



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



In the matter of: )  
)  
) ISCR Case No. 15-01925  
)  
Applicant for Security Clearance )

**Appearances**

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

04/29/2016

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

**Statement of the Case**

On August 28, 2015, the Department of Defense (DOD) issued to 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 (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on September 22, 2015, and requested a hearing before an administrative judge. The case was assigned to me on January 22, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 22, 2016. I convened the hearing as scheduled on March 15, 2016. The

Government offered exhibits (GE) 1 and 2, which were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through I, which were admitted into evidence without objection. The record was left open until March 22, 2016, to allow Applicant to submit additional documents, which he did. Those documents were marked AE J through L and admitted into evidence without objection.<sup>1</sup> DOHA received the hearing transcript (Tr.) on March 24, 2016.

### **Procedural Issues**

Department Counsel moved to amend SOR ¶ 1.b to add after the year 2011 the following: “and for tax year 2012.” He also moved to strike the language: “and you have not paid any taxes and penalties due thereon.”<sup>2</sup> There was no objection and the motion was granted.

### **Findings of Fact**

Applicant admitted all of the allegations in SOR as amended. His admissions are incorporated into these findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 53 years old. He holds a bachelor’s degree and a master’s degree. He married in 1990 and has three children, ages 19, 17 and 14. He has worked for a federal contractor for 31 years and held a security clearance since 2003.<sup>3</sup>

Applicant failed to timely file his 2009, 2010, 2011 and 2012 federal income tax returns. He attributed his failures to being a procrastinator. He explained he has the resources to pay his taxes. He pays his financial obligations on time, has a good credit rating, and does not gamble. He testified that all of his personal and family expenses are paid on time. He does not have excessive bills and lives within his means. He is not reluctant to pay taxes and understands his obligation to do so. He understands his duty to file tax returns on time and admitted to acting irresponsibly in that regard for several years. He admitted he did not have a valid explanation for his inaction. He acknowledged that his conduct could be construed as a pattern, but he has broken that pattern. Applicant stated that the untimely filing of his 2009 federal income tax return was the first time he ever filed tax returns late.<sup>4</sup>

Applicant provided documents to show that his 2009 federal income tax return was filed in September 2011; his 2010 federal income tax return was filed in April 2012; his 2011 and 2012 federal income tax returns were filed in April 2015. His taxes are

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<sup>1</sup> Hearing Exhibit I is Department Counsel’s memorandum.

<sup>2</sup> Tr. 41-44.

<sup>3</sup> Tr. 21-23, 28-29.

<sup>4</sup> Tr. 23-24, 29-34, 37-40; AE B, C, D, E.

paid or he was due a refund for these tax years. Applicant timely filed his 2013 and 2014 federal income tax returns.<sup>5</sup>

Applicant testified that he has received four outstanding awards in his field from his employer. He is proud to work in his area of expertise. He was a baseball coach for 13 years and has also served on the board of directors for the local baseball league for seven years. He is involved in his children's activities.<sup>6</sup>

Applicant provided a character letter from his direct manager for the past 16 years. He considers Applicant to be dependable, reliable, hard-working, conscientious and honest. He is annually ranked very high for his behavior and goal rating. Applicant has a tremendous work ethic and is a proven loyal and trusted employee.<sup>7</sup>

### **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 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 not drawn 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

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<sup>5</sup> Tr. 31, 35-36; AE F, G, H, I, J, K.

<sup>6</sup> Tr. 24-26.

<sup>7</sup> AE A.

mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 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 all of the disqualifying conditions under AG ¶ 19, and the following one is potentially applicable:

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant failed to timely file his 2009, 2010, 2011 and 2012 federal income tax returns. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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; 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 acknowledged he procrastinated in timely filing his federal income tax returns for four years from 2009 to 2012. He has since filed the delinquent returns and paid any tax that was owed, or received a refund. He did not have a reasonable explanation for his conduct. I considered Applicant's testimony and honesty regarding his conduct. He took full responsibility for his conduct, and I believe he has learned his lesson and in the future he will comply with the law and timely file his federal tax returns. Applicant's honesty and acceptance of responsibility outweigh his procrastination and failure to file his tax returns. I believe his conduct is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) applies

There are clear indications that the tax issues that were raised are now resolved and under control. Applicant has filed all delinquent tax returns and provided proof he filed subsequent tax years 2013 and 2014 on time. AG ¶ 20(c) 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 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.

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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 53 years old. He has a distinguished career working for a federal contractor and has held a security clearance for many years. Despite that impressive employment history, for several years he chose not to file tax returns. Applicant acknowledged his procrastination and irresponsibility in complying with his legal obligation to file tax returns. He remedied the issue prior to receiving the SOR and demonstrated that he addressed the problem and such conduct is unlikely to recur. I found Applicant's testimony to be credible and remorseful. Applicant met his burden of persuasion to mitigate the security concerns raised. Overall, the record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline.

### **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:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello  
Administrative Judge