



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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)  
[NAME REDACTED] ) ISCR Case No. 19-02198  
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)  
Applicant for Security Clearance )

**Appearances**

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

10/07/2021

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns raised by his failure to timely file his federal and state income tax returns, by his failure to timely pay more than \$450,000 in federal and state income taxes, and by his failure to pay other delinquent or past-due debts. Applicant’s request for a security clearance is denied.

**Statement of the Case**

On January 17, 2018, 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, adjudicators for the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) could not determine, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive

5220.6, as amended (Directive), Section 4.2, that it is clearly consistent with the interests of national security to continue Applicant's eligibility for a security clearance.

On January 21, 2020, DCSA CAF issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F). The guideline cited in the SOR was part of the current set of adjudicative guidelines (AG) 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 from the Defense Office of Hearings and Appeals (DOHA). I received the case on June 29, 2021, and convened the requested hearing on August 5, 2021. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 – 9. Applicant testified and proffered Applicant Exhibits (AX) A - G. All exhibits were admitted without objection. DOHA received a transcript of the hearing (Tr.) on August 13, 2021.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant did not timely file his federal income tax returns for the 2010 through 2017 tax years (SOR 1.a); that for those same tax years he owed \$325,065 in delinquent taxes (SOR 1.b); that he owed [REDACTED] (State A) \$34,841 pursuant to a tax lien filed against him in 2017 (SOR 1.c); and that he owed [REDACTED] (State B) \$94,921 for unpaid income tax (SOR 1.d). Additionally, it was alleged that Applicant owed \$6,437 for two delinquent credit card accounts (SOR 1.e and 1.f).

In response to the SOR, Applicant admitted with explanations SOR 1.a, 1.b, 1.e and 1.f. He denied SOR 1.c, claiming the State A tax lien has been satisfied. He denied SOR 1.d, claiming that the current balance on the State B tax debt is now significantly lower and that a prior garnishment of his earnings to satisfy the debt has been rescinded. (Answer) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 57 years old and works for a defense contractor in a position that requires eligibility for access to classified information. He was hired by his current employer in State A in February 2021 after working between April 2013 and December 2020 at a defense contractor located in [REDACTED] (State C). Prior to that, he worked for another defense contractor, also in State C, between August 2006 and April 2013. Applicant first received a security clearance in 1982 while serving on active duty in the military between April 1982 and April 1988, when he was honorably discharged. His clearance was renewed for civilian work in 1989 and 2002. (GX 1)

Applicant disclosed in his e-QIP that he owed State B \$30,000 in unpaid income taxes because he had not filed his State B income tax returns for the 2012 and 2013 tax

years, and that his pay was being garnished to satisfy that debt. He further disclosed that State B had placed a lien against a house in State B that he and his wife occupied between 1999 and 2013, when Applicant relocated for new employment in State A. State B obtained the lien on Applicant's house as part of its effort to enforce Applicant's income tax debt. As a result of the lien, Applicant was unable to sell the house when he moved to State A, and the mortgage on that house was foreclosed in June 2015. Applicant does not owe any remainder after foreclosure, but he did not explain why he could not stay current on his mortgage payments. In response to the SOR, Applicant provided information that showed his wages were previously garnished by State B to satisfy a debt for unpaid taxes for the 2005 through 2008 tax years. That garnishment was released in March 2018; however, another garnishment was implemented to recoup unpaid taxes from the 2010, 2011, and 2012 tax years. (Answer; GX 1; GX 2; GX 3; GX 5; GX 6; Tr. 53 – 56)

Applicant's State B tax debt was actually \$94,921. Also, he has not filed his past-due returns; rather, State B tax authorities filed them without input from him. Applicant's pay was involuntarily garnished from 2013 until he left his previous job in December 2020. After he started his current job in February 2021, he contacted State B tax authorities and established a voluntary monthly repayment plan which began in March 2021. Applicant estimates he still owes about \$47,000 in unpaid State B taxes. (Answer; AX F; Tr. 50 – 52)

Applicant did not timely file his income tax returns as required in State A, where he has lived since November 2013, for the 2013 through 2017 tax years. As a result, and as alleged in SOR 1.c, Applicant incurred a \$34,841 debt for unpaid taxes. The state garnished his wages to satisfy that debt. On or about April 13, 2018, Applicant filed all of his past-due State A income tax returns. He also has timely filed his State A returns since the 2018 tax year. On April 23, 2018, State A reduced his wage garnishment to 10 percent of his income at that time. On June 11, 2019, State A released the tax lien against Applicant that served as the basis for the garnishment of his wages. The tax debt alleged in SOR 1.c has been satisfied. (Answer; GX 1 – 4; GX 9; Tr. 48 – 50, 57)

