



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



In the matter of: )  
)  
) ISCR Case No. 15-04265  
)  
Applicant for Security Clearance )

**Appearances**

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

09/29/2017

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to revoke his eligibility for a security clearance. Applicant, a direct-hire NATO employee, has mitigated the security concerns arising from his failure to file and pay federal income taxes between 2004 and 2011. Clearance is granted.

**Statement of the Case**

On February 8, 2016, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant's security clearance and recommended his case be submitted to an administrative judge for consideration.

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<sup>1</sup> The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

Applicant answered the SOR and requested a decision without a hearing.<sup>2</sup> The Government submitted its written case on April 21, 2016. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. He received the FORM on June 15, 2016, and provided a response. The items appended to the FORM and Applicant's response are admitted as Government's Exhibits (GE) 1 through 4 and Applicant's Exhibits (AE) A through B, without objection.

### **Procedural Matters**

While the case was pending decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have applied them in this case.

### **Findings of Fact**

Applicant works for NATO as a direct-hire employee. He has lived and worked in Europe since 1991 and has held a security clearance for the duration of his employment with NATO. Applicant submitted his most recent security clearance application for a periodic reinvestigation in January 2013. He disclosed that he failed to file and pay federal income tax returns from 2004 to 2011. These disclosures served as the basis for the SOR allegations that Applicant failed to file income federal income taxes from 2004 to 2011 as required (SOR ¶ 1.a) and that he owed the \$70,000 in unpaid federal income tax (SOR ¶ 1.b).

In addition to IRS regulations that apply to U.S. citizens worldwide, Applicant's tax filing and payment obligations may also be affected by a treaty between NATO and the United States, excerpts of which Applicant supplied in his response to the FORM. While it is unclear why Applicant failed to file and pay his federal income tax between 2004 and 2011, his security clearance disclosures seem to be based on his understanding of IRS regulations and the treaty. However, neither party offered the treaty or other clarifying regulations into evidence.

In his Answer to the SOR, Applicant indicated that he filed all of his outstanding returns. He also provided documentation showing that between November 2013 and May 2014, he paid over \$120,000 in taxes and penalties for the tax years 2004 through 2011. Applicant also provided confirmation of payment from the IRS.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are not

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<sup>2</sup> GE 1.

inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 national security eligibility 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.

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." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Section 7 of EO 10865 provides that adverse 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**

Failure to meet financial obligations may indicate poor self-control, lack of judgement, 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 or sensitive information.<sup>3</sup> Applicant's disclosures on his security clearance application and SOR admissions establish the Government's *prima facie* case that he failed to file his federal income tax returns and pay federal income taxes as required.<sup>4</sup>

Generally, U.S. citizens are required to pay income tax on their worldwide income. However, under certain circumstances, U.S. citizens living abroad may be entitled to a foreign earned income exclusion. Furthermore, as a direct-hire NATO employee, a treaty between the organization and the United States may also affect Applicant's income tax filing and payments obligations. The record does not contain information to determine the extent, if any, IRS regulations or existing treaties affects Applicant's federal tax filing or payment requirements. There is insufficient evidence to determine whether Applicant's understanding of his federal tax obligation, which prompted his security clearance application disclosures, is accurate or reasonable. The finding that Applicant engaged in disqualifying conduct is based solely on those disclosures.

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<sup>3</sup> AG ¶ 18.

<sup>4</sup> AG ¶ 19(f).

However, Applicant has submitted sufficient evidence to mitigate the alleged security concerns. Between 2013 and 2014, Applicant contacted the appropriate tax authority, filed his federal income tax returns, and paid all taxes owed.<sup>5</sup>

In addition to the financial considerations disqualifying and mitigating conditions, I have also considered the whole-person factors at AG ¶ 2(d). The record supports a favorable whole-person assessment. Applicant is a long-time clearance holder. He self-reported what he believed to be a derogatory financial issue and then diligently worked to resolve it. There is no other evidence in the record to suggest that Applicant has a history of other financial problems or failure to follow laws, rules, and regulations. Accordingly, the issues in this case are resolved in Applicant's favor.

### **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, Financial Considerations:	FOR APPLICANT
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Subparagraphs 1.a – 1.b:	For Applicant
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### **Conclusion**

Based on the record, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Nichole L. Noel  
Administrative Judge

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<sup>5</sup> AG ¶ 20(g).