



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



In the matter of: )  
 )  
 1 ) ISCR Case No. 14-07021  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

12/03/2015

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On May 9, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) 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; DOD 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 June 5, 2015, and requested a hearing before an administrative judge. The case was assigned to me on October 5, 2015. The

<sup>1</sup> Applicant's name was misspelled on the SOR. It has been corrected.

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 29, 2015. I convened the hearing as scheduled on November 16, 2015. The Government offered exhibits (GE) 1 and 2, which were admitted into evidence without objection. In addition, the Government submitted a copy of an exhibit list that was marked as Hearing Exhibit (HE) I. Applicant testified and offered Applicant Exhibits (AE) A through E, which were admitted into evidence without objection. The record was held open until November 30, 2015, to permit Applicant to submit additional documents. He did not submit additional documents and the record closed. DOHA received the hearing transcript (Tr.) on November 24, 2015.

### **Procedural Issues**

The Government moved to amend SOR ¶ 1.a to read as follows: “You failed to file, as required, your federal income tax returns for at least tax years 2010, 2011, 2012, and 2014.”<sup>2</sup> There was no objection and the motion was granted.

### **Findings of Fact**

Applicant admitted the allegation in the SOR. His admission has been incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 47 years old. He has associate and bachelor degrees. He has not served in the military. He was married from 2001 to 2004. He has no children. He has been employed with the same company since 1990.<sup>3</sup>

Applicant admitted he failed to timely file his federal income tax returns for tax years 2010 and 2011. He also testified that “there was a few years here and there I’d for whatever reason not file and then I’d file a couple of years at a time and they send me checks and never bothered me about it. No one ever said anything about it.”<sup>4</sup> He testified that for tax years 2010, 2011, and 2012, he did a rough draft tax return to see if he would receive a refund.<sup>5</sup>

Applicant testified that he was never contacted by the Internal Revenue Service. He does not use a tax preparer or accountant, rather he prepares the tax returns himself. He indicated that because he always received a refund he did not file the tax returns on time. He further stated that his failure to file “has no bearing on my trustworthiness or lack of trust thereof to—there’s no attempt to defraud anyone.

---

<sup>2</sup> Tr. 43.

<sup>3</sup> Tr. 26-28.

<sup>4</sup> Tr. 28, 43.

<sup>5</sup> Tr. 33.

There's no attempt to do anything that's harmful to this country involved in this."<sup>6</sup> When asked if he realized failing to file federal income tax returns on time was a criminal offense, he responded, "I do now."<sup>7</sup> He stated he did not realize it at the time when the tax returns were due because he received a refund each year. When asked how is it that he received a refund if he did not file he stated "you just get a refund. I try to overpay."<sup>8</sup> He explained that his failure to file was "just an oversight on my part."<sup>9</sup> When asked to explain further he stated: "I just didn't do it, ma'am. I knew I was getting money back and didn't file. When the investigator told me that it was an issue, I filed."<sup>10</sup>

During his background interview with a government investigator on March 18, 2013, Applicant indicated the reason he failed to file his federal income tax returns was because he thought the IRS could use the \$1,000 refund that he was owed. He indicated during his interview that did not realize his failure to timely file his tax returns was a criminal offense until his facility security officer told him.<sup>11</sup> He told the investigator that in the summer of 2012, he received a letter from the IRS regarding his failure to file his 2010 tax return, but he had not done anything. He indicated to the investigator that he intended to file his 2010, 2011, and 2012 federal income tax returns by April 15, 2013. He also indicated to the investigator that the IRS did not contact him about his 2011 tax return. Applicant's statement about being contacted by the IRS in 2012 contradicts his testimony that he was never contacted.<sup>12</sup>

Applicant testified that after he met with a government investigator in March 2013 he realized he needed to file his delinquent tax returns. He stated he filed his 2010, 2011, and 2012 federal income tax returns after April 15, 2013. He stated he had to pull his previous years' bank records so he could see if he had any deductions when he filed. He did not have an explanation for why he failed to meet the April 15, 2013 deadline for filing his 2012 return. He testified he filed his 2013 federal income tax returns on time. He stated he filed an extension for his 2014 federal income tax returns that expired in September 2014. He missed the extension deadline, and filed his 2014 tax returns on November 13, 2015. Despite being aware through the SOR that the government had a concern about his failure to timely file his federal income tax returns, he admitted he did not have a valid reason for his failing to comply with the extension deadline.<sup>13</sup>

---

<sup>6</sup> Tr. 19.

<sup>7</sup> Tr. 19.

<sup>8</sup> Tr. 20.

<sup>9</sup> Tr. 20.

<sup>10</sup> Tr. 21, 28-30.

<sup>11</sup> It is unknown when he learned this information from his facility security officer.

<sup>12</sup> Tr. 21-25, 33-36; GE 2.

<sup>13</sup> Tr. 29-30, 33-35.

Applicant provided copies of IRS 1040 Forms for 2010, 2011, 2012, 2013, and 2014. None of the documents are signed. There is no information on the document to substantiate when or if they were actually filed.<sup>14</sup> The record was held open for this purpose. Applicant was specifically advised about the importance of providing proof that the tax returns for 2010 through 2014 were actually filed and when they were filed. He failed to provide either.

## **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 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

---

<sup>14</sup> AE A through E.

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 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 federal income tax returns for tax years 2010, 2011, 2012, and 2014. 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;

(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 was aware of his responsibility to file his federal income tax returns on time, yet repeatedly failed to comply with the deadline. He was advised by his facility security manager that failing to file federal income tax returns is a criminal offense. He was contacted by the IRS in the summer of 2012 about his failure to file his 2010 tax return. After his interview with a government investigator as part of his background investigation for his security clearance, he was put on notice that his failure to file his tax returns was a security concern. He again failed to meet the extension deadline for filing his 2014 federal tax return. He testified he filed it days before his hearing. Applicant's behavior is recent and there is insufficient evidence to conclude that his conduct is unlikely to recur. Applicant's disregard for his responsibilities cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

There is no evidence that Applicant's failure to timely file his tax returns was the result of conditions beyond his control. AG ¶ 20(b) does not apply. Applicant was made aware of his legal responsibility to timely file his federal income tax returns by his facility security manager and the government investigator, even if he was going to receive a refund. Despite this information and being aware that his inaction could impact his eligibility to maintain a security clearance, he again failed to act responsibly. He was afforded an opportunity to provide documentation to show when he filed his tax returns, but did not. AG ¶ 20(c) does not apply.

### **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 47 years old. Despite being made aware of the importance of complying with the law requiring the timely filing of his tax returns, he failed to do so. Applicant's conduct raises questions about his judgment, reliability, and trustworthiness. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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:	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 a security clearance. Eligibility for access to classified information is denied.

---

Carol G. Ricciardello  
Administrative Judge