



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



In the matter of: )  
)  
)  
[NAME REDACTED] ) ISCR Case No. 17-03781  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Allison Marie, Esq., Department Counsel  
For Applicant: *Pro se*

07/23/2019

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Applicant’s debts and unpaid taxes arose from, or were contributed to by, events and circumstances beyond his control, and he acted responsibly in addressing his debts. His information is sufficient to mitigate the security concerns about his financial problems. His request for a security clearance is granted.

**Statement of the Case**

On April 13, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew eligibility for a security clearance required for his employment with a federal contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the interests of national security for Applicant

to have a security clearance, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2.

On November 17, 2017, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F). The adjudicative guidelines cited in the SOR were issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017.

Applicant timely responded to the SOR (Answer) and requested a hearing before an administrative judge at the Defense Office of Hearings and Appeals (DOHA). Due to a combination of relocation by the Applicant, hearing officer caseloads, and Applicant's scheduling conflicts, this case was assigned to three previous administrative judges. I received the case on March 11, 2019, and I convened the requested hearing on April 16, 2019. The parties appeared as scheduled, and DOHA received a transcript of the hearing (Tr.) on May 2, 2019. Department Counsel proffered Government Exhibits (GX) 1 – 9. Applicant testified and proffered Applicant Exhibits (AX) 1 – 8. GX 3, 4, and 8 were admitted over Applicant's objections. (Tr. 22 – 25, 27 – 32) All other exhibits were admitted without objection and the record closed on April 16, 2019.

### **Procedural Issue**

On April 18, 2019, Applicant submitted 14 pages of additional information. He sent the documents by email simultaneously to me and to Department Counsel. At the hearing, I did not make any provision for post-hearing submissions. Nonetheless, Department Counsel has not filed any objection to Applicant's documents, which I have marked as AX 9, and they are admitted.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant owed \$102,076 for five delinquent or past-due debts (SOR 1.a – 1.e), two of which (SOR 1.c and 1.d) were for unpaid federal income tax liens totaling \$71,886.78. The SOR also alleged that in June 2002, Applicant filed a Chapter 7 bankruptcy petition through which his debts were discharged in November 2002 (SOR 1.f).

In response to the SOR, Applicant denied SOR 1.a, asserting that he had been repaying the debt through an agreement with the creditor established before the SOR was issued. He denied SOR 1.b, asserting that he had repaid the debt before he received the SOR (the last payment was made on October 31, 2017; Applicant signed for the SOR on November 28, 2017). Applicant admitted SOR 1.c and 1.d, but he asserted that he had entered into an agreement with the IRS to place both liens temporarily into "uncollectible status" so he could resolve his other debts, and that he planned to begin repaying his tax debts in early 2018. Applicant denied SOR 1.e, claiming the debt and the lien enforcing it had already been paid. Finally, Applicant admitted SOR 1.f, but asserted

that the bankruptcy action was taken 15 years ago and has no relevance to an assessment of his current suitability for access to classified information. (Answer; Tr. 12 – 14)

In support of his response, Applicant provided documents that show, as of the date of his Answer, he has been paying the SOR 1.a debt on a monthly or near-monthly basis since March 2015; that the SOR 1.b debt was resolved in October 2017; that the SOR 1.e debt and a lien enforcing that debt also had been resolved in August and November 2017, respectively. Applicant's Answer also included documentation of his agreement with the IRS in January 2016 to hold his tax debts (SOR 1.c and 1.d) in abeyance.

In addition to the facts established by Applicant's admissions and by the information presented with his Answer, I make the following additional findings of fact.

