



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



In the matter of: )  
)  
) ISCR Case No. 15-05148  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: *Pro se*

01/11/2018  
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**Decision**  
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GARCIA, Candace Le'i, Administrative Judge:

Applicant failed to mitigate the security concerns raised by his failure to timely file his federal income tax returns and his delinquent federal and state taxes. Clearance is denied.

**Statement of the Case**

On January 6, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. 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) implemented by the DOD on September 1, 2006.<sup>1</sup>

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<sup>1</sup> I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Applicant responded to the SOR on February 21, 2017, and elected to have his case decided on the written record in lieu of a hearing. The Government's written case was submitted on March 27, 2017. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on April 11, 2017. He did not respond to the Government's FORM. The case was assigned to me on October 1, 2017. The Government's documents identified as Items 1 through 11 are admitted in evidence without objection.

### **Findings of Fact**

Applicant admitted the SOR allegation in ¶ 1.a. As he did not specifically admit or deny the SOR allegations in ¶¶ 1.b and 1.c, I have construed his lack of a specific response as denials.<sup>2</sup>

Applicant is 68 years old. He obtained his high-school diploma at a date not in the record. He attended community college from 1968 to 1971 but did not earn a degree. He worked for the federal government from March 1971 until he retired in August 2004. He has been employed by a defense contractor since August 2004, during which time he rotated every six months until July 2007 between an overseas deployment and working in-country. He was first granted a DOD security clearance in 1971.<sup>3</sup>

Applicant married in 1972, divorced in 1981, and married again in 1984. He has four adult children.<sup>4</sup>

The SOR alleges that Applicant failed to timely file his federal income tax returns for tax years 2009 through 2014. It also alleges that he owed \$4,994 in delinquent state taxes and \$3,092 in delinquent federal taxes. Applicant listed and discussed his failure to file and pay his 2008 and 2009 state and federal taxes on his March 2014 security clearance application and in his June 2014 interview. He also listed his failure to timely file his federal income tax returns from 2009 through 2014, and his delinquent state and federal taxes, in his September 2016 response to interrogatories.<sup>5</sup>

Applicant attributed the untimely filing of his federal tax returns and his delinquent taxes to his belief that his wife took care of their finances and tax obligations. He stated that he first became aware that she had not done so when he received a garnishment notice for unpaid state taxes at a date not in the record. He also indicated that during most of the years in which he failed to timely file his federal tax returns, he and his wife paid his one child's college tuition and student loan expenses, and had to financially

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<sup>2</sup> Item 2.

<sup>3</sup> Items 3, 6, 9.

<sup>4</sup> Items 3, 6, 9.

<sup>5</sup> Items 1-2, 6, 8-9.

assist another child who was only able to obtain part-time employment. He also cited to tax reform and their inability to continue to claim their children as dependents on their taxes as contributing factors.<sup>6</sup>

In his security clearance application and during his interview, Applicant indicated that he owed \$35,000 in federal taxes for tax period 2008, and paid the majority of it at the time he filed his 2008 taxes by borrowing \$30,000 from his 401k. He then paid the remaining \$12,440 in 2012, after a tax lien was entered against him. He indicated that he still owed and was working to resolve the interest that accrued for both his state and federal taxes, which he believed was between \$600 and \$800. He expected to pay the outstanding interest by the end of 2014.<sup>7</sup>

In his response to interrogatories, Applicant indicated that he filed his 2009 and 2011 tax returns in December 2013, his 2014 tax returns in April 2015, and his 2013 tax returns in April 2016. He provided “no info” for tax period 2010, and he indicated a “notice of intent to levy 5/2014” for tax period 2012. He did not specify whether this information pertained to his federal or state tax returns. He also indicated that he owed \$3,092 in past-due federal taxes and \$4,994 in past-due state taxes.<sup>8</sup>

Credit reports from April 2014 and May 2015 reflect that a tax lien of \$12,440 was filed against Applicant in June 2012, and the lien was paid and released in November 2012. The reports reflect that Applicant had a \$4,382 outstanding lien that was filed against him in September 2014. The reports do not reflect any other outstanding debts.<sup>9</sup>

An April 2015 IRS notice reflected that Applicant had a \$16,773 overpayment in 2010 for tax period 2009. From this overpayment, the IRS applied \$10,260 to tax he owed for 2010, \$900 to tax he owed for 2011, and \$3,770 to tax he owed for 2012, and Applicant received a \$1,917 refund. An April 2016 IRS notice reflected that Applicant owed \$1,468 in unpaid taxes for tax period 2013, and \$861 for tax period 2014.<sup>10</sup>

