



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



In the matter of:

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ISCR Case No. 15-01357

Applicant for Security Clearance

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel

For Applicant: *Pro se*

11/23/2016

RIVERA, Juan J., Administrative Judge:

Applicant failed to timely file federal and state income tax returns for six consecutive years and acquired an undetermined debt to the IRS and his state. He failed to show financial responsibility. His evidence is insufficient to mitigate the Guideline F (financial considerations) security concerns. Clearance is denied.

**History of the Case**

Applicant submitted a security clearance application (SCA) on October 3, 2012. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) was unable to make an affirmative decision to grant Applicant eligibility for a clearance. On September 27, 2015, the DOD issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations).<sup>1</sup> Applicant answered the SOR on December 28, 2015, and requested a decision based on the written record.

A copy of the Government's file of relevant material (FORM), was mailed to Applicant on February 26, 2016. Applicant received the FORM on March 7, 2016. He was allowed 30 days to submit any objections to the FORM and to provide material to refute,

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<sup>1</sup> DOD acted 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

extenuate, and mitigate the concerns. Applicant did not respond to the FORM or submit any additional evidence. The case was assigned to me on November 21, 2016.

### **Findings of Fact**

In Applicant's response, he admitted the two SOR factual allegations – that he failed to timely file federal and state income tax returns for tax years 2006 through 2011. His two-page letter in response to the SOR provided some explanations and extenuating and mitigating information. Applicant's SOR admissions are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 64-year-old employee of a defense contractor. He graduated from high school in 1971 and enlisted in the U.S. Air Force that same year, where he served until being honorably discharged in May 1975. While in the service, Applicant's duties required him to possess a top secret level clearance. He believed he was granted his clearance in May 1972, and held it until his discharge. Applicant married his first wife in 1979 and divorced in 1990. He married his current wife in 1993. He has a 23-year-old son.

Applicant has been continuously working for his employer, a large federal telecommunications contractor, since 1977. He is a senior advanced technical support specialist. There is no evidence to show he has had periods of unemployment or underemployment. It is not clear whether his continued employment is contingent on his eligibility for a clearance. There are no allegations or evidence of any rule or security violations.

In his answers to Section 26 (Financial Record) of his 2012 SCA, Applicant disclosed that during the past seven years he had failed to timely file and pay his federal and state income taxes for tax years 2006 through 2011. The subsequent security clearance background investigation addressed his failure to timely file his income tax returns.

Applicant was interviewed in November 2012 by a government investigator and discussed his failure to timely file his tax returns. Applicant explained that in 2005-2006, his wife had medical problems related to a fall and required rehabilitative treatment. He did not file his income tax return that year because he was distracted with his wife's medical problems. After skipping that year, it was more difficult for him to file because the tax filing program he was using required the prior year tax information. Thereafter, he did not file because he kept putting it off. Applicant knew he was required by law to file his income tax returns. He estimated his total tax delinquency to be between \$10,000 and \$20,000.

Applicant also told the government investigator that his financial situation was stable and he had no financial problems. He believed he was capable of meeting his financial obligations, and had not sought financial counseling. Applicant has provided no information about his current financial position. He did not provide any information about

his income, monthly expenses, or whether his current income is sufficient to pay his current living expenses and debts.

In his December 2015 answer to the SOR, Applicant claimed he had filed his income tax returns for tax years 2006 through 2011 with his 2012 tax return, and that he was current up to tax year 2012. He did not provide any documentary evidence to support his claims. Applicant also stated that he had failed to file his federal and state income tax returns “since 2013”.

Applicant explained that “LIFE” had prevented him from filing his tax returns. He stated that providing and caring for his family was very important to him. He explained that his wife retired, but she continued to have chronic medical problems. His son dropped out of college and is living with him. Applicant claimed he hired the services of a tax accountant to help him bring his tax returns current. He and his accountant were waiting for the electronic filing system to come back online to file his returns. Applicant did not provide documentary evidence to show he has filed any of his past-due federal and state income tax returns, or that he retained a tax accountant to help him file his late tax returns.

### **Policies**

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly

consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

### **Financial Considerations**

Under Guideline F, the security concern is that 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 ¶ 18)

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.

Applicant’s failure to file his federal and state income tax returns for tax years 2006 through 2011 is documented in his 2012 SCA, 2012 interview, and in his SOR response. AG ¶ 19 provides a disqualifying condition that could raise a security concern and may be disqualifying in this case: “(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.”

The Government established the disqualifying conditions in AG ¶¶ 19(a), (c), and (g) requiring additional inquiry about the possible applicability of mitigating conditions. Five mitigating conditions under AG ¶ 20 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

None of the financial considerations mitigating conditions apply. Applicant's financial problems are recent and ongoing. He presented no evidence to show that he has filed any of his delinquent income tax returns. There is no evidence to show that Applicant's financial problems are under control. Applicant presented no documentary evidence of efforts taken to contact the IRS or state tax authorities to file his income tax returns or pay his past-due taxes. In sum, Applicant did not submit sufficient evidence to show financial responsibility.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

Applicant is a 64-year-old employee of a defense contractor. He served in the Air Force four years, and held a security clearance. He has worked for a defense contractor since 1977.

Applicant submitted no documentary evidence to show he has filed his federal and state income tax returns since 2006. There is insufficient evidence of progress addressing

Applicant's financial problems. The available information is insufficient to establish clear indications that he does not have a current financial problem, or that his financial problems are being resolved, or are under control. Applicant failed to establish that he has a track record of financial responsibility. For the above stated reasons, I find that the financial considerations security concerns are not mitigated.

### **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
Subparagraphs 1.a and 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 national security to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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JUAN J. RIVERA  
Administrative Judge