income tax returns from 2007 through 2013. Applicant established that the \$1,140 debt was settled, the \$5,000 judgment was paid, and the \$9,038 judgment was not awarded against him.<sup>2</sup>

Applicant did not file federal income tax returns for tax years 2007 through 2012 when they were due. Applicant's wife handled the family's finances, and he trusted her to ensure their tax returns were filed and their taxes were paid. Before 2007, they used a large national tax preparation company to prepare and file their tax returns, but they switched to a local preparer for their 2007 through 2012 returns. The tax preparer moved to another state, which made it difficult to coordinate the process. Applicant's wife stated that they thought Applicant had received extensions. The tax preparer filed Applicant's wife's tax returns every year using the "Married Filing Separately" status, and she received refunds every year. Applicant also testified that he was out of work for substantial periods after work-related injuries, which hindered his ability to file his tax returns.<sup>3</sup>

Applicant reported on his October 2013 Questionnaire for National Security Positions (SF 86) that he did not file his tax return for tax year 2011 and noted: "The tax preparer I was using left town and failed to file my taxes. I have been unable to contact her to retrieve the documents for that tax year." He provided similar information during his background interview in February 2014.<sup>4</sup>

Applicant retained the national tax preparation company to prepare and file his tax returns for 2007 through 2013. The returns were prepared in August 2014 and filed in September 2014. Applicant's filing status on the returns was "Head of Household."<sup>5</sup> The returns showed the following:

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<sup>1</sup> Tr. at 44-45; GE 1.

<sup>2</sup> Tr. at 23; Applicant's response to SOR; GE 2-5; AE A-C.

<sup>3</sup> Tr. at 23, 29-30, 29-37, 41-49; Applicant's response to SOR; GE 1-3; AE D.

<sup>4</sup> GE 1-3.

<sup>5</sup> Tr. at 32; AE F.

<u>YEAR</u>	<u>ADJUSTED GROSS INCOME</u>	<u>TAX</u>	<u>WITHHELD</u>	<u>OWED</u>
2007	\$87,486	\$12,531	\$8,074	\$4,618
2008	\$95,528	\$14,319	\$8,833	\$5,618
2009	\$104,275	\$16,631	\$9,833	\$6,935
2010	\$76,934	\$7,726	\$8,255	-\$529
2011	\$66,269	\$5,090	\$7,971	-\$2,881
2012	\$94,047	\$12,177	\$12,136	\$41
2013	\$70,441	\$6,244	\$8,809	-\$2,565 <sup>6</sup>

Applicant has not made any payments for the years he owes taxes. He hired a tax attorney to address his back taxes. Applicant stated that his 2014 tax return is prepared, and he intends to file all his future tax returns in a timely manner.<sup>7</sup>

### **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 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 access to classified information will be resolved in favor of 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

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<sup>6</sup> AE F.

<sup>7</sup> Tr. at 31-32, 36-37, 45-46; AE E.

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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant did not file federal income tax returns when they were due for tax years 2007 through 2012. AG ¶ 19(g) is applicable.

Applicant established that the \$1,140 debt was settled, the \$5,000 judgment was paid, and the \$9,038 judgment was not awarded against him. Those matters are mitigated. SOR ¶¶ 1.a, 1.b, and 1.c are concluded for Applicant.

Conditions that could mitigate 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;

(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; and

(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.

Applicant claimed that he was unable to contact the tax preparer to file his returns. However, his wife was in regular contact with the same preparer because the preparer filed her returns every year. There does not appear to be a correlation between Applicant's work injuries and his failure to file his tax returns. Applicant finally filed his tax returns in September 2014. It is unclear why he used the Head of Household filing status.<sup>8</sup> He retained a lawyer to negotiate his delinquent taxes, but he still owes a substantial amount.

Applicant's financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on his judgment, reliability, trustworthiness, and ability to comply with laws and regulations. AG ¶¶ 20(a) and 20(b) are not applicable. AG ¶ 20(c) is partially applicable because the returns have been filed. It is not completely applicable because Applicant still owes taxes. I find that financial considerations concerns remain despite the presence of some mitigation.<sup>9</sup>

### **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

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<sup>8</sup> For a description of filing status qualifications, see <http://www.irs.gov/pub/irs-pdf/p501.pdf>.

<sup>9</sup> See ISCR Case No. 12-05053 at 4 (App. Bd. Oct. 30, 2014), in which the Appeal Board reversed the Administrative Judge's decision to grant Applicant's security clearance:

Security requirements include consideration of a person's judgment, reliability, and a sense of his or her legal obligations. A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information. Indeed, the Board has previously noted that a person who has a history of not fulfilling their legal obligation to file income tax returns may be said not to have demonstrated the high degree of judgment and reliability required for access to classified information. (internal citation omitted)

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.

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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Applicant has a long and stable work history. However, he failed to comply with a fundamental legal requirement.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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:	Against Applicant
Subparagraphs 1.a-1.c:	For Applicant
Subparagraph 1.d:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge