



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-00271  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

08/03/2018

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**Decision**

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TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns regarding Guideline F (financial considerations). Clearance is granted.

**Statement of the Case**

On February 17, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. On April 20, 2017, Applicant responded to the SOR, and requested a hearing before an administrative judge.

On April 20, 2018, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On May 2, 2018, DOHA issued a notice of video teleconference hearing scheduling the hearing for May 22, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through N, which were admitted without objection. I held the record open until June 1, 2018 to afford the Applicant an opportunity to submit additional evidence. Applicant timely submitted AE O through W, which were admitted without objection.

On June 6, 2018, DOHA received the hearing transcript (Tr.). On June 12, 2018, I informed both parties that after due consideration, I intended to issue a summary decision in favor of the Applicant. On June 13, 2018, Department Counsel objected to a summary decision.

On July 19, 2018, Applicant submitted an email and letter, marked as AE X, in which he inquired about the status of his case. Among other things, he also expressed remorse and provided assurances that he had addressed the underlying issues that led to his failure to file his taxes. AE X was admitted over Department Counsel's objection.

### **Findings of Fact**

Applicant is a 30-year-old test technician employed by a defense contractor since January 2016. He seeks to retain his security clearance as a condition of his continued employment. (GE 1, Tr. 10-12)

Applicant graduated from high school in 2005, and attended community college, but did not earn a degree. He served in the Air National Guard (ANG) from 2005 to 2013, and was honorably discharged as a staff sergeant (pay grade E-5). While Applicant was in the ANG, he was deployed to the Middle East for five months. While in the ANG, he held a security clearance. (GE 1; AE P, AE Q; Tr. 12-15, 18) Applicant has never married and has no dependents. (GE 1)

### **Financial Considerations**

The SOR alleges and Applicant admits two allegations that he failed to file timely his state and Federal income tax returns for tax years 2013 to 2015. These allegations are also corroborated through the Government's exhibits. (GE 1 – 2)

Applicant has since filed all of his state and Federal returns that were in arrears. He attributed the delay in filing his tax returns to the chaos leading up to and following his discharge from the military, a cross-country move, and unemployment. (SOR Answer) Around the time Applicant was reaching the end of his obligated military service, two major events had an adverse impact on him. First, his long-term relationship with his girlfriend ended in 2013. Second, in the timeframe of 2014 to 2015, his father was involved in a serious motorcycle accident and he later had a heart attack. (Tr. 15-16, 22-23)

Applicant's post-military adjustment to civilian life did not go well either. Following his discharge, he worked as a sales associate at a low-paying job near home. Hoping to improve his employment prospects, he moved to another state, but was unable to find a job and was unemployed from February 2014 to January 2015. (GE 1) The combination of these setbacks caused Applicant to lose focus and he let the filing of his tax returns lapse. (Tr. 18) At no time was Applicant's failure to file his tax returns motivated by a desire to avoid paying his taxes. (Tr. 19)

When Applicant completed his January 29, 2016 security clearance application (SF-86), he self-reported his tax issues. (GE 1) During his June 20, 2016 Office of Personnel Management Personal Subject Interview (OPM PSI), he openly discussed his tax issues with the investigator. He stated, "he was unsure of what to do and could not afford professional tax help due to sporadic employment." Applicant added that, "he will seek professional tax help within the year." (GE 2) These two self-reporting events of his tax problems occurred before his SOR was issued on February 17, 2017.

Following through on his commitment to the OPM investigator to seek professional help and file his back taxes, he filed his 2013 state and Federal tax returns on May 25, 2017, and filed his 2014, 2015, and 2016 state and Federal tax returns on April 10, 2017. Applicant received state and Federal tax refunds for tax returns filed for 2013 through 2015. He experienced delays in getting the necessary documentation to file his back taxes. (Tr. 18-21; AE A – L)

Applicant asked the Government to forgive him for his mistake and noted that he had done everything he could to correct his tax situation. This has been a sobering experience for Applicant and he understands the importance of timely filing his tax returns. All of Applicant's state and Federal tax returns are current. (SOR Answer; Tr. 19, 22; GE 2; AE X)

Department Counsel thoroughly questioned Applicant on the tax issues. Applicant never wavered in his responses nor did he give any indication that he was being untruthful. Having had a chance to observe Applicant's demeanor and listen to his testimony, I found him to be credible and sincere regarding the circumstances that led up to his failure to file taxes. That said, it is clear that this experience has made an impression on Applicant and it is unlikely that he will ever fall behind on filing his taxes in the future. (SOR Answer; Tr. 20-23; AE O, AE X)

## **Character Evidence**

Applicant submitted his two most recent performance evaluations that reflect above average performance and document his contribution to the national defense. (AE O; AE R - T) Applicant also submitted two work-related reference letters and one personal reference letter. Two co-workers view him as a valued employee. His personal reference has known him for over 15 years. All three references describe Applicant as trustworthy, dedicated, and hard working. All three references recommend Applicant for a security clearance. (AE D - H)

## **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

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 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 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."

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 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 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

### Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes one disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(f) failure to file . . . annual Federal, state . . . income tax returns . . . as required." Applicant did not timely file his state and Federal income tax returns for tax years 2013 to 2015. The record established AG ¶ 19(f) requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 20 lists seven potential mitigating conditions:

(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 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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

(f) the affluence resulted from a legal source of income; 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.

Under these facts, application of AG ¶ 20(a) initially appears limited because three years of state and Federal income tax returns are at issue, and Applicant's tax filing issues have been ongoing until recently. Having regained his footing following the breakup of a long-term relationship, his concern over his father's motorcycle accident and subsequent heart attack, and the uncertainty of a lengthy unemployment, Applicant has filed all three years of his delinquent returns. Applicant is aware of his requirements to file his state and Federal tax returns and promised to file all required tax returns on time, as required. Consequently, I find AG ¶ 20(a) fully applies and AG ¶ 20(b) applies in part.

Moreover, Applicant was genuinely contrite over his laxity and oversight. He took appropriate corrective action. Evidence of his state and Federal tax return filings was introduced. He received refunds from state and Federal tax authorities for all three years in question. In the future, he will be mindful of his obligation to file his tax returns timely. The situation is now under control and AG ¶ 20(g) applies.

Applicant became overwhelmed with a series of life events and fell behind on filing his state and Federal tax returns for three years. The DOHA Appeal Board has commented:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App.

Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns*. Rather, it is a *proceeding aimed at evaluating an applicant's judgment and reliability*. *Id.* A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis in original). See ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015). The Appeal Board clarified that even in instances where an “[a]pplicant has purportedly corrected [the applicant’s] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant’s security worthiness in light of [applicant’s] longstanding prior behavior evidencing irresponsibility,” including a failure to timely file federal income tax returns. See ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. Jun. 15, 2016)

In ISCR Case No. 15-01031 at 2 (App. Bd. Jun. 15, 2016), the Appeal Board reversed the grant of a security clearance, and noted the following primary relevant disqualifying facts:

Applicant filed his 2011 Federal income tax return in December 2013 and received a \$2,074 tax refund. He filed his 2012 Federal tax return in September 2014 and his 2013 Federal tax return in October 2015. He received Federal tax refunds of \$3,664 for 2012 and \$1,013 for 2013.

Notwithstanding the lack of any tax debt owed when the tax returns were filed in ISCR Case No. 15-01031 (App. Bd. June 15, 2016), the Appeal Board provided the following principal rationale for reversing the grant of a security clearance, “By failing to file his 2011, 2012, and 2013 Federal income tax returns in a timely manner, Applicant did not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information.” ISCR Case No. 15-01031 at 4 (App. Bd. Jun. 15, 2016) (citations omitted).

On June 8, 2017, the new AGs went into effect. When completing his security clearance application in January 2016 and during his June 2016 OPM PSI, Applicant self-reported his failure to file his state and Federal tax returns for tax years 2013 to 2015. He stated during his OPM PSI that he would seek professional help and file those returns within the year. He followed through on his promise and in April and May 2017, Applicant “made arrangements with the appropriate tax authority to file [all

required federal income tax returns].” AG ¶ 20(g). Taking into account his credibility, contrition, and understanding of his responsibilities, there is sufficient assurance that his financial problems are resolved, are under control, and will not recur in the future. Under all the circumstances, financial considerations security concerns are mitigated.

### **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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration” of the guidelines and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 30-year-old test technician employed by a defense contractor since January 2016. He served honorably for eight years in the Air National Guard and deployed to the Middle East for five months during his military service. He successfully held a security clearance during his military service and while working as a defense contractor. His employer values him as an employee and supports him for a security clearance.

Applicant recognizes the importance of filing his state and Federal tax returns. Following a series of adverse life events, he fell short of those requirements for three years, but once he regained his footing, he addressed the problem. Noteworthy is the fact he self-reported his failure to file his tax returns and he filed them within the timeframe promised during his OPM PSI. Applicant does not question the importance of timely filing his tax returns. He expressed a significant level of contrition, filed the three years of state and Federal back tax returns and received refunds for all three years. He is current on the filing of all of his income tax returns. I agree with Applicant’s admission of negligence. This process had a sobering effect on Applicant and I am confident that he will endeavor to file timely his tax returns in the future.



I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, and the new AGs, to the facts and circumstances in the context of the whole person. I conclude that financial consideration security concerns are mitigated. It is clearly consistent with the interests of national security to grant Applicant security clearance eligibility.

### **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
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Subparagraphs 1.a – 1.b:	For Applicant
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### **Conclusion**

In light of all of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is granted.

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ROBERT TUIDER  
Administrative Judge