



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



In the matter of: )  
)  
) ISCR Case No. 16-03498  
)  
Applicant for Security Clearance )

**Appearances**

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

10/27/2017  
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**Decision**  
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GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the financial considerations security concerns. He filed his overdue tax returns and paid his taxes. He filed his recent tax returns and received a refund or had a zero balance. His financial situation is under control and it is unlikely similar issues will reoccur. He also mitigated the criminal conduct concern involving an October 2016 disorderly conduct conviction. Applicant's eligibility for a security clearance is granted.

**Statement of the Case**

On December 16, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations) and Guideline J (criminal conduct). The action was taken under Executive Order (Exec. Or.) 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 DOD on June 8, 2017.

Applicant responded to the SOR on February 1, 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 April 25, 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. He received the Government's FORM on May 8, 2017, and responded with documents that I have marked collectively as Applicant's Exhibit (AE) A. The case was assigned to me on October 1, 2017. The Government's documents identified as Items 1 through 6 and AE A are admitted in evidence without objection.

### **Findings of Fact**

The SOR alleges that Applicant failed to file his federal and state income tax returns, as required, for at least tax years 2014 and 2015. It also alleges that Applicant owed the IRS \$2,150 in unpaid federal taxes for tax year 2012, and \$5,040 in unpaid federal taxes for tax year 2013. Finally, it alleges that Applicant was arrested and charged with contributing to the delinquency of a minor in March 2016, convicted of disorderly conduct in October 2016, placed on court supervision for six months in November 2016, and the case remained open as of the date of the SOR. In his response to the SOR, Applicant admitted ¶¶ 1.b and 2.a, admitted in part and denied in part ¶ 1.a, and denied ¶ 1.c.<sup>1</sup>

Applicant is 55 years old. He is married and he has five adult children. He obtained his high school diploma in 1981, and he took online classes with four colleges between 2009 and 2016 but had not earned a degree. He served honorably in the U.S. military from 1985 until he retired in 2005. He was unemployed from September 2005 to February 2006 and April 2011 to October 2012. He previously worked for three defense contractors between February 2006 and February 2013, and he has worked for his current defense contractor since February 2013. He was first granted a DOD security clearance in 1986.<sup>2</sup>

In his September 2015 security clearance application, Applicant attributed his failure to file his 2014 federal and state income tax returns to his frustration with the balances he owed for prior tax years and misplacing his W-2 tax forms. In his response to the SOR, Applicant stated that he was under the mistaken impression that he had up to three years to file his tax returns, after having received refunds in prior tax years. He indicated that he learned otherwise when he received the SOR. He stated that he prepared his 2014 federal and state income tax returns in 2016, but he had not filed them because he was unable to do so electronically; he intended to do so promptly. He also stated that he filed his 2015 federal and state tax returns electronically in 2016 and received a refund, which the IRS applied to taxes he owed for prior tax years.<sup>3</sup>

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<sup>1</sup> Items 1-2.

<sup>2</sup> Items 3-4.

<sup>3</sup> Items 2-3.

Applicant listed in his application and discussed in his April 2016 subject interview that he owed \$7,000 in unpaid federal income taxes for tax period 2010, \$3,000 for 2012, and \$2,000 for 2013. He indicated that the primary reason he became delinquent on his 2012 and 2013 federal income taxes was because he was trying to resolve his 2010 federal income taxes. He first learned from the IRS that he owed \$7,000 for the 2010 tax period in December 2012, at which point he set up a payment plan of \$256 monthly, but then stopped payments after one year when he did not see his balance decrease.<sup>4</sup>

Applicant also cited the following financial hardships as factors that contributed to his delinquent taxes: (1) relocation expenses for his family of seven in 2005 after he retired from the military; (2) his and his wife's period of unemployment in 2005; (3) his unemployment between April 2011 and October 2012; (4) deaths of family members in December 2012, January 2016, and November 2016; (5) his father's medical expenses in 2015; and, (6) the costs of bailing his sons out of jail in 2015.<sup>5</sup>

Applicant stated in his response to the SOR that he set up a \$147 biweekly payment plan with the IRS in July 2013. He also adjusted his federal income tax withholdings to provide a yearly overage that would go towards his back taxes. He provided documentation of payments he made to the IRS from February 2014 to June 2014, and September 2015 to January 2017. He also provided IRS account transcripts for tax periods 2012 through 2016. The transcripts show that he: (1) filed his 2012 federal income tax return in June 2013 and had a \$5 balance as of January 2017; (2) filed his 2013 federal income tax return in June 2014 and had an \$8 balance as of June 2017; (3) filed his 2014 federal income tax return in June 2017 and had a zero balance; (4) filed his 2015 federal income tax return in May 2016 and had a zero balance; and, (5) filed his 2016 federal income tax return in June 2017 and was issued a \$1,712 refund.<sup>6</sup>

Applicant stated in his June 2016 personal subject interview that he was initially unaware that he owed any state taxes for tax period 2014. He provided a July 2016 state department of revenue taxpayer statement that reflected, "This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed." The statement reflected that Applicant owed \$4,286 for the 2015 tax period, and he had already made payments or been credited for \$3,311. No other outstanding state tax information for Applicant was listed. He also provided documentation from an authorized state tax payment service showing that he paid his outstanding balance of \$1,179 for his 2015 state income taxes in July 2016.<sup>7</sup>

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<sup>4</sup> Items 3-4.

<sup>5</sup> Items 2-4.

<sup>6</sup> Item 2; AE A.

<sup>7</sup> Items 2, 4.

Applicant provided court records from June 2017 reflecting that he completed the court-ordered supervision for his October 2016 disorderly conduct conviction. The records also reflected that the case was pending dismissal. He acknowledged that he made a bad mistake when he purchased alcohol and rented a room for his adult son with the intent of keeping his son safe and not driving after partying, when unbeknownst to him underage individuals attended the party. He stated that there is no chance of reoccurrence.<sup>8</sup>

Applicant stated that his overall financial situation is good and he has not had any other financial problems. The November 2016 credit report corroborates his statement, as it does not report any delinquent debts.<sup>9</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(a), 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.

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

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<sup>8</sup> Items 2, 4, 6; AE A.

<sup>9</sup> Items 2-5.

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 that an 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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

- (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 was delinquent in his federal taxes for tax years 2012 and 2013. He also failed to file his federal and state income tax returns for tax year 2014, as required. Applicant's past tax issues establish AG ¶¶ 19 (a), 19(c), and 19 (f).

I have considered all of the mitigating conditions under AG ¶ 20 and considered the following relevant:

(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;

(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.

Applicant provided documentation to corroborate his claim that he filed his federal and state income tax returns for 2014 and 2015, and paid his 2012 and 2013 federal taxes. His financial situation is under control and it is unlikely to recur. AG ¶¶ 20(a), 20(d), and 20(g) apply.

## **Guideline J, Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant was arrested and charged with contributing to the delinquency of a minor in March 2016, and convicted of disorderly conduct in October 2016. He was placed on court supervision for six months in November 2016, and the case remained open as of the date of the SOR. AG ¶ 31(b) applies.

I have considered all of the mitigating conditions under AG ¶ 32 and considered the following relevant:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant acknowledged he made a bad mistake and there is no chance of reoccurrence. He provided court records from June 2017 reflecting that he completed the court-ordered supervision for his October 2016 disorderly conduct conviction, and the case was pending dismissal. As the record does not reflect any other criminal conduct, I find that this was an aberrational event that is unlikely to recur.

### **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 the 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 the facts and circumstances surrounding this case. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant mitigated the financial considerations security concerns involving his unpaid federal taxes for tax years 2012 and 2013, and his failure to file federal and state income tax returns for tax years 2014 and 2015, as required. I also conclude that Applicant mitigated the criminal conduct security concern involving his October 2016 disorderly conduct conviction.

### **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
Subparagraphs 1.a – 1.c:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	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 Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Candace Le'i Garcia  
Administrative Judge