



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-04271  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

03/31/2017

RIVERA, Juan J., Administrative Judge:

Applicant failed to file his federal tax return for tax year 2013. His evidence is insufficient to show that he has good judgment and is a law-abiding person. He knew of his legal obligation to file his return and he failed to do so. He failed to establish a track record of financial responsibility and his ability to abide by rules and regulations. The financial considerations security concerns are not mitigated. Clearance is denied.

**History of the Case**

Applicant submitted a security clearance application (SCA) on December 4, 2014. On March 25, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations).<sup>1</sup> Applicant answered the SOR on April 14, 2016, and requested a decision based on the written record.

A copy of the Government's file of relevant material (FORM) was provided to Applicant by transmittal letter dated May 23, 2016. Applicant received the FORM on May 31, 2016. He was allowed 30 days to submit any objections to the FORM and to provide material to refute, extenuate, and mitigate the concerns. Applicant did not respond to the

---

<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.

FORM or submit any additional evidence. The case was assigned to me on March 21, 2017.

### **Procedural Issue**

In the FORM, Department Counsel advised Applicant that the FORM included his unauthenticated summary of interview with a government background investigator from January 14, 2015. Applicant was informed he could object to the summary of his interview and it would not be admitted, or that he could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that his failure to respond to the FORM or to raise any objections could be construed as a waiver, and the evidence would be considered by me. Applicant failed to respond to the FORM, submitted no documents, and raised no objections. I admitted the document and considered it.

### **Findings of Fact**

Applicant admitted the sole SOR factual allegation – that he failed to file his federal income tax return for tax year 2013. Applicant's SOR admission is incorporated herein as a finding of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 52-year-old employee of a defense contractor. He completed high school in 1982, and that same year he enlisted in the U.S. Navy. He honorably served for 20 years until he retired in September 2002. While in the service, he was granted a secret clearance in 1992, which he held until his retirement. There is no evidence of security violations or issues of concern, except for those in the SOR. Applicant married in 1992, and became a widower in 2003. He married his current wife in 2014. Applicant has four adult daughters, ranging in age from 35 to 24.

Applicant's relevant work history shows that he worked for a private company from 2005 to March 2013. According to Applicant, the government shut down the company for Medicare violations. Applicant was unemployed between March and May 2013; worked as an auto salesperson between May and August 2013; was unemployed between August and November 2013; and employed between November 2013 and October 2014. Applicant also disclosed that he held a part-time job between 2009 and 2015. He has been working for his current employer, a federal contractor, since October 2014.

In response to Section 26 (Financial Record) of Applicant's 2014 SCA, Applicant disclosed that he had failed to file his federal income tax return for tax year 2013. Applicant claimed that he did not receive a W-2 Form from any of the four employers he worked for during 2013. He explained that he did not know to whom or how to request the 2013 W-2 Forms to file his tax return. (FORM, Item 3)

During his January 2015 interview with a Government investigator, Applicant was made aware of the security concerns raised by his failure to file his 2013 tax return. He promised to contact the IRS within two weeks to resolve his problem, and promised to file his 2013 income tax return by April 2015.

In his April 2016 response to the SOR, Applicant stated that as of the date of his response, his 2013 income tax return had not been filed. He explained he had not filed his 2013 tax return because he did not have the 2013 W-2 Form; did not know how to get it; and he had procrastinated. Applicant anticipated filing his 2013 tax return in the next two to three months because he worked 10-hour night shifts and needed more time.

Applicant did not respond to the FORM and failed to provide any evidence of his efforts to obtain his 2013 W-2 Form, to contact the IRS, or to show that he filed his 2013 income tax return. Applicant's 2016 credit report is clean, showing no delinquent accounts. There is no information to indicate whether he has participated in financial counseling or hired an accountant or a tax professional to assist him with his preparing and filing the overdue tax return.

### **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 2013 income tax return is established by his SOR response and his 2015 statement. His behavior raises a disqualifying condition under AG ¶ 19: "(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 condition in AG ¶ 19(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 filed the 2013 tax return. Applicant presented no evidence of efforts taken to obtain his 2013 W-2 Form, to contact the IRS, or to resolve his tax problem. In light of his lack of action, Applicant failed to establish that he was financially responsible.

Applicant was aware of the Government's financial considerations security concerns when he completed his 2014 SCA. The Government's security concerns were reinforced during his 2015 interview, when he received the 2016 SOR, and when he was provided the FORM. He was allowed a period of 30 days after receipt of the FORM to produce evidence in extenuation and mitigation. He failed to provide any documentary evidence to show that he is a law abiding, diligent, and financially responsible person.

### **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.

I considered that Applicant honorably served 20 years on active duty in the Navy while possessing a security clearance (without concerns), and that he has worked for a federal contractor since 2014. Notwithstanding, Applicant did not submit sufficient evidence to show his financial responsibility. Applicant submitted no documentary evidence of efforts to file his 2013 tax return, or of efforts to contact the IRS to resolve his

tax problem. His evidence failed to show that he has good judgment and is a law-abiding person. He knew of his legal obligation to file his tax return, and he failed to do so. Questions remain about his reliability, trustworthiness, and his ability to abide by rules and regulations and to protect classified information.

Once a concern arises regarding an Applicant's eligibility for a security clearance, there is a strong presumption against the grant or renewal of a security clearance. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness. 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
---------------------------	-------------------

Subparagraph 1.a:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

---

JUAN J. RIVERA  
Administrative Judge