



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



In the matter of: )  
)  
) ISCR Case No. 15-00408  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

02/09/2017  
\_\_\_\_\_

**Decision**  
\_\_\_\_\_

CURRY, Marc E., Administrative Judge:

Applicant did not file his 2012 and 2013 federal or state income tax returns on time, prompting a financial considerations security concern. He filed the 2012 tax returns in July 2014 and he filed the 2013 tax returns in July 2015, paying a nominal late penalty for 2012 and receiving refunds from both the federal government and his state's taxing authority for his 2013 income tax returns. Applicant has mitigated the security clearance concern. Clearance is granted.

**Statement of the Case**

On September 19, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant 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 (AG) implemented by the DOD on September 1, 2006.

On October 19, 2015, Applicant answered the SOR, denying the allegations. He initially requested a hearing, then decided to forego a hearing and have his case decided based on the written record. On January 26, 2016, Department Counsel prepared a File of Relevant Material (FORM) consisting of documents supporting the government's allegations. Applicant received the file on February 26, 2016. On April 1, 2016, Applicant filed a response, and the case was subsequently assigned to me on April 1, 2016.

### **Findings of Fact**

Applicant is a 50-year-old married man with two children and one stepchild. He has been married since 2004. A previous marriage ended in divorce in 2003. (Item 3 at 14-15) He earned a bachelor's degree in electrical engineering in 1989, and he earned a master's degree in the same field in 1991. (Item 3 at 9) Currently, Applicant works as a unit director at a defense contractor. His tasks involve program management, contract drafting, quality control, and manufacturing. (Response at 3)

Applicant is highly respected on the job. According to his supervisor, he "always demonstrated . . . that he respects, understands, and lives by all of the obligations and responsibilities required to maintain his position and standing of trust within our country." (Response at 49) According to a government client, Applicant has good technical insights and attention to detail. (Response at 50)

Applicant failed to file his federal and state income tax returns on time in 2012 and 2013. He filed for extensions each year, but missed the extension deadlines. He filed his 2012 state income tax return in June 2014, and received a \$1,491 refund. (Response at 24) He filed his 2012 federal income tax return in August 2014. He owed no income taxes, but had to pay an \$87 late fee. (Response at 5, 45) In August 2015, he filed his federal and state tax returns for 2013. He received a \$1,058 refund for his federal income tax return, and he received a state tax refund of \$2,117. (Response at 11, 26) He filed his 2014 federal and state income tax returns in November 2015. It is unclear from the record whether this was past the extended deadline. He received a federal income tax refund of \$1,058 and a state tax refund of \$25. (Response at 11, 18)

Applicant's income between 2012 and 2014 ranged between \$218,000 per year and \$238,000 per year. In each of these years, he paid more income taxes through withholdings than he owed. Applicant attributes his failure to file his income tax returns on time to procrastination.

### **Policies**

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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 applicant or proven by department counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

- (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.

## **Analysis**

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

Under this guideline, “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.” (AG ¶ 18) Applicant filed his federal and state income taxes returns for tax years 2012 and 2013 late, missing the extended deadline during both years. When he ultimately filed them, his tax transcripts reveal that he had paid more in 2013 through withholdings than he owed, and that the only amount that he owed for 2012 was a nominal penalty of \$87. Under these circumstances, AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” do not apply.

Applicant’s failure to file his income taxes is not without security significance, however. Filing one’s income taxes is a legal requirement and a civic responsibility. Under these circumstances, AG ¶ 19(g), “failure to file annual federal, state, or local income tax returns, as required . . .,” applies.

Applicant's late tax filings revealed that in the years in question he paid all of his income taxes or paid more income taxes than he owed. Because the record does not establish that he had any financial problems, none of the mitigating conditions is relevant. Instead, Applicant's failure to file his income tax returns on time must be evaluated through the prism of the whole-person concept. The misconduct was serious. However, the evidence of rehabilitation is significant as he subsequently filed the returns and paid the nominal penalty for tax year 2012. This evidence, together with his strong character references, outweigh the negative security inference generated by his failure to file his income tax returns on time. I conclude Applicant has mitigated the security concern.

### **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
Subparagraphs 1.a-1.b:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY  
Administrative Judge