



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



In the matter of:

ISCR Case No. 17-01256

Applicant for Security Clearance

**Appearances**

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

February 23, 2018

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On February 9, 2016, Applicant submitted an Electronic Questionnaires for Investigation Processing (e-QIP). (Item 3.) On May 11, 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. The action was taken 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on June 6, 2017. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On June 28, 2017, Department Counsel submitted the Government's written case. A

complete copy of the File of Relevant Material (FORM), containing five Items, were received by Applicant on August 3, 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 responded to the FORM on August 3, 2017, and it was marked and admitted into evidence as Applicant's Exhibit A. DOHA assigned the case to me on November 9, 2017. Applicant had no objection to Government's items. Therefore, items 1 through 5 are admitted into evidence, and hereinafter referenced as Government Exhibits 1 through 5.

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*, 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 by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

### **Findings of Fact**

Applicant is 34 years old. He has a bachelor's degree. He is employed by a defense contractor as a Systems Integration Engineer. He is seeking to obtain a security clearance in connection with his employment. He has been working for his current employer since September 2012.

### **Guideline F - Financial Considerations**

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information.

The SOR identified one allegation under this guideline concerning Applicant's failure to file his Federal income tax returns for tax years 2012 through 2015. In his answer to the SOR, Applicant admits the allegation. Applicant explained his failure to file his Federal income tax returns was not due to a lack of means, but rather a failure to complete the required process and paperwork. (Government Exhibit 2.)

Applicant acknowledges his mistake in not filing his income tax returns in a timely fashion and is remorseful. In 2012, Applicant owned a house and rented it out. He then sold it. He was not sure how to include this information in his tax return and put off filing his tax returns. He then moved to another state, and continued to put off filing his tax returns. In about January 2016, Applicant hired a tax accountant to prepare and file all

of Applicant's missing tax returns. Applicant has now filed the income tax returns in question, and has provided copies of his Federal income tax returns for tax years 2013, 2014, 2015, and 2016. After trying to obtain a record of the account transcript from the IRS, Applicant learned that his 2012 income tax returns had actually been filed timely. (Applicant's Exhibit A.) By not filing his income tax returns on time, Applicant forfeited multiple refunds that he would have been entitled to. Additionally, due to refund expiration dates, he has lost access to several refunds, and will not be allowed to recoup the overpayments. Applicant has learned a hard lesson from this experience, and now understands the correct interpretation of the law, and it must always be followed. He understands the seriousness of this situation, and realizes that going forward, he must always file his income tax returns on time, if he is to avoid penalties and refund forfeitures, and to be security clearance worthy. Failure to complete the required paperwork and file his income tax returns shows poor judgment and unreliability, and disqualifies one from access to classified information. Applicant has filed his income taxes, and corrected his tax problems and states that he will never allow this situation to ever occur again.

## **Policies**

When evaluating an applicant's suitability for national security eligibility, 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 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 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 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 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 as to 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**

### **Guideline F - Financial Considerations**

The security concern for Financial Considerations 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. 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. One is applicable in this case:

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant failed to timely file his Federal income tax returns for tax year 2012, 2013, 2014, and 2015. Applicant's conscious decision to avoid his legal duty to file his

income tax returns indicates that he has a problem complying with well-established governmental rules and systems. His actions demonstrate both a history of and a unwillingness to abide by the law. By not fulfilling his legal obligation to file his income tax returns, Applicant has not demonstrated the high degree of judgment and reliability required to hold a security clearance. In Applicant's response to the FORM, he provides unsigned copies of his Federal income tax returns that he has purportedly filed for the years in question. The evidence is sufficient to raise the above disqualifying condition.

The following mitigating conditions under Financial Considerations are potentially applicable 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 problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation), 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; and

(g) the individual has made arrangement with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant initiated a good faith effort to resolve his tax filing problems. He has filed the income tax returns in question, including his income tax return for 2016, and he has corrected his tax problems. He also understands that going forward he must always comply with the annual tax filing obligation according to Federal law. He now knows that he must file his income tax returns in a timely fashion, and that his chronic history of not filing in the past, must never occur again. In the event that it does, Applicant's security clearance will be in immediate jeopardy. In order to continue to be eligible for access to classified information, Applicant must demonstrate good judgment and reliability in every area of his life, including his financial affairs and the timely filing of his annual income tax returns.

## **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.

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 relevant facts and circumstances surrounding this case. I conclude Applicant has mitigated the Financial Considerations concerns.

## **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
Subparagraph 1.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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson  
Administrative Judge