



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



In the matter of:

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) ISCR Case No. 15-04050  
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Applicant for Security Clearance

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel

For Applicant: *Pro se*

09/30/2016  
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**Decision**  
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CREAN, Thomas M., Administrative Judge:

Applicant failed to provide sufficient documentation to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 10, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for employment with a defense contractor. (Item 3) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on January 29, 2015. (Item 4) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On December 13, 2015, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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) effective in DOD on September 1, 2006.

Applicant answered the SOR on January 27, 2016. He admitted the two financial allegations of failing to file his federal tax returns for tax years 2011 through 2014 (SOR 1.a), and state tax returns for the same tax years (SOR 1.b). He claimed that the federal tax returns for 2011 have been filed and the remaining returns will be filed. He elected to have the matter decided on the written record. (Item 1) Department Counsel submitted the Government's written case on February 24, 2016. Applicant received a complete file of relevant material (FORM) on March 2, 2016, and he was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely filed a response to the FORM. (Item 6) I was assigned the case on September 27, 2016.

### **Procedural Issues**

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM agent (Item 3) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and he could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the summary. In his response to the FORM, Applicant did not object to consideration of the PSI. Any objection to the information is waived. I will consider information in the PSI in my decision.

### **Findings of Fact**

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 59 years old. He graduated from high school in 1975, received his bachelor's degree in January 1980, and his master's degree in December 2001. He has been employed as a senior software engineer by a defense contractor since December 1997. He married in March 1983 and has no children. He received his first eligibility for access to classified information in 1981. It appears that his security clearance has been continuously sponsored by his present employer. (Item 2, e-QIP, dated November 10, 2014; Item 3, PSI, dated January 29, 2015)

The SOR alleges that Applicant did not file his federal tax returns for tax years 2011 through 2014 (SOR 1.a), and state tax returns for the same tax years. (SOR 1.b) In response to question 26 on the e-QIP concerning filing of tax returns, Applicant reported that he did not file his federal and state tax returns for tax years 2011, 2012, and 2013. He stated that he did not have all of the information he needed to file the returns. He had extra funds withheld from his salary so he would still receive a refund

when he did file his returns. He also stated that he had a medical condition that affected his ability to concentrate, and that he had medical appointments to resolve his medical condition. After treatment for his medical condition, he intended to become current with the filing of his tax returns. (Item 2, e-QIP)

When Applicant was interviewed by the Government investigator in November 2014, he had not filed his 2011, 2012, and 2013 tax returns, and the 2014 returns were not yet due. He told the investigator that he did not file the returns because he had stock activities that required a lot of paperwork and he had not finished compiling the documents needed to file the returns. Applicant said he expected a refund when he filed the returns because of the extra taxes he had withheld. He filed for and received an extension for filing 2014 tax returns, and he anticipated filing before the end of the extension. (Item 4 at 5)

In his January 27, 2016 response to the SOR, Applicant wrote that he filed the 2011 federal tax returns in 2015 and received a refund. He would file his remaining overdue federal and state tax returns in the “near term.” (Item 2)

In his response to the FORM (received at DOHA on April 11, 2016), Applicant enclosed a copy of his 2011 federal tax return filed on April 15, 2015, and his 2014 federal tax return filed on April 4, 2016. He stated his plan was to file the remaining tax returns as follows: the 2012 federal return by April 15, 2016; the 2015 federal return by April 15, 2016; then he will file the 2013 federal return by some unspecified date. He will file the state returns for 2011 and 2015 after completing the filing of the federal returns. Applicant also argued that he lives within his means, is not financially overextended; is not a gambler, and lives a modest lifestyle. (Item 6, Response to the FORM)

## **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 must be considered 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 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.

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.

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.

## **Analysis**

### **Financial Considerations**

Failure or inability to live within one’s means, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, thereby raising questions about an individual’s reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is required to manage his or her finances in such a way as to meet financial obligations.

Applicant self-reported that he failed to file federal and state tax returns for tax years 2011 through 2014. The evidence is sufficient to raise security concerns under Financial Considerations Disqualifying Condition AG ¶ 19(g) (failure to file annual Federal, state, or local tax returns as required or the fraudulent filing of the same). The information raises issues about Applicant’s unwillingness to meet his financial responsibilities and obligations. Once the Government has established the adverse financial issue, the Applicant has the responsibility to refute or mitigate the issue.

I considered the following Financial Consideration Mitigating Conditions under AG ¶ 20:

(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 problems 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; and

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

The mitigating conditions at ¶¶ AG 20 (a), (b), and (c) do not apply. Applicant reported two different excuses for not filing his tax returns on time. These excuses do not raise unusual issues or conditions beyond his control preventing the filing of the returns on time. He did not report that he had any financial counseling.

Mitigating condition AG ¶ 20(d) does not apply. Applicant filed late two of the federal returns he was required to file. He intends to file the other federal returns in the future. He has not filed any of the past-due state tax returns. He intends to file the state tax returns after filing all of the federal tax returns. Applicant has not established a good-faith effort to resolve his financial obligations.

Applicant did not file his tax returns on time. His excuse for not timely filing his federal and state tax returns are not compelling since he provided two different reasons for not timely filing the returns. Applicant established that he has now filed the 2011 and 2014 past-due federal tax returns. However, he has not filed the other past-due federal and state tax returns. He only indicated his intent to file those returns in the future.

Applicant has known since he submitted his e-QIP in November 2014 that his failure to file tax returns is a security issue. If he needed to gather documents to file the returns, he had ample opportunity over a number of years to get the documents and file the returns. If he had a medical condition that prevented him from concentrating, he had ample opportunity to be medically evaluated and provide medical evidence of a condition preventing him from concentrating. He filed the 2011 and 2014 federal tax returns so his medical condition, if any, does not prevent him from filing tax returns.

Applicant has not presented sufficient information to mitigate the security concerns. He has not shown that he acted reasonably to resolve his financial obligations. The evidence does not support a finding that he is responsibly managing his finances. His financial problems are not under control. His failure to reasonably and responsibly manage his finances is a strong indication that he may not protect and safeguard classified information.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information 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 considered that Applicant has had access to classified information for many years without any reported adverse incidents. Applicant provided sufficient credible documentary information to show that he has filed federal tax returns for 2011 and 2014. He has not provided ample evidence that he filed his other past-due federal and state tax returns. He has not established that he has taken reasonable and responsible action to resolve his financial obligations. Applicant did not demonstrate appropriate management of his finances and a record of action to resolve financial issues. Overall, the record evidence leaves me with questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation.

### **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 - 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 the national interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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THOMAS M. CREAN  
Administrative Judge