



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



In the matter of: )  
)  
) ISCR Case No. 14-06424  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Braden Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

08/07/2015

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On March 9, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. 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) effective within the DOD on September 1, 2006.

Applicant answered the SOR on April 14, 2015, and requested a hearing before an administrative judge. The case was assigned to me on June 12, 2015. The Defense

Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 19, 2015. I convened the hearing as scheduled on July 27, 2015. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. Applicant and two witnesses testified. He offered Applicant Exhibits (AE) A through J, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on August 4, 2015.

### **Procedural Issues**

Department Counsel moved to correct the numbering of the paragraphs in the SOR, noting there were two paragraphs "1.e." The second "1.e" was changed to "1.f" and "1.f" was changed to "1.g" so the paragraphs could be read sequentially. There was no objection and the motion was granted.<sup>1</sup>

### **Findings of Fact**

Applicant admitted all the allegations in SOR. His admissions were incorporated into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 52 years old. He has a high school education and served in the Marine Corps from 1980 to 1985 and was honorably discharged. He worked for the same government contractor from 1986 until 2011. He was terminated from his employment in 2000 and sometime later was reinstated. He was again terminated in 2011 and reinstated in 2013. He married in 1983, separated in 2000, and was divorced in 2007. He has three grown children. He provided his family with some support from 2005 to 2009. He does not currently provide support.<sup>2</sup>

Applicant completed a security clearance application (SCA) in June 2013. In response to questions in Section 26 about his finances, he failed to disclose he did not file or pay his Federal income taxes for tax years 2008 through 2012, that he had a federal tax lien, and that he had a vehicle repossession, debts turned over to collection agencies, credit cards suspended or charged off, or canceled for failing to pay as agreed.

Applicant testified that he provided accurate information regarding his failure to file his federal income tax returns on a previously SCA completed in May 2013.<sup>3</sup> A review of the SCA shows Applicant disclosed he failed to file his 2001 federal income tax return. He did not disclose he failed to file his 2008 through 2012 federal income tax

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<sup>1</sup> Tr. 13.

<sup>2</sup> Tr. 56, 58, 64; AE E.

<sup>3</sup> Tr. 62-63; AE F.

returns in this document. He also did not disclose the other financial delinquencies regarding past due debts in the May 2013 SCA.<sup>4</sup>

Applicant testified that in a SCA completed in November 2010, he disclosed he had a vehicle repossessed in July 2010. He did not disclose this in the May 2013 or June 2013 SCAs.<sup>5</sup>

Applicant admitted he failed to disclose his financial delinquencies, repossession, and failure to file his federal income tax returns on his June 2013 SCA because he was worried about losing his job and was getting his taxes in order. He stated the answer he provided was “inaccurate” but not “dishonorable.” He was in a hurry when he completed the June SCA and it was not his fault. He stated he was not being dishonest, but rather he panicked and checked “no.” I find Applicant deliberately failed to disclose the correct information on his June 2013 SCA.<sup>6</sup>

Applicant testified he did not pay his federal income taxes from 2001 to 2007 and did not timely file his federal income taxes from 2008 to 2014. He stated he did not file his tax returns because he could not afford to pay someone or a company to complete the tax returns for him. He stated that he separated from his wife in 2000 and that was the last time he filed his federal income tax returns on time. He stated he tried to file at some later time, but the tax return was returned to him because he owed money. He did not explain what year he attempted to file. He attributed his financial problems to a period of time when he worked overseas and his fiancé at the time was supposed to pay his creditors and pay his 2001 through 2007 taxes for him, and she did not. The relationship ended in 2008. Applicant’s testimony was not credible. He acknowledged he did not have sufficient taxes withheld from his pay to cover his income taxes. For a period of time, he had severe financial problems and was homeless for two months. He was employed at this time.<sup>7</sup> Applicant stated that he learned he had a tax lien in June 2009. He owes approximately \$45,143 for that lien (SOR ¶ 1.e). It is unpaid.<sup>8</sup>

Applicant provided a document from the Internal Revenue Service (IRS) noting Applicant’s inquiry from June 2015 to arrange installment payments for taxes owed for tax years 2001, 2003, 2004, 2005, 2007, 2008, 2009, 2010, 2011, 2013, and 2014. Applicant filed federal income tax returns for tax years 2008 through 2014, on June 17, 2015. As noted on the IRS document, the amount of taxes owed by Applicant for tax years 2008 through 2011, 2013 and 2014 with penalties and interest is approximately

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<sup>4</sup> Tr. 39.

<sup>5</sup> Tr. 42-43.

<sup>6</sup> Tr. 39-43.

<sup>7</sup> Tr. 43-52, 60, 62-64.

<sup>8</sup> Tr. 64-65. I have only considered Applicant’s delinquent tax filings for the years alleged in the SOR. I have not considered the other delinquent years for disqualifying purposes, but will consider them when analyzing Applicant’s credibility and the whole-person.

