



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

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ISCR Case No. 18-00147

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

10/15/2018

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Applicant resolved his past-due mortgage debts, but he did not provide sufficient information to overcome the security concerns raised by his failure to file federal and state personal income tax returns since 2010. Applicant's request for eligibility for access to classified information is denied.

**Statement of the Case**

On March 9, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for access to classified information required for his work as a self-employed federal contractor. After reviewing the completed background investigation, adjudicators at the Department of Defense Consolidated Adjudications Facility (DOD CAF) could not determine that it was clearly consistent with the interests of national security for Applicant to have access to classified information.<sup>1</sup>

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<sup>1</sup> Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive).

On April 16, 2018, the DOD CAF issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations).<sup>2</sup> Applicant timely responded to the SOR (Answer) and requested a hearing.

I received this case on August 3, 2018, and scheduled the requested hearing for September 27, 2018. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 - 4. Applicant testified and proffered Applicant Exhibit (AX) A. All exhibits were admitted without objection, and the record was closed at the end of the hearing. I received a transcript (Tr.) of the hearing on October 5, 2018.

### **Findings of Fact**

Under Guideline F, the Government alleged that as of the date of the SOR, Applicant had not yet filed his federal (SOR 1.a) or his state (SOR 1.b) income tax returns for the 2010 – 2016 tax years. It was also alleged that Applicant owed \$7,230 for four past-due mortgage payments on four mortgage obligations totaling \$767,040 (SOR 1.c – 1.f). The mortgage debt addressed at SOR 1.d is for Applicant's personal residence. The rest are for rental properties he owns. Applicant denied, with explanations, all of the SOR allegations.

In response to SOR 1.a and 1.b, Applicant admitted he had not filed those returns. In addition, he claimed that he always overpays his taxes and receives a check from the IRS and his state tax authority "after filing." As to SOR 1.c – 1.f, Applicant denied those allegations, with explanations. In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is a self-employed 43-year-old software consultant who is seeking contracts with a federal agency for which he must be eligible for access to classified information. He has a bachelor's degree in electrical engineering and a master's degree in information technology (IT), earned in 1996 and 1998, respectively. He and his wife have been married since October 2000. They have three minor children together. After working for IT companies from 1999 until 2003, Applicant started his own business and has worked as a solo IT consultant for various private commercial interests. Since about 2014, Applicant has been consulting for different federal government agencies. His business currently has \$250,000 in annual revenue, from which he pays himself \$125,000 annually. (GX 1; GX 2; Tr. 32 – 33)

Applicant and his wife bought their primary residence in July 2004. Applicant owns three other houses as rental properties. Available information shows that Applicant, at times, has been a month late in paying the mortgage on all of his real properties. At hearing, Applicant established that all of his mortgage accounts are current. There is no indication any of those accounts has ever been more than 120 days past due. (Answer; GX 2 – 4; AX A; Tr. 23 – 30, 34 – 38, 53)

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<sup>2</sup> See Directive, Enclosure 2.

Applicant has not filed his personal or corporate state or federal income tax returns after the 2009 tax year. He and his wife had always filed joint returns before then. In 2010, his wife was working in a sales position and was given a luxury car after she met or exceeded her company's incentive goals. Unexpectedly, they received an IRS Form 1099 that required them to declare the value of the car as income. Applicant disagreed with the IRS assessment and has cited this dispute as the basis for his failure to file his returns over the past seven years. However, in his e-QIP, Applicant attributed "procrastination" as the reason for his failures to file his returns to that point, and that he was working with his accountant to file his 2010 – 2014 returns. When he was interviewed by a government investigator in July 2016, Applicant stated that his accountant had just filed Applicant's returns for the 2010 – 2015 tax years and was working to resolve other tax issues. There is no documentation for that statement in this record, and Applicant admitted at hearing that he has not yet filed those returns. (Answer; GX 1; GX 2; Tr. 33 – 34, 38 – 42, 45 – 46)

In response to the Government's information, Applicant has stated that he pays as much as \$10,000 each month to the state and to the IRS in estimated personal and corporate taxes. He further averred that he receives refunds for amounts in excess of what he pays, and that the IRS and state have not contacted him about his failure to file annual tax returns. He did not document his claims about his estimated payments or any refunds he has received. Applicant's accountant has advised him that he will likely have to pay a penalty for his failure to file his annual returns, and Applicant claims that he has the financial resources to do so. (Answer; GX 1; GX 2; Tr. 30 – 32, 38 – 42, 45 – 47)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>3</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified

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<sup>3</sup> See Directive, 6.3.

information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>4</sup> for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.<sup>5</sup> If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.<sup>6</sup>

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information. A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.<sup>7</sup>

## **Analysis**

### **Financial Considerations**

This record reasonably raises the security concern expressed at 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 allegations at SOR 1.c – 1.f do not present any disqualifying information. The Government's information shows that Applicant has, at times, been 30 – 60 days late on one or more of his mortgage payments. This is not an unusual circumstance and does

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<sup>4</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>5</sup> See Directive, E3.1.14.

<sup>6</sup> See Directive, E3.1.15.

<sup>7</sup> See *Egan*, 484 U.S. at 528, 531.

not indicate financial irresponsibility here. Further, I note that the relevant questions in the e-QIP regarding delinquent debts pertains to debts more than 120 days past due. The information he presented shows he is current on all of those accounts. SOR 1.c – 1.f are resolved for the Applicant.

As to SOR 1.a and 1.b, Applicant has not filed any income tax returns for the past seven years. This information requires application of the disqualifying condition at AG ¶ 19(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*), and is sufficient to establish the Government's *prima facie* case and shift the burden of persuasion to the Applicant.

The only pertinent mitigating condition to be considered here is 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*). In his e-QIP, Applicant attributed his failure to file his returns to "procrastination," but that he and his accountant had filed returns for 2010 – 2015. In his subject interview, in response to the SOR, and at hearing, Applicant acknowledged that no returns have been filed. Applicant now claims that his failure to file his returns was the result of a dispute over reportable income for a car his wife received in 2010. Applicant has not produced any information to document his estimated tax payments and refunds. He also has not documented his dispute with the IRS and has not provided a plausible explanation of why that dispute might stop him from filing his returns. Finally, there is no indication in this record that Applicant has attempted any resolution of his dispute in the past seven years. All of the foregoing precludes application of AG ¶ 20(g).

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Applicant's information did not resolve the doubts about his suitability for access to classified information that were raised by his failure to comply with basic income reporting requirements. His inability or unwillingness to file his income tax returns as required is indicative of an failure to requirements for protecting classified information. This, in turn, raises doubts about Applicant's suitability for access to that information. Applicant's response to the Government's adverse information did not resolve those doubts, which, because protection of the national interest is of paramount concern, must be resolved against the individual.

### **Formal Findings**

Formal findings 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 – 1.b:	Against Applicant

Subparagraphs 1.c – 1.f:

For Applicant

**Conclusion**

In light of all available information, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for security clearance eligibility is denied.

MATTHEW E. MALONE  
Administrative Judge