



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-00531

**Appearances**

For Government: Robert B. Blazewick, Esq., Department Counsel  
For Applicant: *Pro se*

01/24/2018

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**Decision**

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CREAN, Thomas M., Administrative Judge:

Applicant failed to provide sufficient evidence to mitigate security concerns for financial considerations under Guideline F. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 8, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for employment with a defense contractor. (Item 3) A security investigator from the Office of Personnel Management (OPM) interviewed Applicant on August 2, 2016. (Item 4, Personal Subject Interview (PSI)) On February 28, 2017, Applicant responded to interrogatories sent to him by the Department of Defense (DOD). The interrogatories included a request for information to clarify facts about Applicant, and a copy of the summary of the PSI. (Item 4) After reviewing the background investigation and Applicant's answers to the interrogatories, DOD could not make the affirmative findings required to issue a security clearance. On May 17, 2017, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) The action was taken under Executive Order 10865,

*Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on June 2, 2017. He admitted the two allegations of failing to timely file federal and state tax returns for tax years 2011 through 2013. He requested that the matter be decided on the written record. (Item 2) Department Counsel submitted the Government's written case on August 23, 2017. (Item 5) Applicant received a complete file of relevant material (FORM) on August 30, 2017, and he was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant timely responded to the FORM on September 29, 2017. Department Counsel had no objection to consideration of Applicant's response to the FORM. (Item 7, dated October 2, 2017) I was assigned the case on December 12, 2017.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing National Security Adjudicative Guidelines for *Determining Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs) which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the September 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.

### **Procedural Issues**

Applicant was advised in the FORM that the summary of the Personal Subject Interview (PSI) with an OPM investigator (Item 4) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the administrative judge could determine that he waived any objection to the admissibility of the PSI summary. Applicant did not raise an objection to consideration of the PSI in his respond to the FORM. Without an objection by Applicant, I will consider information in the PSI in my decision.

### **Findings of Fact**

After thoroughly reviewing the case file, I make the following findings of fact. Applicant is 59 years old. He completed his studies for a high school diploma in 1976, but was not awarded one because he had started taking college level courses. He graduated from college and received a bachelor's degree in 2010. Applicant served on active duty in the United States Marine Corps (USMC) from April 1984 to April 2004

when he retired honorably as a gunnery sergeant (E-7). Applicant married in November 1984 and he has one adult child.

Applicant has been eligible for access to classified information since 1986. The case file contains no indications of any security issue or violation. Applicant was employed by a defense contractor as a calibration technician from July 2004 until September 2006. He was employed as a movie theater manager from October 2006 until July 2011. He was a project manager for another defense contractor from August 2011 until November 2015. He has been a systems engineer for a defense contractor since November 2015. (Item 3, e-QIP, dated March 8, 2016; Item 4, PSI, dated August 2, 2016, including a DD 214)

The SOR alleges, and Applicant's PSI statement and his response to the interrogatories confirm, the two financial allegations in the SOR, that Applicant did not file federal tax returns for tax years 2011 through 2013 (SOR 1.a), and state tax returns for 2011 through 2013 (SOR 1.b)

Applicant noted his failure to file his state and federal tax returns for tax years 2011, 2012, and 2013 on his March 8, 2016 e-QIP. He wrote that he was seeking assistance from a "tax authority" to complete his tax returns. In the August 2, 2016 PSI, Applicant was questioned about his tax returns, and stated that he attempted to determine his taxes himself but did not calculate his taxes correctly. He filed tax returns for 2010, 2014, and 2015. He planned to file tax returns for 2011, 2012, and 2013 in September 2016. He indicated that he had filed his 2015 federal tax return. (Item 3, e-QIP, dated March 8, 2016; Item 4, PSI, dated August 2, 2016)

Applicant was sent interrogatories concerning his tax returns on February 22, 2017. Applicant responded to the interrogatories on April 21, 2017, stating that all of his federal and state tax returns have been filed. He included copies of his 2011, 2012, and 2013 federal and state tax returns that he signed on April 12, 2017, and mailed on April 19, 2017. (Item 4) The SOR is dated May 23, 2017. (Item 1) Applicant's SOR response is dated the same day and includes as exhibits his state and federal tax returns for 2011, 2012, and 2013. (Item 2, exhibits 1 through 4 and exhibits 8 through 10) He stated that his failure to timely file his 2011 through 2013 federal and state tax returns was due to "gross procrastination" and not due "to deception or illegal financial practices or tax evasion." (Item 2, at 2)

Applicant's supervisor stated that he has known Applicant since November 2015. Applicant exhibits good self-control, judgment, and abides by rules and regulations. He is reliable and trustworthy, and is always courteous and professional. The supervisor has no hesitation assigning him to difficult or critical tasks. Applicant's integrity and efficiency is of the highest caliber. The supervisor saw no reason to doubt Applicant's integrity or dedication. He recommended that Applicant be granted eligibility for access to classified information. (Item 2, Exhibit 12) In his annual performance rating, the supervisor rated Applicant's performance as excellent. (Item 2, Exhibit 13)

## **Policies**

When evaluating an applicant's suitability for a security clearance, 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 must be considered 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 access to classified information will be resolved in favor of 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining 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.

