



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



In the matter of: )  
)  
) ISCR Case No. 16-02713  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagle, Esq., Department Counsel  
For Applicant: *Pro se*

09/10/2018  
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**Decision**  
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BENSON, Pamela C., Administrative Judge:

Applicant 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 May 28, 2015, Applicant submitted a security clearance application (SCA). On February 15, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) 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) 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>

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

Applicant answered the SOR on March 10, 2017. He admitted the single SOR allegation alleged under Guideline F. He did not provide any personal statement or supporting documentation with his response. He requested that his case be decided by an administrative judge on the written record in lieu of a hearing.<sup>2</sup> On March 28, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing three Items, was mailed to Applicant on March 29, 2017. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not respond to the FORM nor object to Items 1 through 3, which are admitted into evidence. The Defense Office of Hearings and Appeals (DOHA) Office assigned the case to me on May 14, 2018.

### **Findings of Fact**

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact: Applicant is 50 years old and employed by a Defense contractor as a network engineer since January 2013. He has been married since 1998. There were no children listed on the SCA. He is requesting national security eligibility.<sup>3</sup>

The SOR alleges that Applicant failed to file and pay Federal income taxes for the tax years 2012 and 2013. On his 2015 SCA, Applicant disclosed that he had not filed or paid his 2012 and 2013 Federal income taxes, and he estimated owing a total of \$20,000 to the Internal Revenue Service (IRS) for both years.<sup>4</sup>

DOHA sent Applicant interrogatories asking him to verify his background subject interview report dated July 24, 2015. He was also requested to submit documentation of his filed 2012 and 2013 Federal income tax returns, records of any tax payments, and the current balance of any outstanding tax liabilities. Applicant did not provide any tax documents with his December 2016 response, and he listed that the Federal taxes remained unpaid. He verified the attached subject interview as being accurate. During his July 2015 interview, Applicant reported to the investigator that he had filed extensions for the filing of his Federal tax income returns for 2012 and 2013. He claimed that these Federal income tax returns were then filed. He owed approximately \$20,000 to the IRS for both tax years. He was communicating with the IRS to determine payment arrangements, and he was waiting for approval by the IRS. Applicant admitted to the investigator that he had not yet started paying on his delinquent Federal taxes.<sup>5</sup>

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<sup>2</sup> Item 1.

<sup>3</sup> Item 2.

<sup>4</sup> Items 1, 2.

<sup>5</sup> Item 3.

## 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 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 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. Under Directive ¶ E3.1.15, 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 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 or, 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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following are potentially applicable:

- (a) inability to satisfy debts;
- (c) 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 timely file Federal tax returns for at least two consecutive years. He owes approximately \$20,000 for his Federal tax debt. He did not provide any documentation to show that he filed his Federal income tax returns for 2012 or 2013. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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.

AG ¶¶ 20(a) and (b) are not established. Applicant did not provide documentation or any explanation of his circumstances to demonstrate that his failure to timely file or pay Federal taxes is unlikely to recur. There is no evidence that Applicant's tax problems were beyond his control. His failure to take action for many years does cast doubt on Applicant's reliability, trustworthiness, and good judgment.

There is no evidence Applicant received financial counseling. He has not established any documented good-faith action of his efforts to resolve his Federal tax debt of approximately \$20,000, nor is there any evidence to show that Applicant has filed his 2012-2013 Federal income tax returns. AG ¶¶ 20(c), (d) and (g) do not apply.

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>6</sup>

### **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

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<sup>6</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

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 my whole-person analysis. Some of the factors in AG ¶ 2(d) was addressed under that guideline, but some warrant additional comment.

Applicant is a 50-year-old federal contractor employee. He provided no explanation or documentation to mitigate the security concerns under Guideline F, despite given many opportunities to do so. He failed to provide documentation in response to the interrogatories, the receipt of SOR, and after the receipt of the Government's brief and attached documents. Absent a compelling excuse or reason, his failure to timely file his Federal tax returns and pay his Federal tax debt of approximately \$20,000 reveals a deficiency in his judgment, reliability and trustworthiness required of persons handling sensitive information. A person who fails repeatedly to fulfill his legal obligations, such as filing income tax returns when due, suggests that an applicant may likewise have a problem with complying with well-established government rules and procedures. Applicant's conduct raises questions about his judgment, reliability, and trustworthiness.

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 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:                                **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 grant Applicant a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson  
Administrative Judge