



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-02504  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: *Pro se*

09/21/2016  
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**Decision**  
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RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is granted.

**Statement of the Case**

On October 10, 2015, the Department of Defense (DOD) issued to 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on November 12, 2015, and elected to have his case decided on the written record. On February 22, 2016, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on February 26, 2016. Applicant was afforded an

opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not object to the Government's evidence and provided documents within the time period. The Government's documents are identified as Items 2 through 8 and admitted into evidence. Applicant's documents are marked as Applicant Exhibits A through G and are admitted into evidence without objection. The case was assigned to me on August 26, 2016.

### **Findings of Fact**

Applicant admitted the sole allegation in the SOR with an explanation. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 41 years old. He earned an associate's degree in 1997 and is presently pursuing a bachelor's degree. He served in the military from 2002 to 2013 and was honorably discharged.<sup>1</sup> He served two combat tours from February 2003 to June 2003 and from February 2005 to September 2005. He married in 1998. He has two children from the marriage, ages 17 and 14, and two stepchildren, ages 23 and 21. Applicant's stepdaughter has two children, and they all live with him and his wife. Applicant provides financial support for his stepchildren, children, and grandchildren. He has worked for a federal contractor since his discharge from the military in 2013.<sup>2</sup>

While on active duty, Applicant was stationed in State A from 2007 to 2013. In February 2014, Applicant completed a security clearance application. In it he disclosed that he had not filed his 2007 through 2012 state income tax returns. He stated: "I have always paid and filed Federal taxes. I have always paid State taxes, but am working with the State of [A] as some years have not been filed. However, I owe no monies to the state."<sup>3</sup>

In April 2014, Applicant was interviewed by a government investigator. He advised the investigator that he always paid his state taxes, but he failed to file his 2007 state income tax return because he did not know he was required to file if he did not owe any taxes. Because he believed he was due a refund, he thought it was permissible to not file a tax return. Also, because the refund amount was minimal, it was not a priority to file the return. He indicated that because he did not file the state income tax return in 2007, he did not have the proper forms and figures to file his 2008 state income tax return, and the same was true for subsequent tax years. Applicant further advised the investigator that he was working with the State A's tax office to obtain

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<sup>1</sup> Applicant indicated his separation from the military was due to medical reasons.

<sup>2</sup> Item 4.

<sup>3</sup> Item 4.

copies of his federal income tax returns, so he could file his 2007 through 2012 state tax returns. He believed he was owed a substantial refund.<sup>4</sup>

In Applicant's answer to the SOR, he stated that his failure to file his state income tax returns was based on incorrect information he received from State A's tax office. He indicated he had a discussion with its representative and was told that as an active duty member he was not required to file a State A income tax return. He indicated that State A notified him that he owed fines even though the state had received taxes withheld from his pay.<sup>5</sup>

Applicant indicated that due to deployments and multiple permanent change of station moves, it took years for State A to talk to him. He indicated that he paid all taxes, interest, penalties, and fines imposed, and he had a zero balance owed to State A.<sup>6</sup>

In Applicant's response to the FORM, he provided documentation to show that in August 2013 he made a request to the Internal Revenue Service requesting information about his 2009 through 2012 federal income tax returns. These were the years he was missing the federal income tax returns that he needed so he could file those years state tax returns. He was also missing some of the required W-2 forms, which are required by the state to file. He contacted the local Installation Personnel Administration Center to inquire about how to request these forms. He was only able to obtain the forms for the most recent three years. He was provided information on how to request the W-2 forms for earlier years from his service's records division. He was given a specific email and telephone number. He attempted to contact the division and the phone number consistently went to voice mail with no option to leave a message. Applicant indicated he was attempting to resolve this matter during the same time his stepdaughter, who was living with him, had a baby, and he was separating from the service.<sup>7</sup>

During late 2013, Applicant became aware that State A began garnishing his wages for about \$50 monthly. Due to his hectic personal and professional life at the time, Applicant believed that this was likely the easiest way to resolve the amount owed for interest, penalties, and fines. He acknowledged that he should have realized that it was equally as important to file the delinquent state tax returns.

After receiving the SOR, Applicant realized that the Government still saw the matter as unresolved. He then took immediate steps to rectify the problem. Applicant again requested from the records division that he be provided past years W-2 forms. He became aware that the email he was previously provided was an incorrect email address. He made a new request, which was answered. He completed the delinquent

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<sup>4</sup> Item 5.

<sup>5</sup> Item 3.

<sup>6</sup> Item 3.

<sup>7</sup> AE A, E.

state tax returns in March 2016, and drove to the tax office in the state's capital city and hand-delivered the tax returns for 2007 through 2014. He provided a confirmation letter from the state.<sup>8</sup>

Applicant provided copies of the completed state income tax returns, which show he was due a refund for every year from 2007 through 2014, except for tax year 2009 when he owed \$78. Applicant attributed tax year 2009 as an anomaly because he received a reenlistment bonus that year.<sup>9</sup>

In his response to the FORM, Applicant indicated that he could not remember if the misunderstanding about his requirement to file state income tax returns was the result of a conversation he had with a representative from the state's taxation office or the Tax Center Assistance office aboard his active duty station. There was confusion about state taxes because Applicant's spouse was required to pay state taxes in the state where she was working, which was different than Applicant's home of record state.<sup>10</sup>

Applicant indicated in his response to the FORM that if at any time he had thought he owed any taxes, he would have filed and paid them. He never intended to evade paying his state income taxes. He did a preliminary assessment at the time the taxes were due to determine if he would receive a refund. He believed he was entitled to refunds and not required to file.<sup>11</sup>

Applicant indicated that he has held a security clearance for almost ten years and has never had a security violation or incident. He was the recipient of a Navy Commendation Medal, Navy-Marine Corps Achievement Medal (two awards), and Marine Corps Good Conduct Medal (three awards), while on active duty. He regrets that he put himself in the position where his judgment, reliability, and trustworthiness are being questioned. He apologized for his actions.<sup>12</sup>

## **Policies**

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

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<sup>8</sup> AE A, C, D.

<sup>9</sup> AE A, D.

<sup>10</sup> AE A.

<sup>11</sup> AE A.

<sup>12</sup> AE A.

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 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.

Under 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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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 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 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.

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>13</sup>

AG ¶ 19 provides conditions that could raise security concerns. The following is potentially applicable:

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant failed to timely file state income tax returns for 2007 through 2013. There is sufficient evidence to support the application of the above disqualifying condition.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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; 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 erroneously believed that he did not have to file state income tax returns because he believed he was receiving a refund. He was notified in 2013 that fines were being imposed because of his inaction. In August 2013, he contacted the IRS to obtain copies of prior years' federal tax returns, which were required so he could file his delinquent state tax returns. Applicant also attempted to obtain his past W-2 forms so he could file the delinquent returns, but when the state garnished his wages, he decided this was likely the easiest way to resolve the issue. During this time, his stepdaughter, who was living with him and his wife, gave birth, and Applicant was

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<sup>13</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

separating from the service. He admitted he was distracted. He did not consider the impact his inaction would have on his security clearance.

Applicant has filed all of the delinquent state income tax returns. Except for one year, he was due a refund. He has taken responsibility for his behavior and is apologetic. It is evident Applicant was not attempting to evade paying his taxes, but rather he was misinformed about his requirement to file state tax returns. I find there is sufficient evidence to conclude Applicant's behavior happened under circumstances that are unlikely to recur and does not cast doubt on his current reliability, trustworthiness and good judgment. Applicant is aware of his legal obligations to timely file his tax returns, and the problem is resolved. AG ¶¶ 20(a) and 20(c) apply.

### **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 the 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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 41 years old. He served honorably in the military for 11 years, including two combat tours. He has held a security clearance for approximately ten years without incident. He failed to timely file his state income tax returns because he erroneously believed he was not required to do so because he was receiving a refund. He disclosed this information on his SCA. His delinquent state income tax returns are filed. He understands his legal responsibilities. I believe it is highly unlikely any future issues will occur. After considering all of the evidence, I conclude that Applicant has met his burden of persuasion. The record evidence leaves me no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant mitigated the security concerns arising under Guideline F, financial considerations.

### **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

### **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's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello  
Administrative Judge