Applicant is 42 years old and has worked as a certified information technology (IT) specialist since at least June 2001. He started working for defense contractors in November 2010 and first received a security clearance in March 2011. Between November 2010 and February 2015, he worked on a series of military support contracts and was located in Afghanistan. Thereafter, he worked until August 2015 on a similar contract in South Korea. From December 2015 until July 2018, he was assigned to a military support contract in State A. Since then, he has worked on a different military support contract in State B. Applicant produced ten letters of recommendation and support that portray him as professional, hardworking, trustworthy, and reliable. He also received numerous awards and other forms of recognition and appreciation from his military customers for his work in or near combat zones in Afghanistan. (GX 1; GX 7; Tr. 65 – 68)

Applicant was married from July 2003 until divorcing in April 2006. He remarried in July 2011, but divorced in August 2012. Applicant has one child (now 11 years old) with a third woman with whom he lived between 2006 and 2009. Since April 2014, that woman and their child lived, with Applicant when he was between contracts, in a house Applicant has owned in State C since April 2014. The debt alleged at SOR 1.e is for a lien against that property that arose from the woman's failure to pay homeowners association (HOA) dues; however, she paid that debt in August 2017 and the lien was removed in November 2017. (Answer; GX 2; GX AX 5; Tr. 62 – 63, 103)

Between November 2010 and February 2014, Applicant worked on a series of contracts for two defense contractors at a forward operating base (FOB) in Afghanistan. When he was hired by the second contractor in late 2011, he was asked to complete an IRS form to be used in calculating his tax obligations for income earned overseas. He was unsure how to complete the form and asked fellow employees and his manager for guidance. He submitted the form based on the information they provided; however, their advice was incorrect. As a result, Applicant's employer did not withhold enough income tax from his paycheck for the 2012 and 2013 tax years. On July 31, 2014, the IRS filed a tax lien against Applicant to protect and enforce a \$28,441.31 debt for unpaid taxes in the

2012 tax year. On August 31, 2015, the IRS filed a tax lien against Applicant to protect and enforce a \$43,445.47 debt for unpaid taxes in the 2013 tax year. (Answer; GX 2; GX 7; GX 9; AX 3; AX 4; Tr. 53 – 55, 126)

After he completed his work in Afghanistan in February 2014, Applicant was hired by another defense contractor for work in Korea. He lived and worked there between April 2014 and August 2015. While he was in Korea, he learned of the tax liens against him and contacted the IRS to resolve his debts through repayment plans. Around July 2014, he also received unsolicited calls and emails from companies specializing in tax relief and claiming to help him resolve his obligations for far less than the debt he actually owed. Applicant hired one of those companies (GTS) for \$10,000 but soon realized their plan would not resolve his tax debt. In 2015, he hired another company (TDN) who contacted the IRS on his behalf. At that time, Applicant was out of work, having been laid off by his employer at the end of their contract in Korea. The IRS agreed to place Applicant's 2012 and 2013 tax debts in an uncollectable status because of his financial situation. Under that agreement, the liens would remain in place to protect the IRS's interests; Applicant would claim zero exemptions from income tax withholding; interest would continue to accrue; and Applicant would not have to make payments until such time as the IRS determined he was again able to pay his debts. (Answer; GX 7; AX 3; AX 4; Tr. 56 – 59, 86 – 88, 128)

After his contract in Korea ended, Applicant was unemployed between August 2015 and December 2015. His company then rehired him for work at a military installation in State A. When Applicant was sent to Korea, his employer paid him a monthly stipend for housing. That money was provided separate from Applicant's paycheck and was not reduced by income tax withholdings, and it covered Applicant's housing expenses in Korea. Applicant was supposed to receive money for relocation and a four-month housing stipend, under the same payment arrangements as in Korea, to pay for his housing while working in State A; however, when the housing stipend began in January 2016, it was reduced through income tax withholdings. The result was that Applicant did not have enough money to pay for both his State A and State C residences. Not only was he still unable to start repaying his IRS debts, he accrued additional debts, two of which (SOR 1.a and 1.b) were alleged in the SOR. Although Applicant's employer eventually made good on the shortfall in his stipend, Applicant had already fallen behind on some of his debts. And after the four-month stipend period ended, he had to support two residences. Since July 2018, Applicant's current employer in State B has paid all of his State B living and transportation expenses, thus alleviating Applicant's dual residence expenses. (Answer; GX 2; GX 9; AX 9; Tr. 73 – 82, 119 – 122)

