



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-05870
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Pamela Benson, Esq., Department Counsel  
For Applicant: *Pro se*

05/10/2016

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**Decision**

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RIVERA, Juan J., Administrative Judge:

Applicant’s failure to file his income tax returns from tax year 2000 to at least 2013, demonstrates a lack of judgment and an unwillingness to abide by the law, rules, and regulations. He failed to mitigate the Guidelines F and E security concerns. Clearance is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on December 30, 2013. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) was unable to make an affirmative decision to grant Applicant’s eligibility for a clearance. On June 20, 2015, the DOD Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) and Guideline E (personal conduct).<sup>1</sup> Applicant answered the SOR on September 4, 2015, and elected to have his case decided on the written record, in lieu of a hearing.

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<sup>1</sup> DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines*

A copy of the Government's file of relevant material (FORM), dated November 9, 2015, was provided to Applicant by transmittal letter dated November 10, 2015. Applicant received the FORM on December 7, 2015. He was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. Applicant submitted a two-page letter, dated December 9, 2015, as his response to the FORM. The case was assigned to me on April 29, 2016.

### **Findings of Fact**

Applicant admitted all the factual allegations in the SOR (¶¶ 1.a, 2.a, and 2.b). His admissions are incorporated herein as findings of fact. After a review of the record evidence, I make the following additional findings of fact:

Applicant is a 59-year-old machinist employed by a federal contractor. He graduated from high school in 1974, and shortly thereafter he enlisted in the U.S. Air Force. He honorably served in the Air Force from 1974 until January 2001, when he retired. Applicant met his wife in 1997, and they have been married since 1999. He has one adult stepdaughter.

Applicant's employment history shows that after his retirement in January 2001, he worked abroad for two federal contractors. He worked for the first federal contractor from January 2001 until June 2009. He has been working with his current employer, a federal contractor, since July 2009. Applicant believes that he has held a secret level security clearance since 1979 when he was in the service. Apparently, his clearance eligibility was continued to present. There is no evidence of any security violations or issues of security concern, except for those alleged in the SOR.

Applicant submitted his most recent SCA in 2013. Section 26 (Financial Record) of the 2013 SCA asked Applicant to disclose whether in the last seven years he had failed to file or pay Federal, state, or other taxes when required by law. Applicant answered "yes," and disclosed that he had failed to file his income tax returns for tax years 2000 through 2013.

Applicant explained that although he has not filed his income tax returns, he was paying his taxes. He had money taken out of his paycheck on a monthly basis to pay his taxes. Applicant deliberately failed to file his income tax returns to protest several issues: the Government's waste of tax dollars in spurious projects abroad and in the United States; the wrongful conviction and imprisonment of Leonard Peltier; the air and water pollution; and the U.S. economy. Applicant explained that he had written weekly letters (or emails) to President Obama, the IRS Director, and others to express his protests and concerns. Applicant decided that until the U.S. Government addresses his concerns, he will not file his income tax returns. He failed to present documentary

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*for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.*

evidence to show that he filed any of his income tax returns for tax years 2000 to present.

Applicant claimed on his 2013 SCA that he works abroad in a tax-exempt position. He presented no evidence to support this claim. I note that IRS publications state that a U.S. citizen's income is generally subject to U.S. income tax, regardless of where the U.S. citizen is living (abroad or in the United States). And, that U.S. citizens living abroad are subject to the same income tax filing requirements that apply to U.S. citizens or resident aliens living in the United States. (See IRS Publication 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad*, <https://www.irs.gov/pub/irs-pdf/p54.pdf>)

Applicant was interviewed by a government background investigator in April 2014. The investigator noted that Applicant's income comes from his retired pay (which is taxed), and his salary as an employee of a federal contractor (tax free since he lives abroad). Applicant was paying taxes on both sources of income, and he was overpaying his taxes. Applicant told the investigator that he believes he owes no taxes because he has been overpaying his taxes. Applicant also believes that the U.S (IRS) owes him a refund for each year that he has not filed his taxes. During his interview, Applicant admitted that his failure to file his income tax returns showed bad judgment, and that a person that demonstrates bad judgment should not hold a security clearance.