IRS records also reflected that as of August 2016, Applicant filed his 2009, 2011, and 2012 federal tax returns in December 2013, and he filed his 2013 and 2014 federal tax returns in April 2016. Applicant owed \$5,731 for tax period 2009; \$4,726 for tax period 2011; zero for tax period 2012; \$1,485 for tax period 2013; and \$873 for tax period 2014. As an August 2016 IRS tax return transcript for tax period 2010 reflected

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<sup>6</sup> Items 2, 3, 6, 9.

<sup>7</sup> Items 3, 6-9, 11.

<sup>8</sup> Item 7.

<sup>9</sup> Items 4-5.

<sup>10</sup> Item 10.

that a return transcript was no longer available, though an account transcript might have been, it is unclear when Applicant filed his 2010 taxes.<sup>11</sup>

In his Answer, Applicant stated that he cashed out his IRA, took out a loan from his 401k, applied most of his wife's retirement buyout bonus, and made additional payments to pay his taxes. He further stated:

The amount listed on the Statement of Reasons for past due Federal taxes was incorrect. The taxes had been paid, the amount listed was interest owed for filing late. As of today, our federal taxes are current. Our state taxes have been filed and we have set up a payment plan to bring them current within the next year.

He did not provide documentation to corroborate his claims.<sup>12</sup>

Applicant indicated that he has been in government service for over forty years and his loyalty has never been at issue. He stated that he is a responsible person. He further stated that he does not let his debts go unresolved without making an effort to see them completely paid in full no matter how long it takes.<sup>13</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 to be 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, 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. 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 national security eligibility will be resolved in favor of the national security."

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<sup>11</sup> Item 10.

<sup>12</sup> Item 2.

<sup>13</sup> Item 2.

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.

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.

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**

### **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. . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) a history of not meeting financial obligations; and

(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 file his federal income tax returns for tax years 2009 through 2014, as required, and pay his federal and state taxes. The evidence is sufficient to raise AG ¶¶ 19(a), 19(b), and 19(f) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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 financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling 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;

(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; and

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

Applicant's belief that his wife took care of their finances and tax reform constitute conditions beyond his control that contributed to the untimely filing of his tax returns and his delinquent taxes. However, the remaining contributing factors cited by him do not constitute conditions beyond his control, and he did not provide evidence to show that he acted responsibly under his circumstances. He did not file his 2009, 2011 and 2012 federal tax returns until December 2013, and his 2013 and 2014 federal tax returns until April 2016. While he resolved his 2012 federal taxes, the record shows that he only did so in 2015 through the application by the IRS of his overpayment from tax

period 2009. He still has outstanding federal and state taxes. There is insufficient evidence to conclude that his financial problems are unlikely to recur, and they continue to cast doubt on his current reliability, trustworthiness, and good judgment. Circumstances beyond his control only partially contributed to his financial problems, but he did not act responsibly under his circumstances. AG ¶¶ 20(a) and 20(b) do not apply.

Applicant has not received financial counseling. AG ¶ 20(c) does not apply. As of August 2016, Applicant has outstanding federal taxes for tax periods 2009, 2011, 2013, and 2014. He did not provide documentation to corroborate his claim that he paid, set up a payment plan, or is making payments in accordance with a payment plan to resolve his outstanding federal and state taxes. AG ¶¶ 20 (d) and (g) do not apply.

While Applicant stated in his Answer that the amount listed on the Statement of Reasons for past due federal taxes was incorrect, he acknowledged that the amount listed was interest owed for filing late. As such, he still has outstanding federal taxes. He did not provide documentation to show that he disputed or has taken other actions to resolve his outstanding federal taxes. AG ¶ 20(e) does not apply.

### **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):

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

Applicant retired from the federal government after 33 years of public service. Since then, he has been employed by a defense contractor, during which time he

rotated every six months until July 2007 between an overseas deployment and working in-country. He was first granted a DOD security clearance in 1971.

While Applicant filed his federal income tax returns from 2009 through 2014, he did so only in December 2013 and April 2016. Moreover, his federal and state taxes remain unresolved. He failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant

### **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Candace Le'i Garcia  
Administrative Judge