



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



In the matter of: )  
 )  
 ) ISCR Case No. 12-07142  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Richard A. Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

09/18/2014  
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**Decision**  
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RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is granted.

**Statement of the Case**

On May 16, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense 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.

Applicant answered the SOR on June 14, 2014, and requested a hearing before an administrative judge. The case was assigned to me on July 23, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 24, 2014. I convened the hearing as scheduled on August 22, 2014. The Government offered

exhibits (GE) 1 through 4, which were admitted into evidence without objection. Applicant testified and offered Applicant's Exhibits (AE) A through E, which were admitted into evidence without objection. The record was held open until September 5, 2014, to allow Applicant to submit additional documents. That date was extended to September 15, 2014. Applicant submitted AE F through H, which were admitted into evidence without objection.<sup>1</sup> DOHA received the hearing transcript (Tr.) on September 2, 2014.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a through 1.e, and 1.i. He denied SOR ¶¶ 1.f through 1.h. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 37 years old. He completed some college courses, but has not earned a degree. He is currently enrolled in school. He served in the military from 1998 to 2005. He went to a special court-martial in 2005 for assault and resisting arrest. He was found guilty and sentenced to 90 days confinement and 30 days were suspended. He completed his enlistment and received an honorable discharge. He has been working with his present employer, a federal contractor, since March 2012.<sup>2</sup>

Applicant married in 2001. His wife is on active duty in the military and is stationed overseas. He has a 16-year-old daughter from a previous relationship. His wife has a 26-year-old son. He pays \$400 a month for child support.<sup>3</sup>

Applicant was employed overseas from October 2005 to October 2007, from May 2008 to September 2009, and from August 2010 to December 2011. He was unemployed from September 2009 to August 2010 and from December 2011 to March 2012. He spent from May 2008 to 2009 with his wife in a foreign country where she was stationed. He returned to the United States in December 2009.<sup>4</sup>

Applicant was told by his employer that while working overseas he was in a tax-free zone, so his income was not taxed, and he did not have to file Federal income tax returns. Based on that advice, he did not file his Federal income tax returns for tax years 2009, 2010, and 2011. He explained that when he was working overseas there was no easy way to prepare his tax returns because there was no available tax service to assist him. When he returned to the United States, he did not file his Federal income tax returns because he needed assistance and was unable to pay for it. He decided to

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<sup>1</sup> Hearing Exhibits I, II, and III are Department Counsel memoranda noting there is no objection to the exhibits.

<sup>2</sup> Tr. 24, 73.

<sup>3</sup> Tr. 75-76.

<sup>4</sup> Tr. 21-23; GE 1.

wait and file jointly with his wife when she returned to the United States. At that time, they sought assistance through the military tax services available.<sup>5</sup>

In late 2012 or 2013, Applicant received a letter from the IRS advising him about his overdue tax filings. He had difficulty obtaining the W-2 form from his former employer. He filed his 2008 and 2009 Federal income tax returns in 2013.<sup>6</sup> He filed his 2010 and 2011 Federal income tax return in early 2014. He filed his 2012 Federal income tax return timely. The IRS applied refunds Applicant was due for some tax years to payments that he owed for other tax years.<sup>7</sup> Applicant provided numerous documents from the IRS showing a chronology of actions taken by the IRS and Applicant, including penalties imposed and waived, and interest charges imposed and waived. Applicant has actively been working with the IRS to satisfy all of his delinquent tax debts. It appears he had sufficient refunds to cover most of his past tax liabilities, but is still resolving his tax liability for tax year 2010. He admitted he should have taken the initiative to resolve his tax issues before being contacted by the IRS.<sup>8</sup>

Applicant admitted in his answer to the SOR that he owes the debts is SOR ¶ 1.a (\$6,870), ¶ 1.b (\$6,236), ¶ 1.c (\$10,132) and ¶ 1.d (\$4,911). In February 2014, before receiving the SOR, Applicant hired a debt consolidation company to help him manage his debts and pay them. The debts in SOR ¶ 1.a and ¶ 1.b are for credit cards that are reflected in Applicant's credit report as being delinquent. These debts are to the same creditor. Applicant admitted he had an obligation to pay the creditor. He had difficulty making payments due to periods of unemployment. He also was attending school and maintaining his living expenses. As part of a payment plan, Applicant has made four monthly payments of \$288 to the debt consolidation company. The debt consolidation company then makes payments to the creditor. Applicant intends to continue making monthly payments to resolve the debts. He was advised there is a settlement offer for the debt in SOR ¶ 1.b, for approximately \$3,200. Once his monthly payments reach that sum, the money will be distributed by the debt consolidation company to pay that debt. Applicant testified that he was not unwilling to satisfy his delinquent debts, but was unable. As he becomes more financially stable he intends to satisfy the remainder of his debts.<sup>9</sup>

In 2007 Applicant purchased a house. His intention was to live in it while his wife was deployed overseas. It was his primary residence, but later he rented it when he was

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<sup>5</sup> Tr. 21-41, 46-58.

<sup>6</sup> The SOR does not alleged Applicant failed to file his 2008 Federal income tax return. It does allege a delinquent tax debt for tax year 2008. I will not consider the 2008 failure to file for disqualifying purposes, but will consider it when analyzing the "whole person" and when considering Applicant's credibility.

<sup>7</sup> AE A and F.

<sup>8</sup> Tr. 21-41; 46-58; GE 2; AE A and F. It is unclear what the remaining amount owed is for tax year 2010. The most current documents indicate the amount may be approximately \$1,851.

<sup>9</sup> Tr. 60-64; 73-74; 77-80; GE 2, 3, 4; AE D, G.

working overseas. Due to periods of unemployment he had difficulty maintaining his mortgage payments. He defaulted on the mortgage in 2012, but was able to catch up with his payments, but defaulted again in 2013, and the house was foreclosed. He vacated the premises in December 2013. He received a letter from the mortgage company advising him there is a \$10,132 debt (SOR ¶ 1.c). It is unclear if this amount is the past-due amount owed on the mortgage or a deficiency after the house was sold. He has not contacted the lender about the debt, but is waiting to hear from it. He has not received a Federal income tax form regarding the debt. He understands he may be obligated to pay this debt.<sup>10</sup>

The debt in SOR ¶ 1.d is for a credit card. Applicant intends on paying this debt after he finishes paying the debts in SOR ¶¶ 1.a and 1.b. He believes this debt is a duplicate of the debt in SOR ¶ 1.e, but did not provide supporting documents. Applicant settled the debt in SOR ¶ 1.e. This debt is paid.<sup>11</sup>

Applicant provided numerous character letters describing him as trustworthy, professional, respectful, and a dedicated person. He is considered a person of integrity, whose ethics are beyond reproach. He complies with all security rules and regulations. He is a hardworking, team player, who is conscientious, intelligent, dependable, and loyal. He is committed to the mission. He volunteers at his church and is a devoted family man.<sup>12</sup>

## **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(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 national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to

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<sup>10</sup> Tr. 20-21, 64-69.

<sup>11</sup> Tr. 69-72; AE H.

<sup>12</sup> AE C.

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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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 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 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**

The security concern for financial considerations is set out in AG ¶ 18:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following three are potentially applicable:

- (a) inability or unwillingness to satisfy debts;

(c) a history of not meeting financial obligations; and

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant failed to file annual Federal income tax returns for tax years 2009, 2010 and 2011 on time. He had five delinquent debts that he was unable or unwilling to pay. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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.

AG ¶ 20(a) is not established because Applicant's debts are recent, and are still being resolved. Applicant attributed his failure to file his Federal income tax returns to receiving inaccurate information from his overseas employer about his obligation to file because his income was earned overseas. I found Applicant's explanation credible. Applicant also had periods of unemployment that contributed to his financial problems. These conditions were beyond Applicant's control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. All of his delinquent income tax returns have been filed. He has been actively working with the IRS to resolve his remaining tax debt. Before receiving the SOR, he contacted a debt consolidation company to help him manage and pay his delinquent debts. He has a payment plan to resolve two debts. He paid one debt and he intends on paying the

remaining debts. Applicant has acted responsibly. AG ¶ 20(b) applies. There is clear evidence to conclude Applicant's financial problems are being resolved or are under control. AG ¶ 20(c) applies. Applicant paid one debt and has a payment plan for two others. His actions constitute a good-faith effort to resolve those debts. AG ¶ 20(d) applies to SOR ¶¶ 1.a, 1.b, and 1.e. Applicant believes the debt in SOR ¶ 1.d may be a duplicate of SOR ¶ 1.e, but did not provide documentation to support his dispute. Therefore, AG ¶ 20(e) does not apply to this debt.

### **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.

I considered the potentially disqualifying and mitigating conditions in light of all the 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(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 37 years old. He received an honorable discharge for his service in the Air Force. He provided numerous character letters that reflect he is a trustworthy and reliable person. He is involved with his church and appears to be a good hardworking person. Applicant failed to file his Federal income tax returns because he received inaccurate advice. He had periods of unemployment. He admitted he should have been more active in addressing his tax problems before he was contacted by the IRS. He has since worked diligently to resolve all of his tax issues. He established a payment plan for some of his delinquent debts before receiving the SOR. He intends on resolving the remaining debts and understands the importance of doing so. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns under the financial considerations guideline.

### **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: FOR APPLICANT

Subparagraphs 1.a-1.i: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello  
Administrative Judge