The IRS filed substitute income tax returns for Applicant for tax years 2000 and 2001, and sent him tax refund checks for 2001 (\$495) and 2002 (\$2,048). Applicant told the investigator that he was not going to cash the checks and that he would return them to the IRS. Applicant submitted with his answer to the SOR copies of the two IRS checks, which he voided and did not cash.

Applicant believes that he is not a security risk. He considers himself a loyal American and would never do anything to harm the United States. He noted that he has served his country for over 41 years (combined military service and working for federal contractors) without any security violations or issues of concern. Applicant stated that he enjoys working for the U.S. military and helping soldiers. He told the investigator that if he was required to file his back income tax returns as a means of receiving his security clearance, he would start working with the IRS on filing his delinquent income tax returns.

In his answer to the SOR, Applicant included two statements, the first dated July 29, 2015. Applicant stated that he had been in contact with the IRS, and promised to resolve "this issue" at some point. In his September 2015 statement, Applicant noted that he had not filed his tax returns, but had been paying taxes on U.S. tax exempt wages. Applicant's response to the FORM highlighted that he has been candid and forthcoming throughout the security clearance process, and that he disclosed his failure to file his income tax returns for tax years 2000 through 2013. He also noted that he has been voluntarily paying more in taxes than what he is required to do. Applicant stated that he intends to resolve his income tax filing problem over the next two years.

Applicant presented no documentary evidence to show he has been in contact with the IRS or that he has filed any of his delinquent income tax returns.

### **Policies**

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## Analysis

### Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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 ¶ 18)

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

Applicant failed to file his income tax returns for tax years 2000 through 2013. Applicant's actions raise the applicability of the following financial considerations disqualifying condition: AG ¶ 19(g) "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same."

AG ¶ 20 lists five conditions that could mitigate the financial considerations security concerns:

- (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 financial considerations mitigating conditions are raised by Applicant's evidence. Applicant's illegal behavior has been ongoing since 2000, and it is likely to continue. Applicant was made aware of the security concerns raised by his failure to file his income tax returns by a Government investigator in 2014. Applicant disregarded the security concerns and has chosen to continue his questionable behavior. Applicant's failure to file his income tax returns demonstrates lack of judgment and an unwillingness to abide by the law, rules, and regulations.

### **Guideline E, Personal Conduct**

AG ¶ 15 articulates the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

SOR ¶ 2 cross-alleged the same facts alleged under SOR ¶ 1 (Guideline F), which are incorporated herein by reference. Additionally, it alleged, and Applicant admitted, that he does not intend to file his past due or any future income tax returns until certain matters he is protesting are resolved by the U.S. Government. The security concerns raised by Applicant's failure to file his income tax returns under Guideline E are similar to the concerns analyzed under Guideline F (questionable judgment and an unwillingness to abide by the rules and regulations).

Applicant's failure to file his income tax returns triggers the applicability the following disqualifying condition under AG ¶ 16:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

AG ¶ 17 lists six conditions that could potentially mitigate the personal conduct security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of

authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Considering the evidence as a whole, and for the reasons stated under the Guideline F analysis (*supra*), I find that Applicant's evidence is insufficient to mitigate SOR ¶ 2. The above mitigating conditions are not raised by the facts and circumstances of this case. Personal conduct concerns are not mitigated.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guidelines F and E in my whole-person analysis.

Applicant receives credit for his years of military service and his years working for federal contractors. Applicant's failure to file his income tax returns demonstrates lack of judgment, and an unwillingness to abide by the rules and regulations. He failed to mitigate the Guidelines F and E security 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraphs 2.a - 2.b:

Against Applicant

**Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

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JUAN J. RIVERA  
Administrative Judge