As alleged at SOR 1.a, Applicant also did not file his federal income tax returns for the tax years 2010 through 2017. As alleged at SOR 1.b, he incurred a \$325,061 debt for unpaid federal taxes for those years. Available information also documents unpaid federal taxes for tax years 2006 through 2008. Applicant testified that he has not yet filed any of the returns addressed in SOR 1.a and he has not made any payments or other attempts to resolve his federal tax debt despite receiving notice of his unpaid tax debt from the IRS on March 25, 2019. (Answer; GX 2; GX 3; GX 4; GX 7; Tr. 40 – 43, 79)

Applicant asserted that he failed to file his 2010 through 2017 federal tax returns and his 2013 through 2017 State A returns, because he thought his wife had filed them as joint returns, when, in fact she filed her own returns as "married-filing separately." He did not explain why he did not file his 2006 through 2008 returns, or why he seemingly

was unaware during that entire time that he had not met his federal filing obligations. (Answer; GX 1 – 4; Tr. 85 – 89, 90 – 91)

As for his State B returns, Applicant explained, but did not corroborate, that he continued to file returns in State C, where he had lived until moving just across the state line to State B in December 1999. After moving, he continued to work in State C and thought he was supposed to continue filing there. He did not provide any documentation showing that he continued to file returns in State C after 1999. (Answer; GX 1 – 4; Tr. 85 – 89, 90 – 91)

Since at least 2006, Applicant has been a salaried employee whose taxes are withheld and reported by his employers. His annual income since 2013 has exceeded \$200,000 and, at times, \$300,000. Applicant's personal finances are sound and he estimates he has about \$8,000 remaining after deducting expenses from his estimated monthly net income of \$14,000. In 2014 and 2015, Applicant obtained professional assistance to resolve his tax issues, first from an accounting firm, then from a law firm. In both cases, he received information and advice about how to deal with the IRS and state tax authorities; however, it was not until 2018 that he filed his State A returns. He never himself filed his past-due State B returns. Until February 2021, all of the payments made on his state tax debts were through involuntary wage garnishments and, more recently, state diversion of his timely-filed income tax refunds starting with the 2018 tax year. (GX 4; AX B – E; Tr. 44 – 46, 58 – 70, 76 – 79)

As to the two credit card debts alleged at SOR 1.e and 1.f, Applicant asserted that they have been paid, that they may be his wife's responsibility, and that he has no current information about those accounts. On July 6, 2018, Applicant was asked about both debts during a personal subject interview (PSI) as part of his background investigation. He indicated then that he thought both accounts were paid but would check on both accounts and pay them off if they were still past-due. The most recent credit report available, dated July 3, 2019, shows both debts have been delinquent since at least 2015 and are still unresolved. (Answer; GX 1; GX 3; GX 5; Tr. 39 – 40)

Applicant has an excellent reputation in the workplace and his community. Letters of support submitted by current and former associated who have known him personally and professionally for up to 25 years extol his professionalism, integrity, and trustworthiness. (AX G)

## **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. (See *Department of the Navy v. Egan*, 484 U.S. 518)

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**

Applicant did not timely file his income tax returns for at least eight consecutive tax years. He also amassed debts for unpaid taxes in excess of \$450,000. He has not acted to pay or resolve most of his unpaid taxes, as well as two credit card accounts that have been delinquent for up to seven years. This information reasonably raised 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;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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.

By contrast, Applicant's response to the Government's information requires consideration of the following pertinent AG ¶ 20 mitigating conditions:

- (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's failure to file his returns occurred over a period of at least eight years. He still has not filed his federal returns and his State B returns were filed for him by state tax authorities. To the extent any of his tax debts have been paid, it has been almost entirely through involuntary wage garnishments and diversion of refunds starting with the 2018 tax year. He still has not made any arrangements with the IRS to resolve his \$325,000 federal tax debt.

Applicant's stated reasons for not meeting his tax reporting and payment obligations were not plausible. Even if they were, they would not support a finding that his tax problems arose from circumstances beyond his control. Further, his failure to act in a timely fashion over the past decade to file correct his filing and payment deficiencies shows that he did not act in a reasonable way when faced with circumstances supposedly beyond his control. All of the foregoing also is true for the two credit card debts addressed in the SOR, especially in light of his general history of financial health, which indicates he has had the resources all along to pay or otherwise resolve his debts.

Finally, Applicant is credited with seeking professional tax assistance in 2014 and 2015; however, he did not act on whatever advice he received therefrom for another three years, when he filed his past-due State A returns. He still has not resolved his remaining tax reporting and payment deficiencies.

In summary, the record does not support application of AG ¶ 20 mitigating conditions cited, above. Applicant has not mitigated the security concerns raised under Guideline F.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). The favorable information about his military service and from his associates is not sufficient to overcome the security concerns raised by Applicant's knowing failure over several years to comply with his tax reporting obligations. Those concerns remain unresolved and sustain doubts about Applicant's suitability for continued access to classified information. Because protection of the interests of national security is the principal focus of these adjudications, those doubts must be resolved against the Applicant's request for clearance.

### **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:                   AGAINST APPLICANT

Subparagraphs 1.a – 1.f:                   Against Applicant

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE  
Administrative Judge