



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-06879

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel

For Applicant: Kenneth M. Roberts, Esq.

12/28/2016

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns and mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On November 4, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and 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 December 3, 2015, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on March 16, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 12, 2016, scheduling the hearing for June 15, 2016. The

hearing was continued at Applicant's request. The case was reassigned to me on September 28, 2016. The hearing was reconvened on November 16, 2016. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) A through Z, which were admitted without objection. DOHA received the hearing transcripts (Tr.) on June 23, 2016, and November 30, 2016.

### **Findings of Fact**

Applicant is a 51-year-old employee of a defense contractor. He has worked for his current employer since 2007. He served on active duty in the U.S. military from 1987 until he retired with an honorable discharge in 2007. He seeks to retain a security clearance, which he has held since he was in the military. He attended college for a period without earning a degree. He is married without children.<sup>1</sup>

Applicant regularly filed his income tax returns and received refunds for every tax year from 2000 through 2011. His refunds during that period totaled more than \$68,000. His accountant told him that he had to file his tax returns within three years in order to receive a refund. The accountant told Applicant, or Applicant misinterpreted the accountant's statements to mean, that he was not legally required to file his federal tax returns for three years if he was due a refund.<sup>2</sup>

Applicant mistakenly thought he would receive a refund for tax year 2012. He did not think he was violating any laws or regulations when he failed to file his 2012 federal income tax return when it was due. He also thought he was truthfully answering the financial questions on his September 2013 Questionnaire for National Security Positions (SF 86)<sup>3</sup> when he did not report any tax issues.<sup>4</sup>

Applicant filed his 2012 and 2013 federal income tax returns in October 2014. The tax due for 2012 was \$7,528, and the tax due for 2013 was \$14,460. Applicant paid all his taxes. He filed his tax returns for 2014 and 2015 on time. He accepted responsibility for his actions. He credibly testified that he has learned a valuable lesson and that he will never again fail to file his tax returns on time. He does not owe any taxes, and his finances are sound. He submitted evidence of his excellent job performance and that he has all the positive character traits consistent with a responsible security-clearance holder.<sup>5</sup>

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<sup>1</sup> Tr. at 28-29; GE 1; AE A.

<sup>2</sup> Tr. at 14-16, 19; AE D-O.

<sup>3</sup> The SF 86 was certified in September 2013, but not signed until December 2013.

<sup>4</sup> Tr. at 14-16, 28 Applicant's response to SOR; GE 1, 2.

<sup>5</sup> Tr. at 19-24, 27, 31-35; AE B, C, P-Y.

## 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 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 is potentially applicable in this case:

(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 his 2012 and 2013 federal income tax returns when they were due. The above disqualifying condition is applicable.

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; 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 misinterpreted his accountant's statement or he received bad advice. In either event, he was unaware that he was doing anything wrong until it was brought to his attention. He filed his 2012 and 2013 federal income tax returns in October 2014, more than a year before the SOR was issued. All taxes are paid. He accepted responsibility for his actions. He credibly testified that he has learned a valuable lesson and that he will never again fail to file his tax returns on time. Applicant overcame the heavy burden upon an applicant who shirks his tax responsibilities. See ISCR Case No. 15-03481 at 5 (App. Bd. Sep. 27, 2016). The above mitigating conditions are applicable.

## **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not intentionally provide false information on his SF 86. AG ¶ 16(a) is not applicable. SOR ¶ 2.a is concluded for Applicant.

## **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.

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 Guidelines E and F in my whole-person analysis.

I considered Applicant's 20 years of honorable military service, his steady employment with a defense contractor, and his favorable character evidence. He failed in his obligation to file his tax returns on time. However, he resolved those matters more than a year before the SOR was issued. I am convinced the conduct will not be repeated.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns and mitigated 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:	For Applicant
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge