



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case: 16-03900

**Appearances**

For Government: Robert B. Blazewick, Esquire, Department Counsel

For Applicant: *Pro se*

March 29, 2018

**Decision**

ROSS, Wilford H., Administrative Judge:

Applicant did not file his Federal or state tax returns for tax years 2012 through 2014 in a timely manner. He did not submit sufficient evidence to show that the returns have now been filed. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

**Statement of Case**

On August 27, 2015, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3.) On January 30, 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. (Item 1.) 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 February 24, 2017, and requested that his case be decided by an administrative judge on the written record without a hearing (Answer). (Item 1.) On April 11, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing four Items, was mailed to Applicant on April 12, 2017, and received by him on April 18, 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 submit additional information in response to the FORM, or object to its contents. The case was assigned to me on October 1, 2017.<sup>1</sup>

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* (December 10, 2016), 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 in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility, and eligibility to hold a security clearance. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new SEAD 4 AG.

## **Findings of Fact**

Applicant is 50 years old. He is not currently married. Applicant has worked for his current employer since 1980. (Item 3.)

### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has failed to meet his financial obligations and is therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

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<sup>1</sup> Department Counsel submitted four Items in support of the SOR allegations. Item 4 is inadmissible. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on October 7, 2015. Applicant did not adopt the summary as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation (ROI) summary is inadmissible in the Government's case in chief in the absence of an authenticating witness. (See Executive Order 10865 at Section 5.) In light of Applicant's admissions, Item 4 is also cumulative. Applicant is not legally trained and might not have understood Department Counsel's FORM footnote 1, which described the potential admissibility of Item 4. I therefor reviewed it for any potentially mitigating information that Applicant might have thought would be considered. Any such mitigating information will be discussed later in this decision.

The SOR alleges that Applicant failed to timely file his Federal and state tax returns of at least tax years 2012 through 2014. Applicant admitted both the SOR allegations. (Item 1.)

Applicant also provided the following statement on his Answer:

I have no good reason for not getting my tax returns filed. It started as a family issue and then it was an embarrassment to me. I never let anything like this go before. It wasn't because I thought I may have owed on taxes because I've always had returns on taxes. Like I stated "I have no good reason." I have taken care of the tax filings from 2011 to 2016 and don't plan to let this go again. (Item 2.)

In Section 23 of Applicant's e-QIP (Item 3) he admitted that he had not filed Federal or state taxes for years 2012 through 2014. Asked for the reason he stated, "Just had things go on I let get in the way which led to embarrassment of not getting it done. I don't believe I owe any money because I have enough taken out in taxes" He further stated in August 2015, "I plan on getting all of my filing caught up in the next couple months."

Applicant stated in his interview on October 7, 2015, that he did not file his 2012 tax returns because his girlfriend had health issues. Those health issues are not further identified. He further stated that he did not file tax returns in 2013 or 2014 because it was not a priority. (Item 4 at 5.)

Applicant did not provide any documentation, or other information, concerning when he filed his state or Federal income tax returns. In addition, he did not provide any information to show that he was entitled to a refund on his taxes, or whether he has paid any tax owed. Applicant provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 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 applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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, and has the ultimate burden of persuasion as to obtaining 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

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

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes one condition that could raise security concerns and may be disqualifying in this case:

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

Applicant failed to timely file Federal and state tax returns, as required, for at least three years. These facts establish prima facie support for the foregoing disqualifying condition, and shift the burden to Applicant to mitigate those concerns.

The guideline includes one condition in AG ¶ 20 that could mitigate the security concerns arising from Applicant's admitted failure to timely file tax returns:

(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 did not supply any documentation to show that he has filed any of his past-due tax returns. Nor did he submit any evidence to show that he has entered into a payment arrangement with the IRS or any state taxing authority, and is in compliance with such arrangements if he had filed tax returns and owed taxes. Applicant did state in his Answer that the returns have been filed. However, in these circumstances, that is not enough. AG ¶ 20(g) does not apply.

Applicant did not mitigate his tax issues. Guideline F is found against Applicant.

## **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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant did not provide any documentary evidence to support the contention in his Answer that the subject tax returns have been filed. The potential for pressure, exploitation, or duress remains undiminished. Overall, the evidence creates substantial doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guideline for 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 and 1.b:

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 national security eligibility and a security clearance. Eligibility for access to classified information is denied.

Wilford H. Ross  
Administrative Judge