## **Analysis**

### **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. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. (AG ¶ 18).

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet their financial obligations. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is required to manage his or her finances in such a way as to meet financial obligations.

Applicant's admissions in his response to the SOR and the interrogatories shows his failure to timely file federal and state income tax returns for tax years 2011 to 2013. The evidence is sufficient to raise the following Financial Considerations Disqualifying Conditions under AG ¶ 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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 failed to timely file his federal and state tax returns for 2011 to 2013, and such failure can exhibit an inability and unwillingness to satisfy debts and meet his financial obligations. Once the Government has established the adverse financial issue, the Applicant has the responsibility to refute or mitigate the issue.

I considered the following Financial Consideration Mitigating Conditions 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 problems 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 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; 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.

The mitigating conditions do not apply. Applicant did not timely file his federal and state tax returns for at least three tax years because of gross procrastination. Procrastination does not relieve a person from timely filing returns. His lack of action to file the returns resulted in his financial problems being ongoing and recent, and not incurred under circumstances making recurrence unlikely. Applicant presented no evidence that he received financial counseling.

Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. All that is required is that Applicant act responsibly given his circumstances. Applicant must establish that he has a reasonable plan to resolve financial problems, and that he has taken significant action to implement that plan. Applicant's plan must show a systematic method of handling debts, and Applicant must establish a meaningful track record of tax filing. A meaningful track record of tax filing can be established by evidence of actually filing tax returns. A promise to timely file tax returns is not a substitute for a track record of filing returns in a timely manner and acting in a financially responsible manner.

Applicant knew when he completed his e-QIP in March 2016 that he had not timely filed his federal and state tax returns for 2011 through 2013. He was advised of his failure to file again during the PSI in August 2016. The requirement to timely file tax returns was reinforced when he received the interrogatories in February 2017. However after being advised three times of his failure to file the tax returns, Applicant did not file the tax returns until April 12, 2017.

Failure to timely file tax returns suggests that an applicant has a problem complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified and sensitive information. A person who fails to fulfill his or her legal obligation to timely file tax returns does not demonstrate the high degree of good judgment and reliability required for a grant of access to classified or sensitive information. Where an applicant may have attempted to correct the tax return problem, there must still be careful consideration of the applicant's trustworthiness in view of his longstanding prior behavior evidencing irresponsibility by failing to timely file income tax returns. By failing to file three years of federal and state tax returns, Applicant did not demonstrate the high degree of good

judgment and reliability required of persons granted access to classified or sensitive information

Applicant did not provide enough details about what he did to address the tax return allegations in the SOR. Tax return filing is a necessity. The fact that he merely procrastinated in filing his tax returns does not indicate that the Applicant is acting reasonably and reliably. Applicant did not provide sufficient documentation to show that he worked diligently to resolve the issues that was ongoing for three years. There is insufficient evidence to establish why Applicant was unable to make greater progress resolving his tax return problem. There is insufficient assurance that his tax problems are being resolved, are under control, and will not recur in the future. His lack of reasonable and responsible actions towards his tax return is a strong indication that he will not protect and safeguard classified or sensitive information. Under all these circumstances, Applicant failed to mitigate financial security concerns.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information must be an overall common-sense 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. I have considered that Applicant served 20 years in the Marine Corps and retired as a gunnery sergeant. I considered that he has been eligible for access to classified information for over 30 years without any issues. I also considered the opinion of Applicant's supervisor concerning Applicant's performance and that he should be granted access to classified information. However, Applicant was a Marine Corps gunnery sergeant. As a Marine and especially a gunnery sergeant, procrastination is not a sign of being responsible and exhibiting reasonable action. Procrastination is an excuse and not a reason for inaction. Applicant did not provide sufficient credible documentary information to establish that he took reasonable and responsible action to resolve his tax obligations. Applicant did not

demonstrate appropriate management of his finances. Overall, the record evidence leaves me with questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. He has not established his suitability for access to classified information. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial situation.

### **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:	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 eligibility for access to classified information. Eligibility for access to classified information is denied.

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THOMAS M. CREAN  
Administrative Judge