



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



In the matter of:

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ISCR Case No: 14-05522

Applicant for Security Clearance

For Government: Ray T. Blank, Jr., Department Counsel  
For Applicant: *Pro se*

03/18/2016

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Decision  
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DAM, Shari, Administrative Judge:

Applicant has a history of failing to file Federal income tax returns. He failed to provide evidence to mitigate the resulting financial security concerns and establish a track record of responsibly managing his tax obligations. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

On December 23, 2013, Applicant submitted an electronic Questionnaire for Investigations Processing (e-QIP) as part of a re-investigation for his security clearance. On December 8, 2014, 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; 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* effective within the DoD on September 1, 2006.

Applicant answered the SOR in writing (Answer) on March 2, 2015, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On September 3, 2015, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant on September 10, 2015, and received by him on September 21, 2015. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. He did not submit any additional information or file objections to the Government's Items; hence, Items 1 through 5 are admitted into evidence. DOHA assigned the case to me on February 4, 2016.

### **Findings of Fact**

In his Answer, Applicant admitted the sole allegation contained in the SOR. His admission is incorporated herein.

Applicant is 55 years old and divorced since 1988. He and his former wife have two adult children. He served on active duty in the Marine Corps from 1979 to 1982. He received an honorable discharge. He has worked for his current employer, a defense contractor, since 2003, and has held a security clearance since at least 2010. (Item 4.)

When Applicant completed his December 2013 e-QIP, he disclosed to the Government that he had not filed his 2010, 2011, and 2012 Federal income tax returns. He indicated on the e-QIP that he was "getting ready to file" them, and that he estimated he owed \$1,000 in unpaid taxes for each year. (Item 4.)

In his March 2015 Answer to the SOR, Applicant submitted information from a tax preparation company, dated February 16, 2015, that it was in the process of filing his Federal returns for tax years 2010, 2011, 2012, 2013, and 2014.<sup>1</sup> (Item 2.) The file contains no evidence that he filed said returns.

### **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 and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

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<sup>1</sup> The SOR did not allege security concerns resulting from Applicant's failure to file Federal tax returns for 2013 and 2014. Hence, those facts will not be considered in the analysis of disqualifying conditions, but may be considered in the analysis of mitigating conditions and whole-person factors.

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(a) describing 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 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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies 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.

Section 7 of Executive Order 10865 provides that an adverse decision shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

## **Analysis**

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

The security concerns relating to the guideline for financial considerations are 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>2</sup>

AG ¶ 19 notes three disqualifying conditions that could potentially raise security concerns in this case:

- (a) inability or unwillingness to satisfy debts;
- (b) 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 file Federal income tax returns for 2010, 2011 and 2012, and estimated that he owed the Government \$1,000 in taxes for each of those years, demonstrating an unwillingness to resolve financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

After the Government produced sufficient evidence of those three disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets out four conditions that could potentially mitigate financial security concerns in this case:

- (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;

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<sup>2</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(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 did not provide evidence which would establish mitigation under any of the above four mitigating conditions. Applicant's history of not meeting his financial tax obligations began in 2010 and continues to 2014. He did not submit evidence that he filed returns for any of those years, nor did he provide information establishing that circumstances beyond his control prevented him from filing tax returns for those five years. There is insufficient evidence that he has received counseling for his tax problems or that there are clear indications that he has made a good-faith effort to resolve the matters and they are under control.

### **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). They include the following:

(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) 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 include 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 a 55-year-old man, who honorably served in the military for three years, and has worked for a defense contractor since 2003. He has held a security clearance for some of those years. Applicant's history of not filing his Federal income tax returns for at least five years is concerning, and it raises questions about his reliability. It is unknown how much he owes for unpaid taxes for those five years that he has not filed. At this time, he has not established a track record of responsibly handling his legal financial obligations. The record evidence leaves me with questions and doubts as to Applicant's eligibility and

suitability for a security clearance. For these reasons, I conclude Applicant did not mitigate the security concerns arising under the financial considerations guideline.

### **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
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Subparagraph 1.a:	Against Applicant
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### **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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SHARI DAM  
Administrative Judge