Applicant started repaying, and is still repaying, the SOR 1.a debt in March 2015. To date, he consistently has made at least 48 monthly payments averaging \$300 as part of a resolution agreed to by the creditor. The total paid up to April 2019 is about half the amount alleged in SOR 1.a. In October 2017, Applicant completed a repayment agreement to resolve the SOR 1.b debt. (Answer; AX 1; AX 2; Tr. 83 – 86)

In the first half of 2018, Applicant and TDN began working with the IRS to start repaying his tax debts. Applicant testified that the whole process took several months as he responded to IRS requests for information. In January 2018, Applicant's income had increased to a point where he could cover all of his regular expenses, as well as his other debts, and commit to a meaningful repayment plan with the IRS. Before that agreement was finalized, Applicant of his own accord made payments in August and September totaling \$2,315. On November 15, 2018, TDN notified Applicant the IRS had approved a repayment plan beginning in December 2018, whereby Applicant is to pay \$1,431 each month on a total tax debt of \$98,756. That figure includes Applicant's tax liabilities for 2012 through 2017. The additional tax years were included, ostensibly, because retroactive correction of his 2012 and 2013 returns affected subsequent filings and tax liabilities. As of the hearing, Applicant had timely made the required payments via automatic bank account deductions starting in December 2018. It does not appear that Applicant has ever failed to file his income tax returns as required. (Answer; AX 3; AX 4; Tr. 15, 59 – 60, 86 – 92)

Applicant has experienced financial problems in the past. In 2002, he filed for and received Chapter 7 liquidation of his then-existing debts. The record does not contain information about the amount of debt that was liquidated or the circumstances that led to his decision to file bankruptcy. When he submitted an e-QIP in 2010, Applicant disclosed 15 delinquent or past-due debts totaling \$7,435. During a November 2010 subject interview during the ensuing background investigation, Applicant explained that his debts arose from a combination of his 2006 divorce and a period of unemployment. Many of the debts he disclosed had already been paid when he submitted his e-QIP. During the 2011 adjudication of his clearance, he provided O adjudicators with documentation of his efforts to resolve his debts and his clearance was granted. (Answer; AX 6; AX 8; Tr. 94 - 101)

Applicant has not incurred any new delinquencies in addition to those alleged in the SOR. He meets all of his current obligations and, after meeting all of his monthly expenses including tax lien payments and payment of the SOR 1.a debt, he has a significant positive cash flow. Applicant also has had to pay for unexpected events, including family emergencies, and he has repaid earlier personal loans from family members who helped him when he was struggling. Currently, Applicant and TDN are negotiating with the IRS to subordinate the tax liens against him so he can refinance the mortgage on his house. He hopes to use an estimated \$40,000 in available equity to accelerate repayment of his tax debts. (Answer; Tr. 101 – 116, 130 – 131)

Applicant has an excellent reputation among his professional and personal associates. Numerous letters of recommendation voice support based on the authors' positive observations of Applicant's work ethic, professionalism, integrity, and trustworthiness. Each of his references expressed, without reservation, their confidence in Applicant's ability and willingness to protect sensitive information and in his commitment to the government and military missions he supports. His references represent a cross section of Applicant's military, governmental, private industry, and

community interactions. Applicant also has been personally recognized for his work in support of forward-deployed military organizations. (Answer; AX 7; AX 8; Tr. 131)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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 presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest for an applicant to either receive or continue to have access to classified information. (Department of the Navy v. Egan, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion. (See Egan, 484 U.S. at 528, 531) A person who has access to classified information enters 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 one who will protect the national interests as his or her 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. (See Egan; AG ¶ 2(b))

## Analysis

### Financial Considerations

The Government established that, since 2012, Applicant incurred delinquent or past-due debts, including significant unpaid income taxes, totaling \$102,076. Available information also shows that he has experienced financial problems on at least two other occasions since 2002. That information reasonably raises a security concern about Applicant's finances that is articulated at AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

More specifically, available information requires application of the following AG ¶ 19 disqualifying conditions:

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

I also considered, in response to Department Counsel's arguments, potential application of AG ¶ 19(b) (*unwillingness to satisfy debts regardless of the ability to do so*); however, the available mitigating information about Applicant's repayment efforts, discussed below, precludes a conclusion that Applicant was unwilling to repay his debts. Further, the record also requires application of the following AG ¶ 20 mitigating conditions:

- (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, a death, divorce or separation, clear

victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's current financial problems arose from a period of unemployment that occurred around the time he unexpectedly incurred a large income tax debt. As to his taxes, it does not appear that Applicant engaged in any deceptive practices or that he failed to file his tax returns at any time. Rather, he followed inaccurate guidance about how to have his income taxes withheld while working overseas. In 2014, as soon as he became aware of the two tax liens against him, he engaged the first of two income tax resolution companies in an effort to negotiate with the IRS about his debts. In late 2015, before a payment plan could be established, he lost his job and the IRS agreed to hold his tax debt in abeyance as "uncollectable." Around the same time, Applicant's lost employment resulted in other delinquent or past-due debts; however, since early 2017, Applicant has been repaying those debts through consistent monthly payments. The SOR 1.a debt is now about half what it was, and the SOR 1.b and 1.e debts have been resolved. Just as in 2010 and 2011, available information shows Applicant has been proactive in addressing his debts and that he has acted responsibly under the circumstances. As to his Chapter 7 bankruptcy in 2002, nothing more than the fact of his filing and discharge can be discerned from the record. That information does not weigh one way or the other in an assessment of Applicant's current financial circumstances.

Most of the focus in this case is placed, correctly, on Applicant's efforts to resolve his unpaid taxes. Here, the IRS agreed that his debt was, for a time, "uncollectable." This allowed Applicant to resolve other non-tax debts and to recover his financial footing. In pursuing this course of action, Applicant's tax debt has grown through interest, penalties, and the consolidation of additional years of tax adjustments. But well before the SOR was issued, Applicant was working with the IRS through TDN to establish a repayment plan, which he has been following since December 2018. In view of his current financial stability and his track record of following through on his debt resolution efforts, it is likely he will continue to make his IRS payments as required.

Financial problems present a two-fold inquiry. First, does the ongoing presence of unpaid debt or other unresolved financial burdens present a likelihood that Applicant would resort to illegal acts or other conduct that might compromise national interests? Here, that appears highly unlikely. Applicant is an experienced and well-respected IT professional with a long record of excellent performance and reliability. His record in direct support of the military in a combat zone exhibits a sense of integrity and trustworthiness in dealing with sensitive information. Additionally, the manner in which he has responded



to his financial problems is indicative of a willingness to resolve his debts and further manage his finances through responsible and prudent measures.

Second, did Applicant's financial problems arise from irresponsible decisions, poor judgment, or other factors that indicate he is unreliable or untrustworthy? I conclude they did not. Applicant is in the midst of resolving debts that arose from, or were exacerbated by, a period of unemployment and an unintentional mistake in submitting tax-reporting information through his employer while overseas. The record as a whole establishes that those circumstances are unlikely to recur and that Applicant is now better equipped to manage his finances so they will not be a security concern in the future. On balance, available information is sufficient to mitigate the security concerns raised by Applicant's financial problems.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Of note is the positive information about Applicant's job performance and reputation in the workplace. Most notably, Applicant's positive reputation, as well as several positive observations about his judgment and reliability, are rooted in his work in direct support of forward-deployed military organizations and missions involving the safeguarding of sensitive information. Additionally, his actions to resolve his debts evince a conscientiousness about his obligations and responsibilities that reflects well on his suitability for continued access to classified information. A fair and commonsense assessment of the record evidence as a whole shows that Applicant has mitigated the security concerns about his financial problems.

### **Formal Findings**

Formal findings 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: | FOR APPLICANT |
| Subparagraphs 1.a – 1.f:  | For Applicant |

### **Conclusion**

In light of all of the foregoing, it is clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE  
Administrative Judge