



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 15-00532

**Appearances**

For Government:  
Jeff Nagel, Esquire, Department Counsel

For Applicant:  
Ryan Nerney, Esquire  
Edmund Law Firm

April 10, 2017

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**Decision**

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ROSS, Wilford H., Administrative Judge:

**Statement of the Case**

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on March 28, 2012. (Government Exhibit 1.) On December 16, 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (Answer) on March 31, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 21, 2016. The case was assigned to me on April 25, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on May 4, 2016, setting the case for June 29, 2016. That hearing was canceled and a new Notice of Hearing was issued on June 15, 2016. I convened the hearing as scheduled on July 6, 2016. The Government offered Government Exhibits 1 through 4, which were admitted without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through G. Department Counsel had no objection and the exhibits were admitted into the record. Applicant requested the record remain open until July 22, 2016, for receipt of additional exhibits. No additional exhibits were received. DOHA received the transcript of the hearing (Tr.) on July 14, 2016.

### **Findings of Fact**

Applicant is a 56-year-old employee of a defense contractor, and currently holds a security clearance in connection with this employment. He is married.

#### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has failed to fulfill his financial obligations, which may indicate poor self-control, a lack of judgment, and an unwillingness to abide by rules and regulations. Applicant admitted allegations 1.a and 1.b in the SOR under this Paragraph. He denied 1.c and 1.d. (Answer.) Applicant submitted additional evidence to support his request for access to classified information.

Applicant admitted that he failed to file his Federal and state tax returns for tax years 2009 and 2010 until approximately June 29, 2016. (SOR 1.a and 1.b.)<sup>1</sup> This was the original date set for his hearing, and one week before the date when the hearing was actually held. He admitted that the reason he failed to file these returns for many years was “procrastination.” He further stated regarding his failure to file his tax returns, “There is no good excuse. The only excuse I can give you is what I’ve already stated. I’m just a chronic procrastinator. I have been for most of my life.” (Tr. 18, 20, 26-27, 34, 38, 43-44.)

Applicant properly noted on Government Exhibit 1 at Section 26 that he had not filed these tax returns and further stated that he had an appointment with a tax preparer “to file and pay by 4/15/12.” He subsequently had an interview in September 2012 with an investigator from the Office of Personnel Management. In that interview Applicant admitted that he had not begun the process of filing his tax returns for 2009 and 2010. He

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<sup>1</sup> The SOR does not contain allegations concerning a failure by Applicant to file state tax returns for 2009 and 2010. His failure to do so can be considered in terms of discussing any possible mitigation and under the whole-person concept.

further stated that he intended to file the subject returns by the end of 2012. (Tr. 28-30, 35; Government Exhibit 2.)

Applicant Exhibits F and G are unsigned copies of Applicant's 2009 and 2010 Federal tax returns. Applicant testified that they had been mailed to the Internal Revenue Service (IRS) approximately June 30, 2016. Applicant stated that he has timely filed all of his tax returns after 2010. The record was left open for Applicant to provide return receipts from the IRS for his 2009 and 2010 tax returns, as well as additional tax returns and other documentation from the IRS. No post-hearing documents were received from Applicant. (Tr. 18-19, 21-24, 31-33.)

Applicant denied SOR 1.c and 1.d, which alleged he failed to file his Federal tax returns for tax years 2011 and 2012. (Tr. 17-18.) Applicant Exhibits A and B are copies of the subject tax returns, each of which is signed by Applicant and his wife within the tax return filing deadlines. Government Exhibits contain no information supporting the allegations that Applicant has failed to file these particular returns. Based on the available evidence, I find they were filed as required, and these two allegations are found for Applicant.

## **Policies**

Security clearance decisions are not made in a vacuum. 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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying 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.

## **Analysis**

### **Paragraph 1 (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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, one applies to the facts found 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, based on documentary and testimonial evidence, failed to file his 2009 and 2010 Federal income tax returns in a timely fashion. The evidence is sufficient to raise this potentially disqualifying condition.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions may be mitigated where “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.” In addition, AG ¶ 20(b) states that disqualifying conditions may be mitigated where “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.” Neither one of these is applicable in this case. As stated, Applicant knew for almost four years that the Government was concerned about his failure to file the subject tax returns. His failure to do so was deliberate and willing. Applicant’s sole excuse, which he realizes was not sufficient, was that he is a chronic procrastinator. Filing the subject tax returns a week before the hearing, assuming that it was actually done, is insufficient to show that the Applicant has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” or that “there are clear indications that the problem is being resolved or is under control.” (AG ¶¶ 20(d) and (c).)

Applicant has not acted in a way that shows good judgment, since the evidence shows that his habit of procrastination remains. It is particularly telling that he failed to file the subject tax returns until one week before the hearing, and failed to provide documentation that those returns were actually filed as claimed. None of the mitigating conditions apply to the facts of this case. Paragraph 1 is found against 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 pertinent facts and circumstances surrounding this case. Applicant has failed to mitigate his failure to file Federal and state income tax returns for many years after they were due. Under the circumstances I cannot find that there is little or no “potential for pressure, coercion, exploitation, or duress” as set forth in AG ¶ 2(a)(8). In addition, Applicant’s conduct does not show permanent behavioral changes under AG ¶ 2(a)(6), and there is considerable likelihood of continuation or recurrence under AG ¶ 2(a)(9). Using the whole-person standard, Applicant has not mitigated the security significance of his financial considerations, and is not eligible for a security clearance.

### **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

Subparagraphs 1.a and 1.b:

Against Applicant

Subparagraphs 1.c and 1.d:

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 or continue Applicant’s eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS  
Administrative Judge