



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



In the matter of: )  
)  
) ISCR Case No. 14-04601  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

09/16/2015

**Decision**

CURRY, Marc E., Administrative Judge:

Appellant failed to provide documentation supporting his contention that he has filed his income tax returns and begun paying his delinquent debts. Clearance is denied.

**Statement of the Case**

On October 20, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

On November 18, 2014, Applicant answered the SOR, admitting subparagraphs 1.a through 1.c, 1.e, 1.g, and 1.h. He admitted subparagraph 1.f, in part, and denied it, in

part, and he denied subparagraph 1.d. On February 9, 2015, Department Counsel prepared a File of Relevant Material (FORM) consisting of documents supporting the Government's allegations. Applicant received the FORM on March 17, 2015, and was informed that he had 30 days, through April 16, 2015, to submit a response. Applicant did not submit one, whereupon the case was assigned to me on May 22, 2015.

### **Evidentiary Ruling**

Department Counsel explained to Applicant that Item 7, a summary of a personal subject interview, was not authenticated, and that he could object to its admissibility, or adopt it with corrections, admissions, or deletions. (FORM at 2) I conclude that Applicant, having not responded to the FORM, does not object to its contents. Therefore, I am admitting Item 7.

### **Findings of Fact**

Applicant is a 51-year-old single man. He is a high school graduate, and earned an associate's degree in 2008. (Item 4 at 11) Since 1999, he has worked for a defense contractor as an assembly technician. (Item 4 at 12)

Applicant had not file his income tax returns for tax years 2008 through 2013. (Item 3; Item 7 at 8) He did not file these returns because he knew that he was going to owe money, and he did not have the income to pay them. (Item 7 at 8) He contends that he had filed his income tax returns for 2008 through 2011, and that he had begun paying the delinquency by 2012. (Item 3 at 1; Item 7 at 8) Also, he asserts that he had filed his 2012 and 2013 tax returns by mid-2014. (Item 3 at 1) He provided no evidence supporting these contentions. The delinquent balance totals approximately \$30,000. (Item 3 at 1)

Applicant has miscellaneous delinquent debt totalling approximately \$1,700, as alleged in subparagraphs 1.b-1.f. (Item 3 at 1) He has taken no steps to satisfy subparagraphs 1.b and 1.c. His denial of subparagraph 1.d and his partial denial of subparagraph 1.f is not supported by documentary evidence.

### **Policies**

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.”

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 for obtaining a favorable security decision.

## **Analysis**

### **Guideline F, Financial Considerations**

Under this guideline, “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.” (AG ¶ 18) Applicant failed to file his federal income tax returns on time, and he currently owes \$30,000 in delinquent taxes. He also owes approximately \$1,700 in delinquent commercial debt. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” AG ¶ 19(c), “a history of not meeting financial obligations,” and AG ¶ 19(g), “failure to file annual federal, state, or local income tax returns, as required . . . ,” apply.

The following mitigating conditions 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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Appellant failed to provide documentary evidence supporting his contention that he has filed and begun satisfying his delinquent income taxes, nor has he provided evidence that he has satisfied or developed payment plans for any of his delinquent commercial debts. As for the debts that he either denies or partially denies (subparagraphs 1.d and 1.f), he provided no evidence supporting the basis of his dispute, nor any evidence taken to resolve these disputes. Under these circumstances, none of the mitigating conditions apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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.

The length of time that Applicant has held his job is a sign of stability. He also deserves credit for trying to improve his career opportunities by earning an associate's degree several years after finishing high school. However, these positive facts are not sufficient to overcome the security risk generated by his excessive delinquent debts, absent supporting documentation that he is taking steps to satisfy them.

### **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.h:	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.

MARC E. CURRY  
Administrative Judge