



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



In the matter of:

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) ISCR Case No. 16-03470  
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Applicant for Security Clearance

**Appearances**

For Government: Daniel F. Crowley, Department Counsel  
For Applicant: *Pro se*

April 30, 2018

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On January 19, 2015, Applicant submitted Electronic Questionnaires for Investigation Processing (e-QIP). (Government Exhibit 3.) On January 17, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) 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 after September 1, 2006.

Applicant answered the SOR on March 28, 2017. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On June 27, 2017, Department Counsel submitted the Government's written case. A

complete copy of the File of Relevant Material (FORM), containing nine Items, was received by Applicant on July 13, 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 responded to the FORM on August 15, 2017. Department Counsel had no objection to Applicant's documents and they are admitted into evidence. DOHA assigned the case to me on November 9, 2017. Applicant had no objection to Government's items. Therefore, items 1 through 9 are admitted into evidence, and hereinafter referenced as Government Exhibits 1 through 9.

The Government amended without objection, allegation 1.b., of the SOR. Due to an inadvertent clerical error, the creditor in allegation 1.b., was misidentified as the State of Maryland for a tax lien, instead of the "United States on a Federal tax lien."

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

### **Findings of Fact**

Applicant is 63 years old. He has a bachelor's degree. He is self-employed as a defense contractor, and holds the position of senior information security consultant. He is seeking to obtain a security clearance in connection with his employment.

### **Guideline F - Financial Considerations**

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information.

Applicant served on active duty in the United States Air Force from July 1975 until July 1979 when he received an honorable discharge. He has been working for his current employer since August 2014. He has held his current security clearance since about 2004.

The SOR identified three allegations under this guideline concerning Applicant's owing state and Federal back taxes; and his failure to timely file his state income tax return for tax years 2015. In his answer to the SOR, Applicant admits allegations 1.a

and 1.b, and denies allegation 1.c. Applicant attributes his failure to pay his income taxes to problems he encountered with an accounting software program he used to prepare his tax returns. He contends that the problem was discovered in 2014 and that he is currently resolving the issue.

Applicant is indebted to the state for a tax lien entered against him in 2014 in the approximate amount of \$14,708. In his answer to the SOR, Applicant stated that he has been making payments of \$500 per month to the state for his back taxes owed and by March 28, 2017, he has reduced the balance to \$11,458. In his response to the FORM, Applicant provides evidence of payment in full to the state for his tax liability and a release of lien.

Applicant is indebted to the United States for a Federal tax lien entered against him in 2014 in the approximate amount of \$50,281. In his response to the FORM, Applicant stated that he entered into an installment agreement with the IRS on October 16, 2014, and has continued to pay \$850 per month toward this debt. Applicant has provided proof of this payment to the United States by providing copies of his bank statements from 2014 through 2017 showing payments without interruption. (See Applicant's Response to FORM.) Applicant is also saving money to put toward an offer in compromise to settle this matter sooner.

Applicant denied the allegation that alleges that he failed to file his state income tax return for tax year 2015. Applicant provided a copy of his 2015 state tax return submitted by a professional tax firm indicating that he had filed an extension in which to file his return, and that it was filed prior to October 15, 2016 (See answer to SOR, specifically letter from his accountant dated May 9, 2016.)

Applicant deeply regrets that this tax problem ever occurred. He states that this was a one-time occurrence and an oversight that he did not know about until it was brought to his attention. Since learning of the problems, he has worked diligently to resolve them. Applicant has corrected his tax problems, and has paid, or is currently paying the taxes owed. He states that this situation will not recur again.

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 avoided drawing 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, 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 clearance 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 as to 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. 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. One is possibly applicable in this case:

(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.

The mistake that impacted the Applicant here could happen to anyone. Applicant used a tax accounting system that was mistaken in its calculations. Upon learning of the error, he responded by correcting his problem and resolving the issues. He is currently paying his Federal back taxes, and has already paid off his state back taxes in full. Applicant has demonstrated the high degree of judgment and reliability required to hold a security clearance. He had filed the state income return in question in a timely fashion and allegation 1.c. should never have been alleged.

The following mitigating conditions under the Financial Considerations guideline are potentially applicable under AG ¶ 20:

(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 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; and

(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 in compliance with those arrangements.

To reiterate, Applicant actually timely filed the state income tax return for tax year 2015, and he has corrected his other tax problems. He has resolved his state tax lien and is paying his Federal back taxes. He understands that he must always comply with Federal and state law. He also understands that going forward he must be careful to ensure that the problem does not occur again. In order to continue to be eligible for access to classified information, Applicant must demonstrate good judgment and reliability in every area of his life, including his financial affairs and tax issues.

### **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 relevant facts and circumstances surrounding this case. I conclude Applicant has mitigated the Financial Considerations concerns.

### **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:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	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 grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson  
Administrative Judge