



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



In the matter of: )  
)  
) ISCR Case No. 14-05974  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

06/26/2015

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations and Guideline E, personal conduct. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On December 23, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. 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 DOD for SORs issued after September 1, 2006.

On January 12, 2015, Applicant answered the SOR, and he elected to have his case decided on the written record in lieu of a hearing. On March 19, 2015, Department

Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant on April 17, 2015, and it was received on April 29, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object and the documents were admitted into evidence. In response to the FORM, Applicant submitted additional information, which was included in the record without objection. The case was assigned to me on June 12, 2015.

### **Findings of Fact**

Applicant admitted both SOR allegations. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 50 years old. He served in the military from 1985 to 1991, and was honorably discharged. He began working for a federal contractor in July 2011. He is divorced and has a grown child.<sup>1</sup>

Applicant admits he failed to file federal and state income tax returns for tax years 2006 through 2012, as required. He indicated in his answer to the SOR that he paid taxes for these years through payroll taxes collected by his employer. In his response to the FORM, he indicated that his actions were not "intentional fraud" because he was having payroll deductions taken for taxes. He stated: "My taxes were simple in nature and I did not have any deductions to claim so I checked the tax tables and finding that I did not owe any further taxes I didn't file a tax return."

Applicant signed his security clearance application (SCA) on October 22, 2013. In it he disclosed he failed to timely file state and federal tax returns for 2006 through 2012. In the "Additional Comments" section of the SCA he stated:

In regards to Section 26, Financial Record I have been neglectful in filing tax returns for many years. I, in fact, do pay my taxes but fail to file. I will be in touch with a tax attorney or the IRS and state of [X], as need be to resolve this issue.<sup>2</sup>

Applicant provided copies of IRS Form 1040EZ for tax years 2006, 2007, 2008, 2009, and 2010 that were filed on January 12, 2015. He provided copies of IRS Form 1040EZ for tax years 2011, 2012, and 2013 that were filed on July 14, 2014.<sup>3</sup> He failed

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<sup>1</sup> Item 3.

<sup>2</sup> Item 3.

<sup>3</sup> Tax year 2013 was not alleged for untimely filing. It is noted Applicant filed his federal income tax return for 2013 on July 14, 2014, past the April 15, 2014 filing date. This information will not be considered for disqualifying purposes, but will be considered when analyzing Applicant's credibility and the "whole-person."

to address whether he filed state tax returns for the alleged years or was exempt from doing so.

Applicant noted in his response to the FORM that he was due small refunds after filing his federal tax returns, but did not pursue receiving them. He stated he was in good standing with the IRS and State X. He did not provide supporting evidence as to his status regarding state tax returns.

### **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 are 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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. 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to 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 that an 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 Executive Order 10865 provides that 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 relating to the guideline for financial considerations is set out in AG ¶ 18:

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.

The guideline notes several conditions that could raise security concerns. I have considered the following under AG ¶ 19:

(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 federal and state income tax returns from 2006 through 2012, as required. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following 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 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; and

(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.

Applicant admitted he failed to timely file federal and state income tax returns for 2006 through 2012. His explanation was that he was having payroll taxes deducted, did not believe he owed taxes, and so did not file his returns. Applicant completed his SCA in October 2013. At that point he was on notice that his failure to comply with the law regarding filing his tax returns was a security concern. It was not until January 2015 that he completed the filing of his federal tax returns for 2006 through 2011. He filed his federal tax return for tax year 2012 in July 2014. He failed to timely file his 2013 tax returns, even after he was aware that his conduct was a security concern. Applicant's repeated disregard for following the law, was not a circumstance beyond his control and casts doubt on his current reliability, trustworthiness and good judgment. He failed to provide documented proof that he is in good standing regarding his state income tax returns. There is no clear indication that the state tax problem is under control. None of the above mitigating conditions apply.

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

AG ¶ 15 expresses the security concern about 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.

I considered the disqualifying conditions under AG ¶ 16 that could raise a security concern and concluded the following has been raised:

(d) 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; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant intentionally failed to timely file federal and state income tax returns from 2006 through 2012. His conduct shows an unwillingness to comply with rules and regulations, represents questionable judgment and unreliability, and indicates he may not properly safeguard protected information. His conduct also makes him vulnerable to exploitation and manipulation because if known, it may affect his personal, professional or community standing. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate personal conduct security concerns. I have considered the following mitigating conditions under AG ¶ 17:

(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; and

(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.

Applicant repeatedly violated the law by failing to timely file federal and state income tax returns. The fact that he had payroll taxes deducted does not justify his actions. He had a duty to comply with the law and repeatedly chose not to. When he completed his SCA he was on notice that failure to file income tax returns was a security concern. He acknowledged at that time he was going to take care of the matter, but he did not complete the legal requirement of filing the delinquent federal income tax returns for tax years 2006 through 2011 until January 2015. In addition, he failed to file his 2013 federal income tax return until after the April 2014 due date. Applicant's conduct is not minor and continued for seven years. His failure to expeditiously address the delinquent filing is a concern. Although he acknowledged his behavior, his repeated conduct causes me to question whether it is unlikely to recur. His actions cast doubt on his reliability, trustworthiness, and good judgment. Neither mitigating condition applies.

### **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 the 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.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 50 years old. He failed to timely file federal and state income tax returns from 2006 to 2012. His explanations and subsequent filing of the delinquent federal income tax returns, several after the SOR was issued, are insufficient to overcome his burden of persuasion and the security concerns raised. He failed to provide evidence that his state income tax returns have been filed or that his state tax returns are in good standing. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

### **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
Subparagraph 2.a:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge