



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-03528
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: Alan Edmunds, Esquire, The Edmunds Law Firm

April 30, 2015

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to file both his Federal and state income tax returns for the tax years 2006 through 2012. He was also alleged to be indebted to the Federal Government in the amount of \$6,600 in unpaid taxes. While he satisfied his delinquent tax obligation, he failed to meet his burden to show that he has filed his Federal and state income tax returns. Financial security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on January 30, 2014. On October 2, 2014, 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 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 effective within the Department of Defense for SORs issued after September 1, 2006.

On November 18, 2014, Applicant answered the SOR (Answer), and requested a hearing. On February 25, 2015, the Department of Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On that same day DOHA issued a hearing notice, scheduling the case for April 7, 2015. The hearing was held as scheduled. At the hearing, Department Counsel offered two exhibits (GE) and one Hearing Exhibit (HE) marked HE I. Applicant offered exhibits (AE) A through U into evidence. All were admitted. I received the hearing transcript (Tr.) on April 14, 2015.

### **Findings of Fact**

Applicant is a 58-year-old employee of a defense contractor, where he was hired in 2005. He has held a security clearance for ten years. He possesses a bachelor's degree. He has never been married and has no children. (GE 1; AE B; AE H; Tr. 44, 58-59.)

Applicant was alleged to have failed to file both Federal and state income tax returns for the tax years 2006 through 2012 (SOR ¶¶ 1.a and 1.b). He was also alleged to be indebted to the Federal Government in the amount of \$6,600 in unpaid taxes (SOR ¶ 1.c). Applicant admitted the allegations contained in SOR ¶¶ 1.a and 1.b, and offered explanations. He denied the allegation contained in SOR ¶ 1.c. His admissions are accepted as factual findings. (Answer.)

Applicant testified that his failure to file Federal and state income tax returns for the tax years 2006 through 2012 was the result of two conditions: his brother's 2003 cancer diagnosis, and a ruptured disk in Applicant's back. Applicant's brother testified he was diagnosed with cancer in 2003. He underwent six months of chemotherapy. Applicant actively assisted and cared for him during his cancer treatment. The treatment ended in approximately July 2003. However, they did not know how long he would be in remission. Applicant's back injury occurred in November 2005. In 2006, he started rehabilitation for the ruptured disk. He was apparently prescribed Ibuprofen for his pain. He testified the medication did not affect his judgment or thinking. (Tr. 39-45.) He testified he was overwhelmed by these circumstances and made a bad mistake in judgment by not filing income tax returns. (Tr. 41.)

In approximately 2009 Applicant began to receive letters from both the Federal Internal Revenue Service (IRS) and his state taxation authority regarding his delinquent income tax returns. In 2010 he received a notice from the IRS that indicated he owed \$1,260 for the 2006 tax year and that a levy would be filed.<sup>1</sup> (AE C.) A subsequent letter from the IRS, dated September 13, 2010, stated "we applied \$641.86 of the overpaid tax on your 2006 tax return to the unpaid balance of other [F]ederal taxes." On August

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<sup>1</sup> The SOR alleged Applicant owed the IRS \$6,600 for delinquent taxes. That figure was an estimate that he provided during his security clearance interview.

20, 2010, he submitted a check to the IRS for \$1,911.54 with a notation that it was for "SFR 2007, 2008." On April 18, 2011, he submitted an additional check to the IRS for \$642.77 with a notation "2007 tax [and] penalties." (AE C.) He indicated he tried to call someone at the IRS in 2011, but was unable to get help. That same year, his state taxation authority began to garnish his wages in the amount of \$300 to \$400 monthly for unpaid income taxes. The record also shows on April 18, 2011, Applicant wrote four separate checks made to his state taxation authority with notations that the amounts were for unpaid taxes for tax years 2006 to 2008. (AE C.) His state tax delinquency was resolved through those payments.

Applicant testified that he filed all of his delinquent Federal and state income tax returns for tax years 2006 through 2012, in October 2014, after receiving the SOR. (Tr. 39, 45.) He presented tracking information showing he submitted something to both the IRS and his state's taxation authority in October 2014. However, the contents are not identified on the tracking information, nor did he submit copies of the returns themselves or other proof that the returns have been filed. He included copies of two letters that pertained only to the 2006 and 2007 Federal income tax returns. At best, this evidence suggests he filed his 2006 and 2007 Federal income tax returns with the IRS in October 2014. (AE C; AE D.) It does not verify the status of his 2008 through 2012 Federal income tax returns, or his 2006 through 2012 state income tax returns. Despite his claims to have filed all delinquent Federal and state income tax returns, he has not produced sufficient documentation to support his claims.

