



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-03569

**Appearances**

For Government: Alison O'Connell, Esquire, Department Counsel  
For Applicant: Sheldon I. Cohen, Esquire

02/10/2016

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant's wife's illness and his period of unemployment contributed to his financial problems. Notwithstanding, he failed to establish a track record of financial responsibility and clear indications that he does not have a current financial problem. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on April 26, 2013. On October 8, 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's attorney entered his appearance on November 7, 2014. Applicant answered the SOR on November 13, 2014, and

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

requested a hearing before an administrative judge. The case was assigned to another administrative judge on June 8, 2015, and reassigned to me on September 11, 2015.

On June 23, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, scheduling Applicant's hearing for September 11, 2015. Applicant's hearing was held as scheduled. Department Counsel offered six exhibits into evidence (GE 1-6), and Applicant offered 23 exhibits into evidence (AE A through W). All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on September 21, 2015.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in SOR ¶¶ 1.a through 1.g, and 1.j through 1.l. He denied the factual allegations in SOR ¶¶ 1.h and 1.i, because the alleged debts were paid. His admissions are incorporated as findings of fact. After a thorough review of all the evidence, I make the following additional findings of fact:

Applicant is a 44-year-old software systems engineer working for a federal contractor. He attended high school in the United States in 1986, as an exchange student and returned to his country. He returned to the United States in 1989, under a college student visa. Applicant received a U.S. bachelor's degree in aerospace engineering in 1993. He also completed most of his master's degree requirements, except for the thesis, which he never completed. After college, he remained in the United States and became a naturalized U.S. citizen in 2001.

Applicant met his wife while they were in college, and they married in 1994. After completing two years of college, she worked as an account executive for a telecommunications company for about six and one-half years. She stopped working for some time after the birth of their first daughter in October 2000. Applicant and his wife purchased a home in June 2002, and their second daughter was born in July 2002.

Applicant started working for private companies after he finished college in 1993. Between September 2001 and March 2010, he was self-employed as an independent contractor, and worked as a subcontractor for a federal contractor. Applicant was granted access to classified information at the secret level in 2003. He also worked for a federal contractor from 2010 to September 2013. He was laid off in September 2013, and remained unemployed until March 2014, when he was hired by his current employer, a federal contractor. His current job is contingent on his eligibility to possess a security clearance.

Applicant's wife had serious medical problems during the pregnancy and after the birth of their second daughter in 2002, and she became almost disabled. She suffered from a brain blood clot, seizures, gastritis, esophagitis, ulcerative colitis, bladder problems in 2004, sinus surgery in 2007, and a colostomy in 2008. (AE H, I)

Applicant's wife was unable to take care of herself or her children between 2002 and 2010. Her parents and other relatives had to come in and live with Applicant for extended periods to assist with her and the children's care. Applicant had to reduce his work hours to 30 hours a week to take care of his family. Additionally, he incurred additional expenses related to her incapacity, medical treatments, and providing financial support for relatives caring for his wife and children.

Applicant's wife testified that before becoming ill, she was making approximately \$52,000 a year, plus commissions of about \$45,000. When she was pregnant with her first daughter, she stopped working for a while, but then returned to work. During the pregnancy of her second daughter, she became so ill that she was unable to work until 2010. Applicant's wife testified that she has been doing better since 2010. She has been working two part-time jobs, and has combined earnings of about \$300 a week, or \$1,200 a month.

In his July 2009 SCA, Applicant disclosed he had financial problems that included his failure to file and to pay his federal and state income taxes, delinquent accounts in collection, credit cards cancelled or suspended, and being over 90 and 180 days delinquent on some accounts. Applicant submitted his most recent SCA in April 2013. He again reiterated his financial problems, including his failure to file and pay federal and state taxes, that his mortgage was in foreclosure, and that he had numerous delinquent accounts.

