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



In the matter of: )  
)  
) ISCR Case No. 17-01360  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

12/07/2017

**Decision**

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 January 26, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for employment with a defense contractor. (Item 2) A security investigator from the Office of Personnel Management (OPM) interviewed Applicant on December 22, 2016. (Item 3, Personal Subject Interview (PSI)) After reviewing the background investigation, the Department of Defense (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 financial security concern for not filing federal and state tax returns for tax years 2012 through 2015. He requested that the matter be decided on the written record. (Item 1) Department Counsel submitted the Government's written case on June 26, 2017. (Item 4) Applicant received a complete file of relevant material (FORM) on June 29, 2017, and he was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not file a response to the FORM. I was assigned the case on October 23, 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 3) 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 respond to the FORM, so he did not raise any objection to consideration of the PSI. Since there is no objection by Applicant, I considered 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 72 years old. He graduated from college with a bachelor's degree in June 1968. He and his wife were married in August 1968. They have three adult children. Applicant was employed by a government agency as a mathematician from 1968 until 1987. He has worked for the same company, even as the company changed names, from 1987 until present as a computer scientist or software engineer. He initially was granted eligibility for access to classified information in 1968. His last reinvestigation and grant of eligibility was in 2011. The case file contains no indications of any security issue or violation. (Item 2, e-QIP, dated April January 26, 2016)

The SOR alleges, and Applicant's PSI statement confirms, the two financial allegations in the SOR, that Applicant did not file federal tax returns for tax years 2012 through 2015 (SOR 1.a), and state tax returns for 2012 through 2015 (SOR 1.b)

Applicant attributes the failure to file income tax returns to a dispute with his wife. Applicant acknowledged that for over 40 years, he completed joint tax returns for he and his wife using a computer program. His wife wanted to take over the tax filing responsibility so Applicant turned over the material to her. In 2012, his wife filed their 2011 returns with the assistance of an accountant. In 2013, his wife asked him why he did not file their 2012 tax returns. He told her he did not file the returns because he believe she wanted to take over the function. The tax returns for 2012 through 2014 were not filed as he and his wife were in what he described as a "stubborn head-butting" situation. (Item 3. PSI, dated December 22, 2016 at 2)

In 2016, Applicant realized the 2012 to 2014 tax returns as well as the 2015 returns had to be filed. He contacted a tax accountant to assist him. His wife still did not cooperate and wanted to file separately. Applicant pointed out to her that if they filed separately, it would increase the taxes he paid. He was hoping to get her to agree and to file the returns by January 2017. He expects if they file jointly, they will receive a refund for state taxes but owe some federal taxes. Applicant claims his accountant has completed the 2012 to 2014 returns but not the 2015 return. He did not provide copies of the completed returns or information that the returns are completed and ready to be filed. Applicant's original plan was to use funds his wife inherited to pay the taxes. She refuses to provide the funds, so his plan now is to take funds from his retirement account to pay the taxes. (Item 3, PSI, dated December 22, 2016, at 3-4)

In his response to the SOR, Applicant noted that the tax returns were not filed in January 2017 because his wife refused to sign joint returns. He reported that the tax information for 2013 has disappeared and cannot be found. He believes his wife knows the location of the information. In the meantime, he has arranged a meeting in June 2017 with a financial and family guidance center to assist in resolving the dispute. The federal and state tax returns for 2012 to 2015, as well as 2016 have not been filed. Applicant has known since at least January 2016 when he completed the e-QIP and noted that his tax returns had not been filed that his failure to file the tax returns was a security concern. (Response to SOR, dated June 2, 2017)

### **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 show a failure to file federal and state income tax returns for tax years 2012 to 2015. 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 agrees that when he files his past due tax returns he will owe federal taxes. His failure to file the returns and the taxes owed shows an inability and unwillingness to satisfy debt. 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 has not filed state and federal tax returns for at least four tax years. He claims his wife will not cooperate in filing the tax returns and she wants to either file the tax returns herself or file separately. Applicant admits that the dispute over tax returns with his wife is a stubborn head-butting issue for he and his wife. It is well recognized that filing tax returns and paying taxes is a necessary requirement of being a citizen. Hard-headed stubbornness does not relieve a person from filing returns and paying taxes. The available evidence shows that Applicant willingly and deliberately did not file federal and state tax returns for many years. His lack of action 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 or debt payment. A meaningful track record of tax filing and payment can be established by evidence of actual filing and payments. A promise to pay taxes or debts is not a substitute for a track record of filing returns and paying taxes in a timely manner and acting in a financially responsible manner. Applicant contacted a tax accountant to assist him in resolving his federal and state taxes, but he did not present any documents to establish the status of any plans or arrangements made with the state tax office or the Internal Revenue Service (IRS) to resolve the federal tax issues.

Failure to 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 repeatedly to fulfill his or her legal obligation to 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 four 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 a husband and wife are in dispute on filing tax returns, and both are stubborn does not indicate that the Applicant is acting reasonably and reliably. Applicant did not provide sufficient

documentation to show that he is working diligently to resolve the issues that has been ongoing for over four 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 has been employed since graduating from college in 1968 for either a government agency or a defense contractor. He has been eligible for access to classified information for almost 50 years without any issues. However, Applicant did not provide sufficient credible documentary information to establish that he took reasonable and responsible action to resolve his tax and financial obligations. Applicant did not demonstrate appropriate management of his finances and did not show a record of action to resolve tax and financial issues. 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