



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS and APPEALS**



In the matter of: )  
)  
) ISCR Case No. 14-00205  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ray Blank, Esq., Department Counsel  
For Applicant: *Pro se*

04/09/2015

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. The unpaid, delinquent federal income tax and five charged-off or collection accounts alleged in the Statement of Reasons (SOR) totaled approximately \$15,000. His delinquent taxes have yet to be paid or a repayment plan agreed upon. Clearance is denied.

**History of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on March 20, 2014, the DoD issued a SOR detailing financial considerations security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant

<sup>1</sup> 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.

or continue Applicant's security clearance. On May 22, 2014, Applicant answered the SOR and requested a hearing. On January 27, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for a hearing convened on February 9, 2015.<sup>2</sup> At the hearing, Government's Exhibits (Ex) 1 through 7 were admitted without objection. Applicant provided one original document, which was returned to him to allow him to provide a copy of the document following the hearing. He testified at the hearing. The record was held open to allow Applicant to submit additional information. No additional material was received. On February 19, 2015, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In Applicant's Answer to the SOR, he asserted that the amount owed to the Internal Revenue Service (IRS) was less than what was stated in the SOR, that two additional SOR debts had been paid, and he was waiting verification on the remaining debt. (SOR Answer) I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 52-year-old administrative specialist – systems administrator who has worked for a defense contractor since April 2012, and seeks to obtain a security clearance. (Tr. 10, 11) Applicant called no witnesses other than himself and produced no work or character references. From June 1983 until June 2005, he was in the U.S. Army before being honorably discharged as a sergeant first class (E-7). (Ex. 4) While on active duty, among other award and decorations, he was awarded the Meritorious Service Medal three times, the Army Commendation Medal three times, and the Army Achievement Medal three times.

As of May 2013, Applicant was receiving \$2,171 monthly in military retirement from which a tax levy of \$896 was taken. (SOR Answer) As of May 2013, a balance of \$5,849 was owed on the tax levy. (SOR Answer) He provided no documentation<sup>3</sup> as to which tax year the levy pertained. From November 2009 through March 2013, he was unemployed. As of December 2013, when he completed a Personnel Financial Statement (PFS), his monthly net remainder (net monthly income less monthly expenses and monthly debt payment) was \$3,266, which included his military retirement income and his contractor job income. (Ex. 5)

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<sup>2</sup> On August 28, 2014, I was assigned the case, before it was transferred to another judge on September 11, 2014. On September 15, 2014, I was again assigned the case before it was again reassigned to another judge on November 5, 2014. On January 15, 2015, I was again assigned the case. The case was originally set for hearing on October 23, 2014, which was continued for good cause when Applicant experienced vehicle problems on the day of the hearing. On January 8, 2015, DOHA issued a Notice of Video Tele-conference Hearing to be held on January 15, 2015. The hearing was not held as scheduled because the notice had been sent to an incorrect address.

<sup>3</sup> At the hearing, Applicant was informed of the necessity to support his assertions with documents. (Tr. 21) Following closing argument, he was informed the record would be held open for one week to allow him to submit documents. (Tr. 58) No documents were received.

While on active duty, Applicant was selected to be a drill sergeant. (Tr. 9, 41-43) He had to take a leave of absence from the school when his mother was diagnosed with cancer. (Tr. 31) After he left the Army in 2005, his father died. (Tr. 31) At that time, his daughter was incarcerated, and his stepson became involved with illegal drugs. (Tr. 32) He and his wife of 26 years had separated in September 2012. (Tr. 48, 58) His wife has not worked since shortly after their separation and has applied for social security disability. (Tr. 49) He stated he was trying to keep his head financially above water. (Tr. 32) He under withheld on his federal income tax.

Applicant owned a home at his last duty assignment, which he rented when he moved from the area. (Tr. 35) The real estate manager failed to do his job and the house was ransacked twice. (Tr. 35) The manager had not visited the place in six months. (Tr. 35) Before the damage, the fair market value (FMV) of the house was \$60,000. After the damage, the house had a FMV of \$20,000 at which time it was returned to the mortgage company. (Tr. 35)

Applicant cosigned on his youngest daughter's vehicle. (Tr. 38) The vehicle was a used 2007 Mazda, which was purchased for \$13,000. (Tr. 38) His daughter made payments for two or three years before she chose not to make additional payments, believing her father would make the payments. When he failed to make the payments, the vehicle was repossessed. (Tr. 39) A \$6,371 debt (SOR 1.b) was incurred following the repossession. He asserted, but failed to document, that the collection company agreed to settle the matter when it received \$1,309 in payments, with the final payment to be made following the submission of his SOR Answer. (SOR Answer) He provided copies of four checks to a financial service company showing payments totaling approximately \$700. (SOR Answer)

At the hearing, he asserted the car debt had been paid, and provided an IRS form 1099 C, cancellation of the debt, indicating \$3,000 of debt had been cancelled. (Tr. 15, 24) The cancellation of debt letter was returned to Applicant so he could keep the original for his records. He was directed to make a copy of the letter and submit it following the hearing. (Tr. 15) No document was received.

Applicant asserted the \$398 insurance bill (SOR 1.c) had been paid and, as of May 2014, he was waiting a letter from the creditor showing the delinquent obligation had been paid in full. Nine months later, at the hearing in February 2015, he was still awaiting for a letter from the creditor. He also asserts that in May 2014, he had paid the \$81 telephone service delinquent debt (SOR 1.d) and was waiting for a letter from the creditor confirming it had been paid. (SOR Answer) At the hearing, he was still waiting for a confirmation letter. (Tr. 22)

When Applicant completed his Electronic Questionnaires for Investigations Processing (e-QIP), he estimated he owed \$2,000 federal income tax for 2005, \$4,000 for 2006, \$2,000 for 2007, and \$6,000 for 2010. (Ex. 1) In December 2013, when he completed written financial interrogatories, he stated his financial issues were due to

neglect, and he was trying to correct his mistakes. (Ex. 2) He stated he did not pay his taxes for the four years he listed because he could not afford to pay them. (Ex. 2)

In 2006 or 2007, Applicant was contacted by the IRS about his delinquent taxes. He agreed to have \$250 taken monthly from his military retirement. In 2010 or 2011, he hired a tax service to assist him in settling his tax debt. He received little benefit from the \$4,000 he paid the company. (Ex. 4) At the hearing, he asserted his taxes were paid for tax years 2005 through 2007. (Tr. 45) He still owed tax for tax years 2010 and 2011, but did not know how much he owed. (Tr. 45) As of the hearing, his 2014 taxes were not due and had not yet been filed. (Tr. 47)

Applicant was late in filing and paying his 2013 federal taxes. (Tr. 46) He is unsure if he owes any taxes for tax year 2013. (Tr. 46) He was still experiencing financial hardship because he is separated from his wife and they maintain two households. (Tr. 48)

In 2012, Applicant was again contacted by the IRS and, in September 2012, he started making \$836 monthly payments. (Ex. 4) In his May 2013 and June 2013 Personal Subject Interview (PSI), he asserts he originally owed \$4,000 in delinquent tax, but that amount had grown to \$15,000 with interest and penalties. (Ex. 4) He stated he believed his taxes for 2005 and 2006 had been paid and he only owed for tax year 2007 and 2010. (Ex. 4) He believed his tax debt would be paid "in about one year" from June 2013. In October 2013, the IRS released its levy imposed on Applicant's wages and property. (Ex. 4)

For tax year 2012, the only year for which Applicant provided documentation, his adjusted gross income was \$36,721 and he was entitled to a \$2,744 refund for that year. (SOR Answer) In the last nine years, all of his federal income tax returns have been filed late. (Tr. 52)

As of December 2013, when Applicant answered additional written financial interrogatories, he stated he had not filed his 2010 federal income tax return. (Ex. 5) As previously stated, he asserted he had made payment arrangements regarding the \$6,371 charged-off account following the repossession of his daughter's vehicle (SOR 1.b). (Ex. 5, 6) In December 2013, a collection agency offered to settle a \$364 account not listed in the SOR if he made three payments totaling \$364. (Ex. 5) He provided no documentation evidencing having made the three payments. The last two SOR debts (SOR 1.e, \$24 and SOR 1.f, \$33) appear to be the same obligation generated by a DVD mail-order company. Applicant believes he was erroneously billed for this debt. (Tr. 22)

In December 2013, Applicant submitted an IRS Form 4506-T, Request for Transcript of Tax Return, requesting a copy of his Form 1040. The form does not indicate for which tax year the request was made. (Ex. 5) It could not be for tax year 2010, because he had yet to file a return for that year.

It was suggested to Applicant that he should contact the IRS and obtain some document showing the current status of his previously delinquent taxes. (Tr. 17) No document was received following the hearing. He asserted he received four tax refund checks within an eight-week period in the fall of 2014. (Tr. 18) He provided no documentation supporting this assertion.

Applicant believes his current obligations are stable. (Tr. 50) He is current on his credit card with a \$200 balance, his rent, utility bills, and car payment. (Tr. 50, 51) He has approximately \$8,000 in a 401(k) retirement account. (Tr. 51)

### **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 must be considered 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 interests of 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant 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 (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**

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. Applicant owed approximately \$8,000 federal tax for tax years 2007 through 2010. He is uncertain how much delinquent tax he still owes. He asserted, but failed to document, that other SOR delinquent obligations had been paid. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Five Financial Considerations 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;

(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 mitigating factors for financial considerations fully apply to Applicant or mitigate the security concern. His financial difficulties are both recent and multiple. For the past nine years, he was late in filing his federal income tax returns. He indicated on his December 2013 PFS that his net monthly remainder was \$3,266. This PFS was completed after his September 2012 separation from his wife, when each would have been maintaining a separate household.

While on active duty, Applicant's mother contracted cancer. After leaving active duty his father died, his daughter was incarcerated, his stepson became involved with drugs, and the home he owned at his final duty assignment was taken back by the mortgage company. In 2012, he separated from his wife of 26 years. These are all events beyond his control. However, his failure to timely file and pay his federal income tax occurred over a nine-year period starting in 2005, when he left active duty, and continuing through 2014, when he filed his 2013 federal taxes late. The events may explain some of the late filing and nonpayment, but cannot explain nine years of late filing and failure to pay the proper amount.

Applicant asserts his financial problems are under control, he has paid some of the SOR delinquencies, and he has paid some of his past-due delinquent federal taxes. However, he has not provided any documentation supporting his assertions. Additionally, he is unsure how much federal tax he owes for tax years 2007 through 2013, excluding tax year 2012. Since he has failed to show he is making payment on his delinquent taxes, I am unable to find he has made a good-faith effort to satisfy his debts.

The \$6,371 charged-off account (SOR 1.b), following the repossession of his daughter car, was settled and \$3,000 of the debt cancelled. The mitigating factors set forth in ¶ 20 (d) apply to this debt. The telephone service collection account and the DVD collection debts (SOR 1.d, \$81; SOR 1.e, \$24; and SOR 1.f, \$33) are so small as not to be of security significance. Applicant asserts the insurance collection account (SOR 1.c, \$398) related to the repossessed vehicle is also small enough not to be of security significance. Even though he asserts his finances are stable and he is paying his current monthly obligations, he failed to provide any documentation supporting his claim. Therefore, I am unable to apply the mitigating factors listed in AG ¶ 20 (c).

### **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.

Starting in 2006 or 2007, Applicant was contacted by the IRS about his delinquent federal taxes. An IRS tax levy was entered against him. Applicant was informed of the concern over his finances during his May and June 2013 interviews; in December 2013, when he received the financial interrogatories; in March 2014, when he received the SOR; and in October 2014, when he received the original notice of hearing. Even with his notice, he failed to document payment of his delinquent taxes or a repayment arrangement with the IRS. Given sufficient opportunity to address his financial delinquencies, Applicant has failed to act timely or responsibly under the circumstances. He failed to resolve his debts and failed to reduce his delinquencies.

Good-faith requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy or the statute of limitation) in order to claim the benefit of the good-faith mitigating condition. ISCR case No. 02-30304 at 3 (App. Bd. April 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)). In the year and a half



that he has known of the concern over his delinquent accounts, he documented that the debt following the repossession of the car had been dismissed. He failed to show he acted in good faith in resolving his tax debts.

“Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his or her control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. January 12, 2007)(citing ISCR Case No. 03-13096 at 4 (App. Bd. November 29, 2005)); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. December 1, 1999). He has not acted in a reasonable manner to address his delinquent accounts.

The issue is not simply whether all Applicant’s debts have been paid – they have not – it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) 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 security concerns arising from his financial considerations.

### **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, Financial Considerations: AGAINST APPLICANT

Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b—1.f:	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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CLAUDE R. HEINY II  
Administrative Judge