In his 2013 SCA, and at his hearing, Applicant explained that his financial problems resulted from his wife's medical problems and his period of unemployment. Between 2002 and 2010, he was forced to reduce his work hours to take care of his family, and his wife was no longer able to work and financially contribute to the household. He also incurred additional expenses to take care of his children and to pay his wife's medical expenses. Additionally, he was laid off in September 2013, and unemployed until March 2014. Applicant was unable to find employment in his home state. In March 2014, he took a job in another state, about 1,000 miles away from his family. His current salary is approximately \$7,100 a month, but working and living in another state increased his living expenses.

Concerning his tax problems, Applicant explained that he filed his federal and state income tax returns for tax years 1993 to 2001, and paid any owed taxes. Applicant testified that he never filed his federal income tax returns for tax years 2002 through 2005, and he did not pay any federal income taxes for those years.

Applicant did not timely file his federal and state income tax returns for tax years 2006 through 2011, which he filed in May 2015. (AE U) He also failed to timely pay his federal income taxes for at least tax years 2006 through 2009.

From 2002 to 2011, Applicant was a 1099 employee. As such, he was required to keep track of his own income records and to file and pay estimated quarterly self-employment taxes. Applicant claimed that he kept his income records for many years,

but at some point, his wife and her friend destroyed the records because they were mildewed and had cockroaches.

Applicant claimed that he failed to timely file and to pay his taxes because of his wife's serious illness. He was living through very difficult times and had difficulty keeping up with day-to-day events such as taking care of his daughters, managing the home, and taking care of his wife. Applicant explained that he never filed his 2006 through 2011 income tax returns until 2015, because he was under the impression that he was required to file all his income tax returns retroactively in order, and he was overwhelmed by the task.

Applicant claimed that he hired a tax resolution firm in 2008, to help him file his taxes, but his wife's condition worsened and he did not do anything with his taxes until 2015. He presented no documentary evidence to support his claim. Applicant and his wife filed for Chapter 13 bankruptcy in November 2014, trying to prevent the foreclosure of the home mortgage. (AE A) The bankruptcy attorney referred Applicant to an accountant to help Applicant file his income tax returns for tax years 2006 through 2011.

Applicant testified that from 2006 to 2009, he was earning approximately \$60 an hour, and working at least a 30 hour week as an independent contractor. Notwithstanding, in his income tax returns for tax years 2006 through 2009, he claimed he received no income. I note that although Applicant filed his income tax returns for tax years 2006 through 2011 in 2015, the IRS has not accepted his income tax returns. I find his tax problems are unresolved. In his Chapter 13 filing, Applicant estimated he owes the IRS around \$27,000. However, he submitted no documents to establish his IRS assessed tax liability.

Applicant and his wife's current monthly income is about \$9,000. They pay the bankruptcy trustee \$3,589 monthly. Applicant anticipates a \$10 an hour raise if he is determined eligible for a clearance. He believes that with the anticipated income from his current job he will be able to successfully complete the Chapter 13 bankruptcy proceeding, and pay his living expenses and any remaining debts.

All the delinquent financial accounts alleged in the SOR were included in the Chapter 13 bankruptcy filing. I note that SOR ¶ 1.e was paid through the bankruptcy proceeding. (AE M) SOR ¶¶ 1.h and 1.i were also paid in September 2014.

At his hearing, Applicant claimed that he had no prior financial problems. However, during cross-examination Applicant admitted that he and his wife filed for Chapter 7 bankruptcy protection in 1996, because they accrued high credit card debt while in college.

Applicant submitted four favorable reference statements from a coworker and three supervisors. He is considered to be a valuable employee who displays exemplary performance and always meets or exceeds his job requirements. Applicant continuously pursues advance training and certifications, increasing his technical expertise and value to his employer. He was instrumental in helping his employer secure a large, important

contract. All of his references lauded Applicant's judgment, character, and trustworthiness, and strongly recommended his eligibility for a clearance.

## **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)

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.

