



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-06090
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

06/30/2015

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant failed to timely file his federal and state income tax returns for tax years 2011 through 2013. He is delinquent on his child support obligations, taxes, and other debts. His evidence is insufficient to show that he has a track record of financial responsibility, that he does not have a current financial problem, or that his financial problem is being resolved or is under control. He failed to mitigate the Guideline F security concerns. Clearance is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 20, 2014. On December 16, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations).<sup>1</sup> Applicant answered the SOR on January 5, 2015, and elected to have his case decided on the written record.

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<sup>1</sup> DOD acted 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines*

A copy of the Government's file of relevant material (FORM), dated April 6, 2015, was provided to him by transmittal letter dated April 20, 2015. Applicant received the FORM on April 27, 2015. He was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. Applicant did not respond to the FORM or submit any information.

### **Findings of Fact**

Applicant admitted all the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. After a review of the record evidence, I make the following additional findings of fact:

Applicant is a 36-year-old ship fitter employed by a federal contractor. He has never been married. He has a nine-year-old son. This is his first security clearance application.

Applicant disclosed in his March 2014 SCA five periods of unemployment since October 2007. Most of his unemployment was due to his employers downsizing or losing their contract. He was employed from October 1999 to October 2007; unemployed from October 2007 to December 2008; employed from December 2008 to March 2009; unemployed from March 2009 to August 2009 (terminated for losing tools); employed from August 2009 to September 2012; unemployed from October 2012 to December 2012; employed for one month, and unemployed from January 2013 to May 2013. He was employed from May 2013 to August 2013 (left the job for medical reasons); unemployed from August 2013 to December 2013; and employed from December 2013 to present. He was hired by his current employer, a federal contractor, in March 2014.

Applicant disclosed in Section 26 (Financial Record) of the 2014 SCA that he had financial problems, which included his failure to timely file federal and state income tax returns for tax years 2011 and 2012, and that he owed taxes for those two years. Applicant disclosed no reasons for his failure to file his federal and state income tax returns. He stated that he was planning to file his delinquent income tax returns in 2014. Applicant admitted in his response to the SOR, that he failed to file federal and state income tax returns for tax years 2011 through 2013. Applicant presented no evidence to show that he has filed his delinquent income tax returns.

Additionally, Applicant disclosed that he was \$1,700 delinquent on his court-mandated child support obligations. He changed jobs in September 2012, and stopped his wage attachment. He failed to notify proper authorities of his new job to continue the wage attachment to pay his child support. As of March 2013, he had taken no action to pay his past-due child support obligation. Applicant also indicated he underwent eviction proceedings in 2005, 2007, and 2013.

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*for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.*

Applicant provided no information about his current earnings and financial position. He did not provide any information about his monthly income, monthly expenses, and whether his current income is sufficient to pay his current day-to-day living expenses and debts. There is no information to indicate whether he participated in financial counseling or whether he follows a budget. He presented no evidence of any payments made, efforts to contact creditors, establish payment plans, or efforts to otherwise resolve his financial problems.

## **Policies**

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch 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).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## Analysis

### Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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. (AG ¶ 18)

Applicant's failure to timely file his federal and state income tax returns for three consecutive tax years and his delinquent debts raise the applicability of the following financial considerations disqualifying conditions: 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 or the fraudulent filing of the same."

AG ¶ 20 lists five conditions that could mitigate the financial considerations security concerns:

- (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.

None of the financial considerations mitigating conditions apply. Applicant provided no reason for his failure to timely file his federal and state income tax returns. Additionally, he provided no documentary evidence to show that he filed the delinquent tax returns.

I considered Applicant's periods of unemployment, which could establish circumstances beyond his control that may have contributed or aggravated his financial problems. Notwithstanding, Applicant submitted no evidence to show he acted responsibly under the circumstances to warrant applicability of AG ¶ 20(c).

Furthermore, Applicant provided little information about his current earnings and financial position. He did not provide any information about his monthly income, monthly expenses, and whether his current income is sufficient to pay his current day-to-day living expenses and debts. There is no information to show that he participated in financial counseling or that he follows a budget. The available information is insufficient to establish clear indications that he does not have a current financial problem, or that his financial problem is being resolved, or is under control. Applicant failed to establish that he has a track record of financial responsibility.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant failed to submit evidence to show that he has a track record of financial responsibility, that he does not have a financial problem, or that his financial problem is being resolved or is under control. He failed to mitigate the Guideline F 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.j:	Against Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

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JUAN J. RIVERA  
Administrative Judge