



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 16-03923
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Pamela C. Benson, Esq., Department Counsel  
For Applicant: *Pro se*

11/24/2017

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**Decision**

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HESS, Stephanie C., Administrative Judge:

Applicant failed to timely file and pay his 2014 and 2015 Federal and state taxes. However, he has since filed and paid his taxes and taken proactive steps to prevent future tax-related issues. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on December 10, 2015. January 30, 2017, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order (Ex. 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 September 1, 2006.

Applicant received the SOR on February 22, 2017, and submitted his Answer to the SOR in March 2017. He requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on April 21, 2017. A complete copy of the file of relevant material (FORM), which included Government

Exhibits (GX) 1 through 5, was sent to Applicant on May 2, 2017. He was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on May 9, 2017, and his Response was received by the Defense Office of Hearings and Appeals (DOHA) within the allotted 30 days and admitted without objection. The case was assigned to me on October 1, 2017.

The SOR was issued under the AG implemented on September 1, 2006. The DOD implemented the amended AG on June 8, 2017, while this decision was pending. This decision will be based on the amended AG effective June 8, 2017.

### **Findings of Fact**

The SOR alleges that Applicant failed to file and pay his Federal and state income taxes for tax years 2014 and 2015 as required. Applicant admits that he failed to file and pay his Federal taxes, but denies that he failed to file and pay his 2014 and 2015 state taxes.

Applicant is a 55-year-old document declassifier currently employed by a federal contractor since January 2010, and in the defense industry since February 2001. He has held a security clearance since at least 2003. He received a bachelor's of science degree in 1984. He and his wife married in 1981, and have three children, a young adult and 18-year-old twins. (GX 1.)

Applicant was late filing and paying his taxes for 2014 and 2015 primarily due to being disorganized. Applicant did not gather all the necessary documentation he needed to timely file accurate returns. However, Applicant filed and paid his 2014 Federal taxes on February 7, 2017, prior to receiving the SOR on February 22, 2017. He filed and paid his 2015 taxes on March 3, 2017. Additionally, he filed his 2014 and 2015 state tax returns on September 30, 2016, and received a refund for both years in November 2016. As of November 2015, Applicant's employer, at the instruction of the Internal Revenue Service (IRS), changed Applicant's withholding rate and allowances to prevent future insufficient withholdings from Applicant's paychecks. (Answer.)

Applicant has held a security clearance for over 15 years. He is an ordained deacon, the past-president of his local Boys and Girls Club, and a youth coach. He has received counseling from a tax preparer whose recommendations Applicant is following. He lives within his means and is current with his ongoing financial obligations, including having paid 20 years on a 30-year mortgage, as well as paying college tuition and expenses for his twins. He will continue to comply with Federal and state tax requirements.

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The

President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant’s meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-

20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

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

The concern under this guideline 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.

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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's testimony, corroborated by the record evidence, establishes three disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”), AG ¶ 19(c) (“a history of not meeting financial obligations”), and AG ¶ 19(f) (“failure to file . . . annual Federal . . . income tax returns or failure to pay annual Federal . . . income tax as required.”) The following mitigating conditions under this guideline are potentially applicable:

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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 delinquent filing and paying of his 2014 and 2015 Federal and state taxes was due primarily to disorganization. However, he filed and received refunds for his 2014 and 2015 state taxes in 2016. He filed and paid his 2014 Federal taxes prior to receiving the SOR, and his 2015 Federal taxes in March 2017. Since November 2015, he has, at the suggestion of the IRS and the implementation of his employer, increased his withholdings to prevent future underpayment of taxes. Applicant sought and followed advice from a tax preparer. He will comply with Federal and state tax requirements and obligations.

"Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at \*4 (App. Bd. Oct. 12, 1999). A security clearance adjudication is an evaluation of a person's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that a person make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant acted in good faith by resolving his tax issues. Applicant's failure to timely file and pay his 2014 and 2015 taxes was not due to irresponsible conduct or reckless spending, but rather due to disorganization and under-withholding. He has acted responsibly by filing and paying his late taxes, and complying with his ongoing tax-related obligations. His past tax-related issues do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a), 20(d), and 20(g) apply.

## **Whole-Person Concept**

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but I have also considered the following:

Applicant has received counseling from a tax preparer whose recommendations Applicant is following. He lives within his means and is current with his ongoing financial obligations, including having paid 20 years on a 30-year mortgage, as well as paying college tuition and expenses for his twins. He will continue to comply with Federal and state tax requirements.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the potential security concerns raised by his failure to file and pay taxes. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a through 1.d: For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess  
Administrative Judge