Additionally, an IRS account transcript, dated March 8, 2015, shows Applicant filed his 2013 Federal income return on December 1, 2014. He had previously filed for an extension to the April 15, 2014 filing deadline, and was granted an extension until October 15, 2014. However, he filed his 2013 Federal income tax return after the extension expired. Applicant received a refund of \$4,696.74 on December 29, 2014. It was not garnished to satisfy any past tax obligations because he has resolved all past indebtedness to the IRS. (AE M.)

Applicant submitted a signed statement of intent indicating, "I am submitting this statement as intent to never fail to file my Federal or State Income Tax Returns again." (AE N.) He documented that he filed his 2014 Federal and state income tax returns in March 2015. (AE O; AE P.)

Applicant testified he earns \$168,000 per year. He has \$84,000 in his savings account and \$1,500 in his checking account. He has approximately \$500 per month left over after he pays monthly expenses. (AE E; AE F; AE J; Tr. 38-39.) He completed credit counseling and uses a monthly budget. (AE Q; AE R; Tr. 41.) He has also met with a tax consultant regarding the processing of his 2006 through 2012 Federal, and state income tax returns. (AE G.) His credit report, dated October 2014, reflects no negative accounts or collections. (AE K.) His credit report, dated March 8, 2015, reflects a credit score of 912. (AE S.)

Applicant presented testimony of two witnesses and six letters of recommendation that attest to Applicant's responsibility and trustworthiness. He is thought to be "honest" and "hardworking" by his manager and teammates. Another coworker indicated, "He has a reputation for honesty, integrity, hard work, and high personal and professional standards." (AE A; Tr. 22-36.) He has received numerous awards and certificates in recognition of his outstanding contributions to his employer. (AE I.) His performance evaluations reflect that he "exceeds" or "far exceeds" every rating criterion. (AE L.)

## **Policies**

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 (AG) 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, these guidelines are applied 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. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 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, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 protect or 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.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes three conditions that could raise a security concern and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant failed to file 2006 through 2012 Federal and state income tax returns. His failure to file his Federal income taxes resulted in a debt of approximately \$6,600, which he has now fully resolved, having remained delinquent from 2007 to at least 2010. Despite resolving this tax delinquency, he failed to produce sufficient evidence to document that he filed Federal and state income tax returns, as required by law. He has a history of not meeting his legal financial obligations. The evidence is sufficient to raise the above disqualifications, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's delinquent debts including:

- (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 person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

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

(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.

None of the above mitigating conditions provide full mitigation for Applicant's failure to file Federal and state income tax returns for tax years 2006 through 2012 as required by law. While Applicant's brother's 2003 illness and his own 2006 back injury may initially have played a role in his failure to file income tax returns in 2006 and possibly 2007, he failed to adequately explain how they affected his ability to file in subsequent years. "A person who fails repeatedly to fulfill his or her legal obligation does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information."<sup>2</sup> While Applicant claims he filed his past-due Federal and state income tax returns for tax years 2006 through 2012, in October of 2014, he failed to produce substantive proof to support his claim. Further, even if he filed those delinquent taxes, he did so after receiving the SOR and learning his position was in jeopardy. Further, he filed his 2013 Federal income taxes late. These facts significantly undermine his signed statement promising to file his income tax returns in a timely manner in the future. His financial counseling, excellent financial status, and reputation for honesty do not provide full mitigation due to the recency and long history of failing to file his Federal and state income tax returns.

Applicant presented sufficient information that he satisfied all indebtedness to the Federal Government and his state taxation authority. AG ¶ 20(d) offers some mitigation with respect to his debt alleged in SOR ¶ 1.c.

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<sup>2</sup> ISCR Case No. 12-05053 (App. Bd. October 30, 2014.)

## 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(a):

(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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is a 58-year-old contractor, who has held a security clearance for ten years. According to his performance evaluations, letters of recommendation, awards, and certificates, he is a hard-working and highly valued employee. He has an excellent credit score and has adequate means to pay his debts. However, he exercised extremely poor judgment over a nine-year period with respect to filing Federal and state income tax returns for tax years 2006 through 2012. He has not credibly demonstrated that he will comply with Federal and state regulations requiring the timely filing of all income tax returns. While he filed his 2014 income tax returns in a timely manner, he has not established a proven track record in this respect.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	AGAINST Applicant
Subparagraph 1.b:	AGAINST Applicant
Subparagraph 1.c:	FOR 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 a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein  
Administrative Judge