



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



In the matter of: )  
)  
) ISCR Case No. 14-00857  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gina L. Marine, Esq., Department Counsel  
For Applicant: *Pro se*

01/22/2015

---

**Decision**

---

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On May 1, 2014, the Department of Defense (DOD) issued to 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 effective within the DOD for SORs issued after September 1, 2006.

On June 10, 2014, Applicant answered the SOR, and he elected to have his case decided on the written record. On November 26, 2014, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was provided to Applicant on the same date, and it was received on December 9, 2014. Applicant was

afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted additional information. The case was assigned to me on January 13, 2014.

### **Findings of Fact**

Applicant admitted the allegation in SOR ¶ 1.a and denied the allegation in ¶ 1.b. The admission is incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 58 years old. He served in the Army from 1978 to 1998 and retired with an honorable discharge. He married in 1980 and divorced in 1981. He remarried in 1984 and separated from his wife in 2006. He has a child born in 1983. Appellant has held a security clearance since 1999. After his retirement from the Army in 1998, Applicant worked for federal contractors overseas, except for a short period of unemployed from December 2008 to March 2009. He has worked for his current employer, a federal contract, since 2009.

Applicant failed to file his federal income tax returns on time for tax years 2006, 2007, 2008, and 2009. During a background interview conducted on November 8, 2013, he explained why he failed to file his 2006 through 2012 federal income tax returns.<sup>1</sup> He believed his income fell below the taxable amount for Americans living and working abroad, and he did not have to file. The threshold amount for being exempt from filing federal income taxes for Americans living and working overseas was \$16,900 in 2006, \$17,500 in 2007, \$17,900 in 2008, and \$18,700 in 2009. Applicant did not provide supporting documents that showed his gross income was below these amounts for the years listed. He provided a copy of his 2009 tax return which shows a gross income of \$63,406. His military pension in 2012 was \$14,021.<sup>2</sup>

Applicant told the investigator that he received a letter from the IRS in late 2011 asking why he did not have any federal taxes withheld from his pay. He stated he provided a form to the IRS showing he was exempt from withholding federal income taxes. Applicant's statement to the investigator is confusing because he disputes he was told by the IRS that he failed to file his 2010 federal income tax return and owed taxes, but rather he was only notified about the withholding issue. However, he goes on to tell the investigator that shortly after being contacted by the IRS, he then filed his 2010 federal income tax return. He indicated that two weeks after he filed his 2010 tax return he received another notification letter from the IRS advising him he had failed to file his 2011 tax return. He disputes this, but he said that he was notified that he failed to

---

<sup>1</sup> I have only considered the years alleged in the SOR for failing to file for disqualifying purposes. However, the other years that Applicant admitted he failed to file timely returns can be considered when analyzing his credibility and under the whole-person. Applicant filed his 2011 federal income tax return on August 5, 2013. He filed his 2012 federal income tax return on December 23, 2013. A substitute tax return was prepared by the IRS for Applicant on November 19, 2012. Item 5.

<sup>2</sup> Item 5.

have taxes withheld. He then stated to the investigator that he filed his 2011 tax returns shortly thereafter.

Applicant indicated to the investigator that in June or July 2013 he contacted the Internal Revenue Service (IRS) and was told his 2010 tax return was in the system, and was advised he needed to file his 2009 tax return. Applicant indicated he filed his 2009 federal income tax return in August 2013. He told the investigator that he filed his 2012 federal income tax return on November 7, 2013. He indicated to the investigator that he planned on filing his 2006, 2007, and 2008 tax returns before April 2014, and promised to file on time in the future.

According to Applicant's IRS transcripts, Applicant filed his 2006 federal income tax return on October 6, 2014. His 2007 federal income tax return was filed on October 13, 2014. His 2008 federal income tax return was filed on July 7, 2014. His 2009 federal income tax return was filed on June 16, 2014.<sup>3</sup> After 2011, Applicant was on notice that he was required to file federal income tax returns for prior tax years. He provided no explanation why he failed to do so until 2014.

Applicant provided documentation that established he does not owe the IRS \$10,698. The amount was an apparent error by the IRS, and I find in favor of Applicant on SOR ¶ 1.b.<sup>4</sup>

### **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 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 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." In reaching this

---

<sup>3</sup> Item 5 is Applicant's financial interrogatories. In it he stated that he filed his 2009 federal income tax return on February 15, 2014, which is inaccurate.

<sup>4</sup> Item 6.

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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 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 that an 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 Executive Order 10865 provides that 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 relating to the guideline 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. I have considered the following under AG ¶ 19:

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant failed to file his 2006, 2007, 2008, and 2009 as required by law. I find the above disqualifying condition applies.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions 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;

(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; and

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

Applicant has lived and worked overseas since 1998. He has been employed by federal contractors during almost all of his entire tenure overseas. He did not file his 2006, 2007, 2008, and 2009 federal income tax returns until 2014. His explanation was that he believed he did not have to file because his income was exempt because his earnings were below the threshold. Applicant provided no explanation for why he presumably filed his federal income tax returns in years preceding 2006 and then stopped in the subsequent years. He provided no documents to show he was below the income threshold for filing federal income taxes. Although his income may have been exempt from federal taxation, a determination cannot be made until the federal government knows how much he earned overseas. That determination cannot be made until he filed his federal tax returns. AG ¶ 20(a) does not apply because Applicant was on notice that he had issues with his federal income tax filings and he did not comply with the requirements until June through October 2014. He offered no explanation for his delay. Insufficient evidence was provided to conclude that his conduct is unlikely to recur. His actions cast doubt on his reliability, trustworthiness, and good judgment. There is no evidence that Applicant's tax issues were beyond his control. AG ¶ 20(b) does not apply. There is evidence that Applicant has filed his delinquent tax returns for 2006 through 2009. AG ¶ 20(c) applies. His delay in completing his tax returns after he was aware there was a problem does not constitute a good-faith effort to resolve the problem. AG ¶ 20(d) does not apply.

## 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 the 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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 58 years old. He has lived and worked overseas since 1998. He failed to file his 2006 through 2009 federal income tax returns until 2014. Applicant did not offer a reasonable explanation for why he presumably filed his federal income taxes for previous years and then stopped in 2006. He did not provide evidence that his income was below the federal reporting level. Once he was on notice in 2011 that there were problems with previous years, he did not complete his obligation to file his federal income tax returns until 2014. Despite some evidence of mitigation, in that Applicant's delinquent tax returns are now filed, he failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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

---

Carol G. Ricciardello  
Administrative Judge