



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-01271
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

05/27/2015

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on August 14, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on June 19, 2014, 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; DOD 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), implemented on September 1, 2006.

Applicant received the SOR on June 25, 2014. He submitted a notarized, written response to the SOR allegations dated July 30, 2014, and he requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on March 4, 2015. Applicant received the FORM on March 17, 2014. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response. DOHA assigned this case to me on May 21, 2015. The Government submitted five exhibits, which have been marked as Items 1-5 and admitted into the record. Applicant's response to the SOR has been marked as Item 2, and the SOR has been marked as Item 1.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the two factual allegations in the SOR. His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 30 years old, works as a business operations analyst for a DOD contractor. He began working for his current employer in June 2003. He has also held two separate part-time positions while working for his current employer.<sup>1</sup>

Applicant graduated from high school in 2002. He attended college, but he did not receive a degree. Applicant is single, and he does not have any children.<sup>2</sup>

When Applicant completed his 2013 e-QIP, he acknowledged that he had not filed his federal and state income tax returns for the tax years 2005 through 2012. He explained that he did not file his returns because he thought he did not need to file tax returns if he did not owe any money for taxes. He further stated that once he started the security clearance process, he realized that he was wrong. He indicated that he never received any notices from the Internal Revenue Service (IRS) or the state about owing taxes.<sup>3</sup>

When he met with the Office of Personnel Management security clearance investigator, he advised the investigator that he had prepared his federal and state tax returns for the tax years 2005 through 2012, and he had filed these tax returns in August 2013. He later learned that the IRS had no record of his tax returns being filed in

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<sup>1</sup>Item 3.

<sup>2</sup>Item 3; Item 5.

<sup>3</sup>Item 3.

August 2013. Applicant prepared his federal tax returns again and sent his federal tax returns by overnight delivery service on May 22, 2014. The IRS tax transcripts for Applicant's account reflect that the IRS received the tax returns for the tax years 2005, 2006, 2009, 2010, 2011, and 2012 on May 27, 2014. The tax transcripts show that the IRS filed and processed his 2012 tax return on June 23, 2014, his 2011 tax return on June 30, 2014, and his 2005, 2006, 2009, and 2010 tax returns on August 4, 2014. The tax transcripts also reflect that the IRS did not receive his tax returns for the tax years 2007 and 2008. Applicant timely filed his 2013 federal income tax return on April 15, 2014.<sup>4</sup>

Applicant contacted the IRS in May 2014 and set up an account to pay past due taxes, penalties, and/or fees. On May 21, 2014, Applicant paid the IRS the following amounts: \$266 for the tax year 2011; \$356 for the tax year 2010; \$123 for the tax year 2009; \$1,450 for the tax year 2008; \$1,088 for the tax year 2007; and \$762 for the tax year 2006. Applicant received a tax refund for the 2012 federal tax year, and he did not owe additional taxes for the 2005 federal tax year.<sup>5</sup>

In his response to the SOR, Applicant advised that he was waiting for a final tax accounting from the IRS. He has not submitted proof, such as additional tax transcripts from the IRS, that he filed his 2007 and 2008 tax returns although he paid anticipated taxes due for those years. He indicated that he filed his state income tax returns for the years 2005 through 2012, but he has not provided proof that these income tax returns have been filed or the status of any state taxes owed.<sup>6</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 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.

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<sup>4</sup>Item 2; Item 4.

<sup>5</sup>Item 2; Item 4.

<sup>6</sup>Item 2.

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 decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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. . . .” An applicant has the ultimate burden of persuasion for 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 an 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.

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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(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 failed to timely file his federal and state income tax returns for the tax years 2005 through 2012. He made payments to the IRS in anticipation of owing additional taxes, penalties and/or fees. A security concern has been established under AG ¶¶ 19(c) and 19(g).

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and 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;

(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.

I have reviewed the above mitigating conditions. Applicant's decision to file his seven years of past-due income tax returns in 2013 and 2014 is recent. His noncompliance with his federal and state income tax filing obligations occurred over seven years, so his conduct was not infrequent. Applicant has not provided any reason which reflects that his failure to timely file his income tax returns was beyond his control. AG ¶¶ 20(a) and 20(b) are not applicable.

Applicant has not provided any evidence of credit counseling. He has provided some evidence that he is working to solve this problem and that he has some control over his past-due federal taxes. In May 2014, he made a good-faith effort to repay any past-due taxes owed to the IRS when he sent money for the taxes, penalties, and/or fees he believed he most likely owed. AG ¶¶ 20(c) and 20(d) are only partially applicable because he has not provided proof that he has resolved all his past-due tax issues, especially his state tax matters. The record lacks any evidence that the IRS filed a tax lien against Applicant or garnished his wages.

## 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 an 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.

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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. When he failed to timely file his federal and state income tax returns from 2005 through 2012, Applicant abdicated a major responsibility of U.S. citizenship. He is required to timely file his federal and state tax returns each year. He had a responsibility to know the law and to make sure that he was in compliance with the law. He did not. Applicant has not acted responsibly about his income tax returns. He has not provided sufficient information to show that he has resolved his tax problems fully. His actions show a disregard for his duties as a United States citizen and raises questions about his ability to act properly while handling classified information. A security concern remains.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his finances under Guideline F.

## **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:	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 grant Applicant eligibility for a security clearance. Eligibility for a security clearance is denied.

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MARY E. HENRY  
Administrative Judge