



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-00910  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Braden Murphy, Esq., Department Counsel  
For Applicant: Betty Osborn, Personal Representative

05/31/2016

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

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

**Statement of the Case**

On October 15, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to 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; DOD 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 December 4, 2015, and requested a hearing before an administrative judge. The case was assigned to me on February 17, 2016.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 22, 2016. I convened the hearing as scheduled on March 16, 2016. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through L, which were admitted into evidence without objection. The record was held open until March 30, 2016, to give Applicant more time to submit additional documents. He submitted documents that were marked AE M through R, which were admitted into evidence without objection. The record closed.<sup>1</sup> DOHA received the hearing transcript (Tr.) on March 24, 2016.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶ 1.a through 1.i. He denied SOR ¶ 2.a. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 61 years old. He completed the 11<sup>th</sup> grade. He was married from 1978 to 1993. He has a grown child from a previous relationship. He has worked for a federal contractor from 1996 until he had medical problems in July 2014.<sup>2</sup>

Applicant completed a security clearance application (SCA) in August 2012. Question 26 on the SCA inquired about Applicant's debts. He indicated that he had failed to pay his 2006 federal income taxes because his "mother was doing the paperwork and she failed to pay it for me and I didn't know it until later."<sup>3</sup> He noted he owed \$4,600 and that it was paid in full in February 2012. He did not disclose any other instances that he failed to pay his federal or state taxes.<sup>4</sup>

In July 2014 Applicant developed a serious and debilitating illness. He has been unable to work or pay his bills since then. He admitted he owes the delinquent debts in SOR ¶ 1.c through ¶ 1.i, totaling approximately \$37,000. Applicant stated that he contacted the creditors to explain the reason he could not pay them. He does not know when he will be able to pay his delinquent debts. He does not have any money and relies on Social Security disability payments. The debts alleged in the SOR are supported by credit reports from September 2012 and July 2015.<sup>5</sup>

Federal tax liens were filed against Applicant in 2009 for \$121,521 and in 2010 for \$32,015. Applicant testified that he worked away from his residence and his

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<sup>1</sup> HE I is Department Counsel's email memorandum.

<sup>2</sup> Tr. 28-30.

<sup>3</sup> Electronic Questionnaires for Investigations Processing questionnaire for National Security Positions, signed August 30, 2012.

<sup>4</sup> GE 1.

<sup>5</sup> Tr. 30-31; 54-58; GE 2, 3; AE F and G.

stepmother took care of his bills, banking, and taxes. She was supposed to file his federal income tax returns for him and make required quarterly payments. He testified that she never filed his 2004 through 2011 federal income tax returns and did not pay his taxes as she agreed to do.<sup>6</sup> He stated that he relied on her to prepare and file the returns, and paid for her to have a company complete them. He testified that in the past, he signed some of the tax returns and sometimes she signed for him. Applicant testified that he paid a tax attorney \$6,000 to discuss his tax liability with the Internal Revenue Service (IRS) and arrange an installment agreement to pay his tax debt. He provided a document that shows he had an agreement with a tax “solution” company dated June 2013.<sup>7</sup> He stated that since 2012 he has been making monthly payments of \$124 to the IRS. He provided a letter from the IRS indicating that it accepted an installment agreement to pay \$124 a month beginning in December 2013. He provided proof that he made a payment of \$124 to the IRS in December 2013 and January 2016. The IRS letter from November 2015 indicates that the balance owed by Applicant for tax years 2004 through 2012 is \$82,020. In the block “last payment received” the amount is zero.<sup>8</sup> Applicant testified that he uses his Social Security disability payment to pay the IRS. He indicated that the IRS may suspend his installment agreement because he cannot afford to make the payments.<sup>9</sup>

Applicant testified that he was unaware when he completed his SCA that he had delinquent federal income taxes or tax liens because he relied on his stepmother to handle the matters. He testified that he was providing his stepmother money to pay his bills before he became sick and that she was stealing his money and not paying his bills. He testified that she retrieved his mail when he was on travel. His stepmother no longer has access to his accounts. She abandoned him when he became sick.<sup>10</sup>

Applicant provided a character letter from an employer who described him as dependable, conscientious, honest, trustworthy, and an excellent employee.<sup>11</sup>

### **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

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<sup>6</sup> I have not considered information regarding unfiled tax returns for disqualifying purposes, but may consider it when analyzing Applicant’s credibility, in mitigation, and the whole person.

<sup>7</sup> AE R.

<sup>8</sup> AE I, K, N.

<sup>9</sup> Tr. 32-47, 61.

<sup>10</sup> Tr. 32-53, 59-61.

<sup>11</sup> AE A.

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>12</sup>

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

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has two delinquent tax liens from 2009 and 2010. He also has delinquent debts totaling approximately \$37,000. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following four 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

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<sup>12</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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

Applicant attributed the federal tax liens to a period when he relied on his stepmother to pay his quarterly federal income taxes, file his returns, and pay his bills. He subsequently learned that she was stealing from him and not helping him manage his financial obligations. In 2014, Applicant became disabled and has been unable to pay his bills. None of the debts alleged in the SOR are resolved or paid. Applicant's debts are recent and ongoing. There is insufficient evidence to conclude they are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant's stepmother abused her position of trust. Applicant is unemployed due to medical problems and has been unable to work since July 2014. He cannot pay his delinquent debts. He has had an installment agreement with the IRS to pay his delinquent federal income taxes since December 2013, but provided proof of making only two payments. He testified that the IRS is reviewing his situation and ability to pay. No other proof of payments was provided. Applicant's medical condition resulting in his unemployment was beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant failed to provide sufficient evidence to show he responsibly monitored his financial situation to ensure his taxes or other debts were being paid. Due to his medical condition he is unable to work and pay his delinquent debts. AG ¶ 20(b) partially applies.

None of the SOR debts are paid or resolved. It appears Applicant has an installment agreement with the IRS that began in December 2013. He provided evidence of two payments. He testified he has been making payments to the IRS since 2012. The IRS letter indicates the balance he owes is less than the tax liens alleged. Applicant has not paid or resolved any of the other delinquent debts in the SOR. Applicant did not provide evidence that he received financial counseling. There is insufficient evidence to conclude Applicant's financial problems are being resolved, under control, or that he has initiated good-faith payments to pay overdue creditors, other than the two payments to the IRS. AG ¶ 20(d) partially applies to the extent that he made an effort to contact the IRS and participate in an installment agreement. AG ¶ 20(c) does not apply.

### **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.

Applicant was unaware that his stepmother was not paying his quarterly federal taxes, and that as a consequence he incurred a large tax debt. Although he should have been more responsible in monitoring her conduct, I find he was unaware when he completed his SCA that his tax liens entered against him. I find Applicant did not intentionally fail to disclose he had federal tax liens. The above disqualifying condition does not apply. Applicant successfully refuted the personal conduct allegation. Hence, a discussion of mitigating conditions is not necessary.

### **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 61 years old. He owes a large federal tax debt and approximately \$37,000 in delinquent debts. He has an installment agreement with the IRS, but there is insufficient evidence to conclude he began making payments in 2012 or has made consistent payments. He provided evidence he has made only two payments since

negotiating that agreement in 2013. Applicant is unable to pay his delinquent debts, due to his medical problems and unemployment. He did not provide sufficient evidence to show he established a track record of being fiscally responsible or a plan to resolve his financial obligations. 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. Applicant successfully refuted the personal conduct allegations.

### **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.i:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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