



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 15-00804

**Appearances**

For Government: Braden M. Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

12/31/2015

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate security concerns regarding his finances. Eligibility for access to classified information is denied.

**History of the Case**

On July 25, 2015, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons adjudicators could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken 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* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on September 1, 2015, and elected to have his case decided on the basis of the written record. Applicant received the Government's File of Relevant Material (FORM) on October 15, 2015, and did not respond to the FORM . The case was assigned to me on December 4, 2015.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly failed to file his federal tax returns for tax years 2006 through 2011 as required by law. For the same tax years, he allegedly failed to file his state tax returns as required by law.

In his response to the FORM, Applicant admitted he had not filed his federal and state tax returns for tax years 2006 through 2011. He claimed he was unemployed for most of the covered years and did not believe he produced enough income during these years to impose tax filing requirements. He claimed he served in the military for four years. He provided no other claims or explanations for his failure to file his federal and state tax returns as required by law for the years alleged and admitted.

### **Findings of Fact**

Applicant is a 45-year-old technician for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

#### **Background**

Applicant married in February 1995 and divorced his wife in June 2006. (Item 1) Applicant has one child (age 18) from this marriage. Since May 2008, he has cohabited with another. Applicant attended classes at a technical school between May 2007 and June 2007. He claims no diploma or degree. He served in the Army inactive reserve between June 1995 and June 1999 and was honorably discharged in June 1999. (Item 1)

Records document that Applicant has worked for his current employer as a technician from June 2012 and the present. (Item 1) Between January 2008 and June 2012 he was self-employed as a home improvement carpenter and also helped his cousin and his father in their septic business. For the most part, though, he was either underemployed or unemployed.

#### **Finances**

Between 2006 and 2011, Applicant failed to file his federal and state tax returns for these tax years. He attributed his filing failures to mistaken understandings of what earned income levels required federal and state filing of personal income tax returns. While he did not report his adjusted income for those tax years in issue, he did indicate the amounts of federal taxes he owed for those years in an interview with an agent of the Office of Personnel Management (OPM) in January 2013.

Afforded an opportunity to respond to the FORM with documentation of his filing his federal and state returns for tax years 2006-2011, as required by law, Applicant did not respond with any filing tax-filing documentation, evidence of financial counseling, or contacts with federal and state-taxing authorities.

### **Endorsements**

Applicant provided no endorsements or performance evaluations on his behalf. Nor did he provide any proof of community and civic contributions.

### **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." The AGs must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guideline is pertinent in this case:

## Financial Considerations

*The Concern:* 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG ¶ 18.

## Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

## Analysis

Applicant is a fully employed technician for a defense contractor who failed to file his federal and state income tax forms for tax years 2006 through 2011. Applicant attributed his filing failures to recurrent unemployment, associated income shortages, and misunderstandings over whether he was required to file tax returns with his level of income. While unemployment and misunderstandings over his tax-filing obligations are cited as factors in his tax-filing lapses, they are not detailed as to how they may have played a role in Applicant's financial decision-making. He provided no evidence of financial counseling or proof of his researching tax-filing requirements for persons in different income brackets. Afforded an opportunity to supplement the form with documentation of his tax-filing efforts and counseling pursuits, he elected not to supplement the record.

Applicant's collective tax-filing failures warrant the application of one of the disqualifying conditions (DC) of the Guidelines: DC ¶ 19(g); Failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same."

Applicant's pleading admissions with respect to his federal and state tax-filing failures negate the need for any independent proof (*see McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant's listed filing lapses are fully documented in his OPM interview and credit reports. Some judgment problems persist over Applicant's financial affairs. Well documented is his failure to take more concerted actions to resolve his tax-filing lapses and demonstrate he acted responsibly in addressing his delinquent tax filings. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004).

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on Government employees and contractors involved in other lines of Government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).

Inferentially, Applicant's tax-filing failures are attributable for the most part to his using poor judgment. While he attributed his tax filing lapses to unemployment, underemployment, and mistaken understandings of his federal and state tax-filing obligations, he provided insufficient specifics in his answer. Afforded an opportunity to supplement the record, he did not. Based on the documented materials in the FORM, some extenuating circumstances are associated with Applicant's filing lapses. Partially available to Applicant is MC ¶ 20(b), "the conditions that resulted in the behavior 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." Unemployment, income shortages, and mistaken understandings, while partially extenuating do not account for

Applicant's failure to secure financial counseling and take the necessary corrective steps to file his respective tax returns.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his failure to file federal and state tax returns for the years 2006-2011. Resolution of his federal and state tax returns is a critical prerequisite to his regaining control of his finances. While unemployment, reduced earnings, and misunderstandings over legal tax-filing requirements might have played a considerable role in his federal and state tax-filing lapses, Applicant failed to provide more specific explanatory material and corrective tax-filing steps for consideration. Endorsements and performance evaluations might have been helpful, too, in making a whole-person assessment of his overall clearance eligibility, but were not provided.

Overall, clearance eligibility assessment of Applicant based on the limited amount of information available for consideration in this record does not enable him to establish judgment and trust levels sufficient to overcome security concerns arising out of his lapses in judgment associated with his failure to file his federal and state income tax returns for tax years 2006 through 2011.

Taking into account all of the documented facts and circumstances surrounding Applicant's federal and state tax-filing failures and his lack of more specific explanations of his filing lapses and evidence of corrective filing efforts, it is still too soon to make safe predictive judgments about Applicant's ability to resolve his tax return issues. Based on the evidence presented, Applicant's finances are not sufficiently stabilized to justify his access to classified information. Unfavorable conclusions warrant with respect to the allegations covered by subparagraph 1.a.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

#### **GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT**

Subpara. 1.a:

Against Applicant

### **Conclusions**

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

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Roger C. Wesley  
Administrative Judge