Applicant's failure to timely file and pay his federal income tax returns for tax years 2002 through 2011, and his history of financial problems (established by his answer to the SOR, his testimony, and credit reports) 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 fully apply, and do not mitigate the security concerns. Applicant's financial problems are recent and ongoing. I considered Applicant's wife's serious, long-term illness and his period of unemployment,

which could have resulted in, or contributed to, his delinquent debts. These are circumstances that adversely affected his finances, and they were largely beyond his control.

Notwithstanding, Applicant failed to act responsibly under his circumstances. He knew he was required to keep his income records, to file estimated quarterly taxes, and to timely file and pay his taxes. His wife's illness does not excuse Applicant's deliberately failure to timely file and pay his federal taxes for 10 years.

Applicant filed for Chapter 13 bankruptcy protection in November 2014, apparently to prevent the foreclosure of his mortgage. For his bankruptcy filing to be accepted, he was required to bring up to date his federal taxes filings. He presented little evidence of any efforts to resolve his financial and tax problems prior to his 2014 Chapter 13 bankruptcy filing. Applicant's evidence failed to show that he was financially responsible under the circumstances.

Applicant also claimed that he never filed his 2006 through 2011 income tax returns until 2015, because he was under the impression that he was required to file all his income tax returns retroactively in order, and he was overwhelmed by the task. He provided no documentary evidence to show that he communicated with the IRS, made any payments to the IRS, or of any efforts to establish a payment plan. He also failed to submit documentary evidence of the extent of his debt to the IRS.

I find Applicant failed to submit sufficient evidence to show that his financial problems "occurred under such circumstances that it is unlikely to recur and does not cast doubt on the [Applicant's] current reliability, trustworthiness, or good judgment" under AG ¶ 20(a). The available information is insufficient to establish clear indications that he does not have a current financial problem. Financial considerations concerns are not mitigated.

SOR ¶ 1.e was resolved through the Chapter 13 bankruptcy process, and SOR ¶¶ 1.h and 1.i were paid in 2014. I have credited Applicant with mitigating these SOR allegations.

### **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 Guidelines F in my whole-person analysis.

Applicant is a 44-year-old software systems engineer who has worked for federal contractors from 2001 to present, except for a period of unemployment between September 2013 and March 2014. Applicant's wife's medical problems and his period of unemployment contributed to his financial problems. Notwithstanding, he failed to establish that he acted responsibly under the circumstances and that he has a track record of financial responsibility. His evidence is insufficient to establish valid reasons

for his failure to timely file and pay his income taxes from tax years 2002 to 2011. Although he filed his federal income tax returns for tax years 2006 through 2011 in 2015, Applicant never filed or paid federal income taxes for tax years 2002 through 2005.

I also find that he failed to establish clear indications that he does not have a current financial problem. Although he filed for Chapter 13 bankruptcy protection and included all the debts alleged in the SOR, the debts have yet to be discharged. Furthermore, as of the closing of the record, the IRS had not accepted his filing for tax years 2006 through 2011, and it is not clear what the total extent of his tax liability is.

Applicant's wife's medical problems presented a compelling case in mitigation. However, the favorable evidence does not outweigh the serious security concerns raised by his failure to timely file and pay his federal taxes. The Appeal Board recently explained the concern regarding individuals who fail to file and pay their taxes:

A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information.

ISCR Case No. at 3 (App. Bd. Oct. 9, 2015). Applicant's consistent failure to abide by the obligation of all citizens to pay their taxes raises the concern that he would similarly fail to honor his security obligations.

Once a security concern arises regarding an Applicant's eligibility for a security clearance, there is a strong presumption against the grant or renewal of a security clearance. Unmitigated financial considerations concerns lead me to conclude that granting or reinstatement of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary to justify the award of a security clearance in the future. With more effort towards resolving his past-due debts and a track record of financial responsibility, he may well be able to demonstrate his eligibility for access to classified information. Applicant's financial considerations concerns are not mitigated. His access to classified information is denied.

### **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.d, 1.f, 1.g, 1.j-1.l:	Against Applicant
Subparagraphs 1.e, 1.h, and 1.i:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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JUAN J. RIVERA  
Administrative Judge