



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No: 15-05339

For Government: Aubrey M. DeAngelis, Department Counsel  
For Applicant: *Pro se*

06/07/2017

Decision

DAM, Shari, Administrative Judge:

Applicant failed to timely file Federal income tax returns for 2011 and 2013. He mitigated the resulting financial security concerns. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

**Statement of the Case**

On November 13, 2014, Applicant submitted an electronic Questionnaire for Investigations Processing (e-QIP) as part of an investigation for his security clearance. On May 4, 2016, the Department of Defense (DOD) issued 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 for Determining Eligibility for Access to Classified Information* effective within the DoD on September 1, 2006.

Applicant answered the SOR in writing June 3, 2016, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3.) On August 10, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing four Items, was mailed to Applicant on that day. He received it on August 15, 2016. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. He did not submit any additional information or file objections to the Government's Items; hence, Items 1 through 4 are admitted into evidence. DOHA assigned the case to me on May 4, 2017.

### **Findings of Fact**

Applicant denied the two allegations in the SOR, and asserted that he had filed his Federal tax returns for 2011 and 2013 late.

Applicant is 51 years old and married to his second wife since 2008. He has eleven children and three stepchildren. They were married from 1986 into 2008. He served on active duty in the Navy from 1984 to 2014. He held a security clearance while serving. He received an honorable discharge on his retirement. He has worked for his current employer, a defense contractor, since November 2014. (Item 4.)

When Applicant completed his November 2014 e-QIP, he disclosed to the Government that he had not filed his 2011 and 2013 Federal income tax returns. He stated in the e-QIP that the reason he was unable to timely file them was because he needed to obtain tax identification numbers for his dependents while on active duty deployment, and he was in the process of getting them. He indicated that he also had a dispute with his former wife about the amount of alimony she received for those years. He estimated that he did not owe any monies for either year. He also disclosed specific delinquent debts, some of which he asserted were his former wife's legal obligations. (Item 4.)

In his June 2016 answer to the SOR, Applicant stated he filed the two returns, albeit late. He submitted a 1040 U.S. Income Tax Return for 2011, signed on April 15, 2015. He submitted the same form for tax year 2013, signed on April 6, 2016, by him and his current wife. (Item 3.) Both returns were filed after he submitted his 2014 e-QIP, but before the SOR issued.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying and mitigating conditions, which are useful 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 AG ¶ 2(a) describing 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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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 protect or 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 an adverse decision shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

## **Analysis**

### **Guideline F, Financial Considerations**

The security concerns relating to the guideline for financial considerations are 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.

AG ¶ 19 notes one disqualifying condition that could potentially raise security concerns in this case:

(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 Federal income tax returns for 2011 and 2013. The evidence is sufficient to raise the above disqualifying conditions.

After the Government produced sufficient evidence of this disqualifying condition, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets out four conditions that could potentially mitigate financial security concerns in this case:

(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; and

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

Applicant's failure to timely file Federal tax returns for 2011 and 2013 occurred under former marital circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) applies. Those circumstances appear to have been out of his control. However, no explanations are in the record to document that he acted responsibly under those circumstances. The evidence established partial mitigation under AG ¶ 20(b). There is no evidence that he received financial or credit counseling, but there are indications that the two outstanding returns have been filed and the matters are under control. AG ¶ 20(c) has some application. There is insufficient evidence to assess what good-faith steps he took effort

to resolve the matters after he missed the tax filing deadlines or whether he filed for extensions for those years. AG ¶ 20(d) applies minimally.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

- (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) 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 include 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 pertinent facts and circumstances surrounding this case. Applicant is a 51-year-old man, who honorably served in the Navy for 30 years, and has worked for a defense contractor since 2014. He held a security clearance during his service. Applicant forthrightly disclosed in his e-QIP that he did not timely file a Federal tax return for 2011 and 2013 because of differences he had with his former wife, and difficulties he encountered attempting to obtain tax identification numbers for his new family members. Other than financial information related to two unfiled tax returns and some delinquent debts, all of which he disclosed, no other derogatory information is in this case file. Based on that fact, his candid answers to financial questions in the e-QIP, and his 30 years of military service, I have no reason to believe that he did not file his 2011 and 2013 Federal tax returns, as he stated, albeit late. The record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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SHARI DAM  
Administrative Judge