



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-01137

Appearances

For Government: Lauren A. Shure, Esq., Department Counsel
For Applicant: *Pro se*

07/21/2025

Decision

Hale, Charles C., Administrative Judge:

Applicant presented insufficient evidence of what progress, if any, that he has made to resolve his federal income tax returns. Under these circumstances, he failed to mitigate the financial considerations security concerns. His application for a security clearance is denied.

Statement of the Case

On December 4, 2024, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility. The DoD took the action under Executive Order (EO) 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017.

On December 12, 2024, Applicant answered the SOR and requested a decision based on the evidence in file rather than a hearing. On February 13, 2025, Department

Counsel prepared a File of Relevant Material (FORM), setting forth the Government's arguments against Applicant's security clearance worthiness. The FORM contains eight attachments, identified as Item 1 through Item 8.

Applicant received a copy of the FORM on March 27, 2025. He was given 30 days to file a response. He did not file a response. The case was assigned to me on July 10, 2025. FORM Items 1 and 2 are pleadings in the case. I admitted Items 3 through 8 into evidence without objection.

Findings of Fact

Applicant is a 62-year-old man. He was married for four years in the early 90s. He remarried in 2001 to his current spouse. He has one child and a stepchild, both adults. (Item 3; Item 8.)

SOR ¶ 1.a: You failed to timely file, as required, federal tax returns for tax years 2017, 2018, 2020, and 2021. Applicant denied SOR ¶ 1.a on the basis he had filed his Federal tax returns for tax years 2017, 2018, 2020, and 2021. In his Answer, he stated his Federal taxes were filed with Turbo Tax two years ago and that he has hired an attorney to help him and his wife through this issue. He then acknowledged in his Answer that "these tax years were indeed delinquent but have since been caught up and steps have been taken to assure this doesn't happen in the future." (Answer; Item 7.) In his response to the first Government interrogatories, he stated that he had gotten behind due to an inability to pay his taxes in 2016, and as the years progressed, he fell further behind. (Item 4.) In response to a second set of Government interrogatories, issued in November 2024, he stated all his Federal tax returns were filed but provided no dates for when the tax returns were filed. The IRS account transcripts prepared in January 2023, for the government interrogatories for tax years in question, show "no tax return filed" for these years but the 2020 tax year return, which was not alleged, was timely filed according the January 2023 IRS account transcript. (Item 5.) In his 2023 security clearance interview he stated he forgot to adjust his withholdings back, which he did because of the company bonus he received each year. When he discovered the error, he knew he could not pay his tax liability and just ignored it. He used money from his 401K to resolve his Federal tax liability. (Item 8.)

SOR ¶ 1.b: You are indebted to [your state] for delinquent taxes in the approximate amount of \$10,200. Applicant admitted he was indebted to his state for delinquent taxes in the approximate amount of \$10,200. In his initial Government interrogatory response, he wrote he was "taking steps" to have his "state obligations met." (Item 4.) He provided his state account payment history, which shows regular payments beginning in March 2024 through November 2024. He attributed his large tax liabilities to not changing his withholdings back after receiving a bonus that he regularly received from his employer. He admitted in the second Government interrogatories that he had filed his state taxes late for multiple years. (Item 5; Item 6; Item 8.)

Applicant provided no documentary evidence to support his statements that he had resolved his Federal tax returns. I have considered the unalleged late state tax filings for tax years 2018 to 2023, referenced in his second interrogatory response, as whole person evidence. (Answer; Item 5; Item 8.)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 15- 01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline is set out in AG ¶ 18:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . . Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person’s self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant’s admissions and the documentary evidence in the record establish the following disqualifying conditions under this guideline:

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 are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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; and

AG ¶ 20(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.

AG ¶ 20(a) and AG ¶ 20(b) are not established for SOR ¶ 1.a. Applicant's unfiled Federal tax returns, which he attributed to a withholding error for his bonuses he regularly received, are recent and did not occur under circumstances making them unlikely to recur. This error may have impacted his ability to pay his tax obligations, but it did not cause his failure to file his Federal taxes as required. When he discovered the error, he just ignored it for several years until his security clearance was in jeopardy. He has not demonstrated he has acted responsibly.

AG ¶ 20(a) and AG ¶ 20(b) are established for SOR ¶ 1.b. The debt for his state tax liability occurred due to a withholding error and he has established a payment plan and established a nine-month history of repayment.

AG ¶ 20(g) is not established for SOR ¶ 1.a. Applicant offered insufficient evidence to support his claim he had recently filed his tax returns for the years in question. The Federal tax account transcripts in the record reflect no tax return filed for the years alleged. Applicant's repeated failure to fulfill his legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 15-08782 at 3 (App. Bd. Apr. 5, 2017).

AG ¶ 20(g) is established for SOR ¶ 1.b. Applicant offered sufficient evidence he had made arrangements with his state tax authority to pay the amount owed and that he is in compliance with those arrangements.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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 have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his failure to timely file his Federal income tax returns.

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
Subparagraph 1.b:	For 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.

Charles C. Hale
Administrative Judge