\$94,734. Applicant was due a refund for tax year 2012, which was applied to delinquent taxes for tax year 2001. The remaining amount owed for 2001 is \$1,824. The specific amount owed on the remaining tax years that are not noted is unknown. His plan is to work with the IRS to get the amount reduced.<sup>9</sup>

The debts alleged in the SOR are supported by credit reports from June 2013, October 2014, and June 2015.<sup>10</sup> In April 2015, Applicant paid the debt in SOR ¶ 1.c. He provided a copy of receipt of payment.<sup>11</sup> He contacted one creditor to make payment arrangements, but no agreement has been made. He believed at the time he had medical insurance for the medical debts, but then stated he did not. None of the other debts in the SOR are paid.<sup>12</sup>

Applicant worked for his present employer from 1986 to 2011. He lost his job in approximately November 2011 and after an arbitration hearing he was rehired in May 2013. He worked at another job while waiting for the outcome of his hearing. Applicant attributed his financial problems to periods of unemployment. In 2000, he was terminated from his employment for sleeping on the job. He was out of work for one month.<sup>13</sup>

Applicant admitted he made mistakes regarding filing and paying his federal income taxes. He indicated it will likely take between 13 and 16 years to pay the debt.<sup>14</sup>

Applicant's friend testified on his behalf and stated she has known him since 1986 and on a more personal level for the past five years. She loaned him money so he could purchase a vehicle, and he paid her back. She acknowledged he has financial problems, but now that she is with him he is getting his finances on track and has a budget. He does not live extravagantly.<sup>15</sup>

Applicant's landlord testified on his behalf. He has lived in one of his rentals for six years. He has worked out an agreement where Applicant pays his rent through installment payments. Applicant takes good care of the property.<sup>16</sup>

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<sup>9</sup> Tr. 44-52, 67-68, 72-73; AE B and J.

<sup>10</sup> GE 2 and 3; AE C.

<sup>11</sup> Tr. 52-53; AE C.

<sup>12</sup> Tr. 53-54.

<sup>13</sup> Tr. 55-57, 64, 70-72.

<sup>14</sup> Tr. 75.

<sup>15</sup> Tr. 77-84; AE E.

<sup>16</sup> Tr. 84-89.

## 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.

Under Directive ¶ E3.1.14, the Government must 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

### Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following three are potentially applicable:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant failed to timely file his federal income tax returns from 2008 through 2012. He is indebted to the IRS for a \$45,143 federal tax lien entered in 2009. He has delinquent debts that are not paid or resolved. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. 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, 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant was terminated from his job, but was able to work part-time. He had short periods of unemployment. Applicant failed to provide credible information for his failure to file and pay his federal income taxes. He only recently filed for the tax years alleged and other years that were not alleged. He was aware of his 2009 tax lien. He paid one delinquent debt, the others are unresolved. Although he requested to pay his tax debt through an installment plan, none has been accepted and no payments have been made. Applicant's past conduct casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

I have considered Applicant's testimony about the reasons for his failure to file his federal income tax returns and his periods of unemployment and underemployment. His unemployment was beyond his control. His failures regarding his tax obligations were within his control. In order to fully apply AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. There is no evidence Applicant did anything regarding his financial problems until he received the SOR. He has only paid one debt and did not provide a plan on how he intends to resolve his financial problems. I find AG ¶ 20(b) only partially applies.

Applicant filed his 2008 through 2012 federal income tax returns in June 2015. He has not paid the taxes owed. He has not paid the 2009 tax lien or the remaining alleged debts, except for one. There is no evidence he has received financial counseling. There is insufficient evidence to conclude Applicant's financial problems are resolved or under control. He has not initiated a good-faith effort to pay the overdue creditors, except for one. AG ¶ 20(d) applies to SOR ¶ 1.c. AG ¶¶ 20(c) and 20(d) do not apply to the remaining financial allegations.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct;

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

On his June 2013 SCA Applicant deliberately omitted he failed to file his 2008 through 2012 federal income tax returns, that he had a 2009 tax lien, and that he had other delinquent debts including a vehicle repossession. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant was aware that he failed to file his federal income tax returns. He testified that he disclosed this information on a May 2013 SCA, but that document only shows he disclosed he failed to file his 2001 return. Applicant did not make a prompt, good-faith effort to correct his omissions, rather he attempted to rationalize and explain how he did disclose the information about his taxes and the repossession. His testimony was not credible. His falsifications were deliberate, not minor, and did not happen under unique circumstances. I cannot find this behavior is unlikely to recur. His actions cast doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 17(a) and 17(c) do not apply.

### **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(a):

(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 clearance 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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 52 years old. He served in the Marine Corps and was honorably discharged. Applicant has a long history of failing to file his federal income tax returns. After receiving the SOR he filed his federal tax returns for 2008 through 2014. A letter from the IRS he provided shows he owes taxes for other tax years. Applicant deliberately failed to disclose he did not file his federal tax returns for numerous years. He failed to disclose he had delinquent debts. His testimony was not credible. He has not resolved his delinquent debts, except for one. He has a large tax bill that he estimated will take from 13 to 16 years to pay. He has not made any payments on the debt. Applicant's conduct raises questions about his judgment, reliability, and trustworthiness. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the financial considerations and personal conduct guidelines.

### **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:	<b>AGAINST APPLICANT</b>
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.g:	Against Applicant
Paragraph 2, Guideline E:	<b>AGAINST APPLICANT</b>
Subparagraphs 1.a-1.c:	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 a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge