



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



In the matter of:	)	
-----	)	
Applicant for Security Clearance	)	ISCR Case No. 14-06337

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

March 24, 2016

\_\_\_\_\_  
**DECISION**  
\_\_\_\_\_

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on February 5, 2013. (Government Exhibit 1.) On April 1, 2015, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. 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 Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on June 2, 2015 (Answer), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 20, 2015. This case was assigned to me on July 27, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 29, 2015. I convened the hearing as scheduled on August 28, 2015. The Government offered Government Exhibits 1 through 5, which were admitted without objection.

Applicant testified on his own behalf. DOHA received the transcript of the hearing on September 10, 2015. Applicant requested the record remain open for the receipt of evidence. He timely filed Applicant Exhibits A and B, which are admitted without objection. The record closed on September 18, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 51, and single. He is employed by a defense contractor, and seeks to obtain a security clearance in connection with his employment.

#### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has failed to file his federal income tax returns for several years, and is therefore potentially unreliable, untrustworthy, and shows an unwillingness to abide by rules and regulations. Applicant admitted the single allegation in the SOR (1.a) under this Paragraph. He also submitted additional information to support his request for a security clearance.

The original allegation in the SOR read, "You failed to file, as required, your federal income tax returns for at least tax years 2006 through 2011." Applicant admitted at the hearing that he had also not filed his federal income tax returns for the tax years 2012, 2013, and 2014. Upon request of Department Counsel, pursuant to Directive, Additional Procedural Guidance, ¶ E.3.1.17, without objection by Applicant, SOR 1.a. was amended to read, "You failed to file, as required, your federal income tax returns for at least tax years 2006 through 2014." (Tr. 24-25, 36-37.)

The record shows, and Applicant admits, that he has a history of not filing his tax returns. He states that there are several reasons for this continuing failure. First of all, his home of record is in State One, and his job is located in State Two, which is on the opposite side of the United States. Secondly, he is a perfectionist and a procrastinator. Once he got behind on his taxes, he didn't have the appropriate paperwork and just did not bother filing his taxes. He admits that this history is not something he is proud of. (Tr. 27-29, 33-34.)

The situation regarding each taxable year in question is as follows:

2006 - Applicant believes the IRS filed a substitute return for him. In 2011 the IRS filed a Notice of Levy on Wages, Salary, and Other Income for that tax year. The levy was for \$6,214.14. Applicant maintains that this debt was paid, but no documentary evidence was submitted to confirm this fact. (Applicant Exhibit A at 16, Exhibit B.)

2007 - Applicant states, "IRS opted not to file a substitute tax return since income was minimal." (Applicant Exhibit B.) Applicant did not submit his Form 1040 for that year

or any other evidence to support his contention that his income was under the statutory minimum and he did not have to file a tax return.

2008 - Applicant believes the IRS filed a substitute return for him. In 2014 the IRS filed a Notice of Levy on Wages, Salary, and Other Income for that tax year. The levy was for \$10,641.38. Applicant maintains that this debt was paid, but no documentary evidence was submitted to confirm this fact. (Applicant Exhibit A at 17, Exhibit B.)

2009 - Applicant supplied a copy of his Federal income tax return for this tax year. (Applicant Exhibit A at 18-19.)

2010 - Applicant supplied a copy of his Federal income tax return for this tax year. (Applicant Exhibit A at 20-21.)

2011 through 2014. Applicant admitted that he has yet to file Federal tax returns for these four tax years. (Tr. 24; Applicant Exhibit B.)

## **Mitigation**

Applicant is a successful and respected employee. His Performance Reports for 2010, 2011, and 2014 all indicate that his performance “Exceeds Expectations.” (Applicant Exhibit A at 6-11, 15, Exhibit B.)

## **Policies**

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any 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, “The 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.”

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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Paragraph 1 (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. Under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. In addition, AG ¶ 19(g) applies to Applicant’s “failure to file Federal . . . income tax returns as required.” Applicant has deliberately failed to file his Federal income tax returns for several years, resulting in the IRS having to levy his wages to collect the

taxes owed for at least two of the years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “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.” Also, AG ¶ 20(d) states it can be mitigating where, “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” None of these mitigating conditions were established by Applicant’s case.

Applicant has failed to file Federal tax returns for tax years 2011 through 2014. He had no reasonable excuse for this failure. He did submit evidence showing he filed his tax returns for 2009 and 2010. The record is unclear regarding tax years 2006, 2007, and 2008. Applicant’s testimony did not show any intention to file the necessary income tax returns in the foreseeable future. It is Applicant’s burden to submit evidence sufficient to mitigate the security concerns arising from his failure to file his tax returns in a timely fashion. He has not met it. In conclusion, looking at Applicant’s entire income tax situation at the present time, the evidence does not support a finding that “there are clear indications that the problem is being resolved or is under control,” as is required by AG ¶ 20(c). Paragraph 1 is found against Applicant.

### **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 relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. Applicant has a history of not filing his tax returns in a timely fashion, and there is little evidence to show that he is now trustworthy and reliable. Applicant's conduct with regard to his finances was not mitigated.

Under AG ¶ 2(a)(3), his conduct is recent and continuing. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is little to no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his income tax return situation. Accordingly, the evidence supports denying his request for a security clearance.

### **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

### **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.

WILFORD H. ROSS  
Administrative Judge