



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-07865

**Appearances**

For Government: David Hayes, Esquire, Department Counsel

For Applicant: *Pro se*

06/22/2017

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline B, foreign influence, but failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On October 17, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, financial considerations, and B, foreign influence. The action was taken under Executive Order (EO) 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 (AG) effective within the DOD on

September 1, 2006. On June 8, 2017, new AGs were implemented and are effective for decisions issued after that date.<sup>1</sup>

Applicant answered the SOR on November 14, 2016, and requested a hearing before an administrative judge. The case was assigned to me on May 1, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 4, 2017. I convened the hearing as scheduled on June 6, 2017. The Government offered exhibits (GE) 1 through 4. Applicant testified and offered Applicant Exhibits (AE) A and B. All exhibits were admitted without objection. The record was held open until June 20, 2017, to allow Applicant to submit additional documents. No documents were received and the record closed. DOHA received the hearing transcript on June 14, 2017.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 32 years old. He graduated from high school and earned a vocational diploma. He was married from 2007 to 2013. He has no children. He served in the military from 2005 to 2009, and received an honorable discharge in the paygrade E-3. After his discharge, he was unemployed from October 2009 to July 2011, and again from October 2011 to January 2012. He has been employed by his current employer, a federal contractor, since January 2012.<sup>2</sup>

Applicant testified that he no longer cohabitates with his ex-wife, who is a citizen of Japan and resides in the United States. He lived with her from approximately 2014 until May 2016, so they could share rent. They may occasionally talk or have dinner, but he has no consistent contact with her. She is in the United States legally. He has had no contact with her family or any of her friends, who are citizens and residents of Japan since 2008.<sup>3</sup>

Applicant completed government interrogatories on May 17, 2016. In them, he explained that he did not file his 2011 federal income tax return because he did not "receive the documents required to file."<sup>4</sup> He testified that he attempted to contact his former employer several times to obtain the required documents, but was unable to get a response. He stated that he never received any correspondence from the Internal

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<sup>1</sup> I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines.

<sup>2</sup> Tr. 18-24; GE 1.

<sup>3</sup> Tr. 20, 24, 43-47.

<sup>4</sup> GE 2.

Revenue Service (IRS) about his 2011 tax returns.<sup>5</sup> He indicated that he filed his 2012 and 2013 federal income tax returns, and believed he owed taxes that have not been paid. He stated:

2014 may not have been filed. I requested the transcript for each year and only received 2012 and 2013. The reason I filed late is because after my divorce I forgot to change my allowances. So at the end of the year I owed money. That caught me off guard so I didn't file until the following year and I didn't change my allowances until recently. So I'm still catching up.<sup>6</sup>

Applicant testified that because his tax forms were setup to show he was married, he never got around to changing them. He stated that when it was time to file his tax returns he realized he owed taxes that he could not afford to pay.<sup>7</sup>

Applicant testified that he understood and was aware of his duty to file his tax returns. He explained he had no excuse for failing to file his tax returns. Letters from the IRS indicated that he requested transcripts on May 2, 2016. The transcripts reflect his 2012 federal income tax return was filed on May 26, 2014, and his 2013 tax return was filed on July 6, 2015. He owed federal income taxes for both years. Applicant provided a receipt dated June 5, 2017, showing he paid \$190 for tax year 2013. It is unknown if this amount satisfies his total tax debt for that year. He believed this amount owed may be for a penalty, and he thinks he has paid the debt for 2013. He testified that he still owes taxes to the IRS for tax year 2012 and has not arranged to pay this debt. He did not file his 2012 or 2013 federal income tax returns timely because he owed taxes and did not have the money to pay them. He considered having more money withheld from his income throughout the year, but did not because it would create a financial burden during the year. He has not filed his 2014, 2015, or 2016 federal tax returns. He believes he owes taxes for each year and has not paid them.<sup>8</sup>

Applicant failed to timely file his state income tax returns for tax years 2011 through 2014. He stated that he has now filed his 2012 and 2013 state income tax return and would provide documents to support his claim. He failed to do so. He doubted that he filed his 2011 state income tax returns and he did not file or pay his 2014 through 2016 state tax returns.<sup>9</sup>

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<sup>5</sup> Tr. 32-34.

<sup>6</sup> GE 2.

<sup>7</sup> Tr. 28-29.

<sup>8</sup> Tr. 25-32, 34-36, 40. Applicant's failure to pay 2014 federal and state income taxes, and failure to file 2015 and 2016 federal and state income tax returns and pay taxes for those years were not alleged. I will not consider these facts for disqualifying purposes, but will consider them when assessing Applicant's credibility, in applying the mitigating conditions, and when analyzing the whole person.

<sup>9</sup> Tr. 36-40.

Applicant failed to pay the collection account alleged in SOR ¶ 1.d because it went to a collection account before he received the bill. When he became aware of it and had sufficient money to pay it, he repeatedly forgot about it because he had other financial priorities. He provided a receipt dated June 4, 2017, for \$168, showing the debt in SOR ¶ 1.d is paid.<sup>10</sup>

## **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 list potentially disqualifying conditions and mitigating conditions, which are used 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. Likewise, I have not drawn 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. Directive ¶ E3.1.15 states that 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 to obtain 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

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<sup>10</sup> Tr. 40-41; AE B.

extrapolation of 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 for financial considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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>11</sup>

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following four are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and

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

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant failed to timely pay a delinquent debt that went to collection. He failed to timely file his 2011 through 2014 federal income tax returns. He failed to file his 2011 through 2014 state income tax return. He is indebted to the federal government for delinquent taxes for at least tax years 2012 and 2013. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counselling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is compliance with those arrangements.

Applicant is aware of his duty to timely file federal and state income tax returns. He failed to file his federal and state income tax returns from 2011 through 2014, because he believed he owed money and did not have it to pay. He was made aware by the SOR that this was a security concern. He filed his 2012 and 2013 federal income tax returns, but had not filed federal returns for 2014, 2015, or 2016 tax years. He made a payment toward his 2013 federal tax debt, but it is unknown if the total balance is paid. He continues to owe federal taxes for 2012, and for 2014 and subsequent tax years. He believed he filed his state income tax returns for 2012 and 2013, but failed to provide documentary proof. His years of failure to responsibly file his federal and state tax

returns and pay taxes casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant stated that he attempted to obtain documents from his former employer for tax year 2011, but was unsuccessful. This may have been beyond his control. There is no other evidence that he was prevented from filing income tax returns for tax years 2012 through 2014, due to conditions beyond his control. Applicant eventually filed his 2012 and 2013 federal tax returns, but provided no evidence to show he filed state returns for 2012, 2013, or 2014. He failed to provide evidence that he paid any remaining federal taxes owed. He paid a collection debt alleged in SOR ¶ 1.d, but not until two days before his hearing. I find AG ¶ 20(b) partially applies regarding his efforts to obtain 2011 tax documents from his former employer.

There is no evidence Applicant received financial counseling. Applicant has not provided evidence that he filed his 2011 through 2014 state income tax returns, or his 2014 federal income tax returns. In fact, he failed to file his 2015 and 2016 federal and state tax returns that are not alleged. There is insufficient evidence to conclude that Applicant's financial and tax problems are resolved or under control. AG ¶ 20(c) does not apply. Although Applicant paid the debt in SOR ¶ 1.d, I cannot find that it was a good-faith effort to pay the overdue creditor as it occurred two days before his hearing. He provided evidence that he filed his 2012 and 2013 federal income tax returns late, but none of the other years alleged. There is insufficient evidence that Applicant has made arrangements with the IRS or the state tax authority to file his delinquent returns or make arrangements to pay the amounts owed. There was some evidence that Applicant made a payment toward his 2013 federal tax debt, but it is unknown if that satisfied the balance owed. I find AG ¶ 20(d) does not apply and AG ¶ 20(g) has marginal application.

## **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 7, and the following two are potentially applicable:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

Applicant does not cohabitate any longer with a citizen and resident of Japan. Before May 2016, he lived for a period with his ex-wife, who is a citizen of Japan and resident of the United States. He has minimal contact with her. He has not had any contact with his ex-wife's family and friends, who are citizens and residents of Japan since approximately 2008. The evidence does not support a conclusion that Applicant's infrequent contact with his ex-wife, who resides in the United States, or her relatives and friends living in Japan, create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. AG ¶ 7(a) does not apply. There is also insufficient evidence to conclude that Applicant's connection with his ex-wife and her family creates a potential conflict of interest between his obligation to protect classified or sensitive information or technology and his desire to in some way help them or Japan by providing such information. AG ¶ 7(b) does not apply. This guideline is found in Applicant's favor.

### **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(d):

(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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is 32 years. He served in the military for four years and received an honorable discharge. He was unemployed for a period. He has a history of failing to timely file federal and state income tax returns and paying taxes. Despite being aware of the Government's security concerns, he has not complied with his legal obligations. His conduct raises questions about his judgment, reliability, and trustworthiness. His connections to his ex-wife and her Japanese relatives no longer raises security concerns. Overall, the record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude he has mitigated the security concerns under Guideline B, foreign influence, but failed to mitigate 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline B:	FOR APPLICANT
Subparagraphs 2.a-2b:	For 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 a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge