



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-01632

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

05/20/2025

Decision

Curry, Marc E., Administrative Judge:

Applicant presented insufficient evidence of what progress he has made to resolve his delinquent income tax debts. Under these circumstances, I conclude Applicant has failed to mitigate the financial considerations security concerns. His application for a security clearance is denied.

Statement of the Case

On September 27, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudications Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, financial considerations, explaining why it was unable to find it clearly consistent with interests of national security to grant security clearance eligibility. The DCSA CAS took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the National Adjudicative Guidelines (AG) effective for any adjudication

made on or after June 8, 2017. On November 1, 2024, Applicant answered the SOR, admitting the allegations and requesting a decision based on the evidence in the file rather than a hearing. On November 26, 2024, Department Counsel prepared a File of Relevant Material (FORM), setting forth the Government's arguments against Applicant's security clearance worthiness. The FORM contains four attachments, identified as Item 1 through Item 4.

Applicant received a copy of the FORM on January 24, 2025. He was given 30 days to file a response. He did not file a response, whereupon the case was assigned to me on April 2, 2025. After receiving the FORM, I admitted Items 1 through 4 into the record.

Findings of Fact

Applicant is a 59-year-old man with five children. He is currently separated from his wife. He earned a bachelor's degree in 2013. He has been working for a defense contractor as a facility manager since 2023. (Item 3 at 9)

At the time of the issuance of the SOR, Applicant had failed to timely file his federal and state income tax returns for the 2019 tax year. (GE 3, 4) Applicant admits to the allegations, and he states that he is "taking the steps" to file the outstanding returns. (Item 2 at 3) He attributes his difficulties with filing his tax returns to being preoccupied with overseeing the care for his ailing mother who required round-the-clock care, and his marital breakdown. (Item 4 at 3) He presented no evidence of what, if any, steps he has taken to begin ameliorating his financial problems.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny 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 ¶ 1(d) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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. 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 applicant or proven by Department Counsel. . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

The security concern under this Guideline states, “failure 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 or sensitive information.” (AG ¶ 18)

Applicant’s failure to file his 2019 federal and state income tax returns triggers the application of AG ¶ 19(f), “failure to file or fraudulently filing annual federal, state, or local income tax returns or failure to pay annual federal, state, or local income tax, as required.”

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, a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
 - (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant attributed his failure to file his 2019 federal and state income tax returns to his marital separation and the time he was compelled to spend caring for his severely disabled mother. Although he stated that he was taking steps to file the tax returns, he provided no evidence of any plan. Consequently, although the circumstances with his marriage and his mother's declining health are certainly circumstances beyond his control, the absence of any proof that he is acting responsibly under the circumstances renders the mitigating conditions inapplicable.

Whole-Person Concept

I considered the whole-person concept factors in my analysis of the disqualifying and mitigating conditions, discussed above, and they do not warrant a favorable conclusion.

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

Subparagraphs 1.a – 1.b:

Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge