



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-00860  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

11/06/2019

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 26, 2019, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD acted under Executive Order (EO) 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 effective within the DOD on June 8, 2017 (AG).

In an undated response, Applicant answered (Answer) the SOR. The case was assigned to me on August 26, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 11, 2019, and the hearing was convened as scheduled on September 23, 2019. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. Department

Counsel's exhibit list and discovery letter were marked as hearing exhibits (HE) I-II. Applicant testified and offered exhibits (AE) A-E, which I admitted without objection. The record was held open until October 11, 2019. Applicant's timely post-hearing submissions were marked as AE F-S and admitted without objection. DOHA received the hearing transcript (Tr.) on October 2, 2019.

### **Findings of Fact**

Applicant admitted the SOR allegations in his Answer. His admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 61 years old. He is not currently working for a defense contractor, but he has the opportunity to gain a position should he receive a security clearance. He currently works temporary jobs. He was unemployed from: October 2008-July 2009; November 2010-December 2010; November 2011-April 2014; and January 2015-August 2016. He served in the military for over 20 years, was honorably discharged, and is receiving a monthly pension in the amount of approximately \$655. He is a high school graduate. He is single, has never married, and has no children. (Tr. 6, 21, 23; GE 1; AE A)

The SOR alleged that Applicant failed to timely file his federal income tax returns for the following years: 2008-2010, 2012-2014 and 2017. It also alleged that he owed federal taxes in the amount of approximately \$21,000. He admitted in his response to interrogatories, his Answer, and his hearing testimony not timely filing his federal tax returns for those years and owing federal taxes. (Tr. 24-27, 30-31; GE 2-3; Answer)

Applicant attributed his tax problems to two factors. First, he claims he was homeless for a number of years and that during that time he only was able to secure "odd jobs." Second, he acknowledged that he was "a little bit irresponsible" in dealing with his tax issues. He documented that for tax years 2008-2010, he filed his tax returns in March 2012. He did not owe federal taxes for those years. For tax years 2012-2014, he filed his tax returns in May 2016. He owed approximately \$350 in federal taxes for 2012. For tax year 2017, he filed his tax return in March 2019. He did not owe federal taxes for that year. Applicant's large tax debt is attributable to tax year 2006, in which he owed approximately \$15,000 in taxes that he has been unable to pay. Over time, including interest and penalties, that amount has grown larger. (Tr. 30-31; GE 2-3; AE B-C, H-S)

Over the past two years, Applicant claims that he paid his tax debt in cash directly to the local IRS office. He did not provide receipts of those payments. The record remained open until October 11, 2019 to allow Applicant to produce additional evidence of any cash payments, but he failed to do so. His documentation with the IRS shows that in March 2016, the IRS agreed to accept \$162 monthly payments from Applicant. He did not provide documentation of making any of those payments. In March 2019, the IRS agreed to another installment plan with him requiring monthly payments of \$624 beginning March 25, 2019. Applicant documented that he set up an

undated automatic payment from his bank, but he only showed making two payments, in August and September 2019 of \$250 each time, which is less than the installment agreement called for him to make. He did not provide any other proof of tax payments. There is no evidence of financial counseling. His August 2019 credit report shows no other delinquent debts. He asserted that if he received his clearance, his expected job would allow him to pay his tax debt within six months. (Tr. 25-27, 36; GE 3, 5; AE E, G)

## **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(a), 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 national security eligibility will be resolved in favor of the 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.

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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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**

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

(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.

Applicant had unfiled federal tax returns from 2008-2010, 2012-2014, and 2017. He also owes in excess of \$15,000 for unpaid federal taxes. I find both the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(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 failed to make a good-faith effort to resolve his federal tax issues for numerous tax years. Although he eventually filed all his tax returns, which would indicate responsible action by him, he failed to do so in a timely manner. He also is delinquent in paying tax debt that arose in 2006. Meeting his legal tax obligations was not a priority to Applicant. This pattern shows a lack of reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant's intermittent work and homelessness may be conditions beyond his control, but his admitted irresponsibility was not beyond his control. He eventually filed all his tax returns, but has not paid his delinquent tax debt. He has not acted responsibly. AG ¶ 20(b) is not fully applicable.

Applicant provided some evidence that his tax filing problems are under control. He receives some credit for eventually filing all his delinquent federal tax returns. However, he has failed to pay his delinquent tax debt arising from 2006, despite the IRS's willingness to agree to two different installment payment plans. Applicant documented only two recent payments, apparently under the plan, but which were less than the agreed upon amount. Overall, good-faith efforts to pay or resolve his tax issues are lacking. AG ¶¶ 20(c), 20(d), and AG ¶ 20(g) only partially 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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's military service, his unemployment, underemployment, and his homelessness. However, I also considered that his federal returns went unfiled for a lengthy time and he still owes over \$15,000 in unpaid tax debt from 2006. He has not shown responsibility in exercising his lawful duty to file his federal tax returns in a timely manner, or pay his taxes.

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 has not mitigated the financial considerations 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.b:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge