



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



## **Appearances**

For Government: Jenny Bayer, Esq., Department Counsel  
For Applicant: *Pro se*

02/25/2025

## Decision

BENSON, Pamela C., Administrative Judge:

Applicant acted responsibly in filing his 2018, 2019, 2020 and 2021 federal and state income tax returns after being faced with several challenges that postponed these tax filings, and that were also circumstances beyond his control. He does not owe any back taxes. Guideline F (financial considerations) security concerns are mitigated. National security eligibility for access to classified information is granted.

## **Statement of the Case**

On December 5, 2022, Applicant completed and signed his security clearance application (SCA). On December 15, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The action was taken 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 Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

On February 7, 2024, Applicant provided a response to the SOR. He requested a hearing before an administrative judge. The case was assigned to me on August 6, 2024. On September 23, 2024, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for October 17, 2024.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4; Applicant testified but did not submit any documentation. All proffered documents were entered into evidence without objection. I held the record open for two weeks, until October 31, 2024, in the event Applicant wanted to supplement the record after the hearing. He timely submitted his federal tax transcripts covering tax years 2018 through 2023. Applicant also requested an extension due to additional time needed to obtain his tax transcripts from the state tax authority. I granted an extension until November 18, 2024. Applicant timely submitted state tax transcripts for tax years 2018 through 2023. All of the post-hearing documents were labeled as Applicant Exhibits (AE) A through P. I admitted all proffered exhibits into evidence without objection. DOHA received the hearing transcript (Tr.) on October 24, 2024, and the record closed November 18, 2024.

### **Findings of Fact**

Applicant is 32 years old. He has never been married but he does have a 12-year-old daughter. Since October 2022, he has been employed full-time by a federal contractor, and his current job title is assembly operator. His annual salary is approximately \$57,000. This is Applicant's first application for a DOD security clearance. (Tr. 9-10, 17-19; GE 1)

### **Financial Considerations**

The SOR alleges Applicant failed to timely file his 2018, 2020, and 2021 federal income tax returns. He also failed to timely file his state income tax returns for 2019, 2020, and 2021. He admitted both SOR allegations. (¶ 1.a and ¶ 1.b)

Applicant stated in his response to the SOR that the reason he fell behind on filing his federal and state income tax returns was due to several factors. In approximately late 2018, Applicant's long-time tax preparer passed away. He had difficulty finding another tax preparer that he felt he could trust. Next, the COVID-19 pandemic hit the United States and he lost his employment from March 2020 through November 2021. He received unemployment benefits and moved-in with his parents. Applicant also had to assist his daughter with full-time remote schooling during this period. All of these factors, plus suffering issues with his mental health after losing his job, prevented him from timely filing his federal and state income tax returns until the Spring of 2023. (SOR Response; Tr. 9-10, 17, 30-37; GE 2)

Applicant disclosed on his December 2022 SCA that he had not filed his income tax returns for 2019, 2020, and 2021. He listed the reason he did not file was due to "personal reasons" and that he would resolve these unfiled tax returns by Spring 2023.

Based on the federal and state tax transcripts in the record, the following tax chart was made below:

	Income tax return	Income tax return	Taxes owed to S/Fed
Tax Yr 2018	State filed 4/18/2023	Fed filed 8/07/2023	Owe taxes – 0/0
Tax Yr 2019	State filed 4/18/2023	Fed filed 5/11/2023	0/0
Tax Yr 2020	State filed 4/16/2023	Fed filed 5/22/2023	0/0
Tax Yr 2021	State filed 4/16/2023	Fed filed 5/29/2023	0/0
Tax Yr 2022	State filed 4/16/2023	Fed filed 5/08/2023	0/0
Tax Yr 2023	State filed 3/29/2024	Fed filed 4/29/2024	0/0

(AE A, B, C, D, E, F, K, L, M, N, O, P; GE 1)

Applicant was aware of his legal obligation to file income tax returns, and he regretted not filing his income tax returns on time. He stated that there were multiple reasons why he was able to file all of his unfiled income tax returns by Spring 2023, as promised on his December 2022 SCA. He stated, “I’m well-established in my job. I’m better -- I’m better financially. I’m better spiritually. I’m better mentally. I have a better grasp on parenthood. So it pushed me even further to just better myself.” His girlfriend also helped him find a trustworthy tax preparer in 2023 that he plans to use in the future. It is Applicant’s intention to never fall behind again when filing his income tax returns. (Tr. 47-50)

## **Character Evidence**

Applicant submitted three character reference letters from his direct supervisor, line supervisor, and the facility security officer (FSO) at his current place of employment. Both of his supervisors stated that Applicant is a valuable member of the team. He is dependable, respectful, and willing to work overtime when needed. Applicant’s FSO reported that he is friendly to everyone, a quick learner, and a hardworking employee. She would like to see Applicant continue to learn more about how the federal contractor directly contributes to our country’s warfighters, which would require security clearance eligibility. (AE G, H, I)

## **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.

Directive ¶ E3.1.14 requires the Government to 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 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**

### **Financial Considerations**

AG ¶ 18 articulates the security concern for financial problems:

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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following is potentially applicable in this case:

- (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.

Appellant's failure to timely file federal and state income tax returns for 2018, 2019, 2020 and 2021 support the application of AG ¶ 19(f).

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; and
- (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.

Appellant knew he was required to timely file his state and federal income tax returns. He encountered tax complications stemming from his tax preparer's death in about late 2018. He had difficulty finding a tax preparer he could trust. Then he lost his job during the pandemic. He struggled with his finances, with his mental health, and he moved in with his parents. He supported his daughter during her remote school learning and education while schools were closed during the pandemic.

Applicant was candid about his tax problems when he completed his December 2022 SCA. He also disclosed that he planned to have all of his income tax issues resolved in the Spring of 2023. The tax transcripts in evidence show that all of his unfiled tax returns were filed by Spring 2023, and Applicant kept his promise to address this problem well before the SOR was issued in December 2023. Applicant does not owe any back taxes to the federal or state tax authorities, and it is his intention to file all income tax returns in a timely manner.

The new tax preparer hired by Applicant resolved all of his unfiled federal and state tax returns. Applicant plans to use this tax preparer in the future. Under the current circumstances, there are clear indications that his tax problem is sufficiently resolved. His failure to timely file his federal and state income tax returns occurred under such circumstances that it is unlikely to recur and does not cast doubt on his current reliability,

trustworthiness, and good judgment. Financial considerations security concerns are mitigated.

### **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(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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security 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 and the AG ¶ 2(d) factors in this whole-person analysis.

The Federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. In deciding whether to grant or continue access to classified information, the Federal government can take into account facts and circumstances of an applicant's personal life that shed light on the person's judgment, reliability, and trustworthiness. Furthermore, security clearance decisions are not limited to consideration of an applicant's conduct during work or duty hours. Even if an applicant has a good work record, his or her off-duty conduct or circumstances can have security significance and may be considered in evaluating the applicant's national security eligibility.

To his credit, Applicant took responsible action to file his 2018-2021 federal and state income tax returns before receipt of the SOR. He does not owe any back taxes. He used the services of a new tax preparer to handle his income tax returns, and he intends to continue using her services in the future. I also considered that Applicant is a valuable asset to his employer, and he is considered dedicated and a quick learner by his supervisors. After evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the financial considerations security concerns.

## **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, I conclude that it is clearly consistent with national security to grant Applicant's national security eligibility. Eligibility for access to classified information is granted.

Pamela C. Benson  
Administrative Judge