



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-07681
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel  
For Applicant: *Pro se*

11/23/2012

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on July 7, 2010. On August 3, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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 Department of Defense for SORs issued after September 1, 2006.

On August 22, 2012, Applicant provided a written, notarized response to the SOR and elected to have a hearing before an administrative judge. The case was assigned to me on September 20, 2012. I convened a hearing on October 24, 2012, to

consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced three exhibits, which were marked Ex. 1 through 3 and entered in the record without objection. Applicant testified and called one witness. He introduced 15 exhibits, which were identified and marked as Applicant's Ex. A through Ex. O and entered in the record without objection. At the conclusion of the hearing, I left the record open until close of business October 31, 2012, so that Applicant could, if he wished, provide additional information for the record. Applicant timely filed a 22-page document, which I marked as Applicant's Ex. P. Department Counsel did not object to the admission of Applicant's post-hearing submission.<sup>1</sup> DOHA received the hearing transcript (Tr.) on November 2, 2012.

### **Findings of Fact**

The SOR contains nine allegations of financial conduct that raise security concerns under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.i.). In his Answer to the SOR, Applicant admitted eight of the allegations (SOR ¶¶ 1.a. through 1.h.). He neither admitted nor denied the SOR allegation at ¶ 1.i.; instead, he provided additional information that the debt was being satisfied by another. Applicant's admissions are entered as findings of fact.

Applicant is 55 years old, married, and employed as a painter by a federal contractor. He has worked for the government contractor since 2010, and he seeks a security clearance for the first time. (Ex. 1; Tr. 63-64.)

Since 1998, Applicant has also owned his own painting business. In this capacity, he has, at different times, employed between two and eight individuals, who worked as independent contractors. After purchasing his supplies and paying his helpers, Applicant often found he had no funds remaining to set aside to pay his federal income taxes. Applicant also explained that he did not keep business records or books; instead, he "kept [his business information] in [his] head." (Ex. 1; Tr. 56-57, 63-64, 71-72, 75-76, 80-81.)

Although he is married, Applicant and his wife file separate federal income tax returns. For several years, Applicant has retained the services of an accountant in the preparation of his tax returns. (Tr. 35, 38.)

The SOR alleges eight federal income tax delinquencies which total \$59,308 (SOR ¶¶ 1.a. through 1.h.). The delinquencies arose when Applicant failed to pay his federal income taxes for tax years 2000, 2003, 2004, 2005, 2006, 2007, 2008, and 2009. Applicant admitted these delinquencies and stated that they arose when he lacked funds to pay federal income taxes that resulted from his painting business. He explained that, in his painting business, he was sometimes not paid promptly for his

---

<sup>1</sup> Department Counsel's memorandum stating that she had no objection to the admission of Applicant's post-hearing submission is marked as Hearing Exhibit (HE) 1.

work. Nevertheless, he had to pay his suppliers and his helpers in a timely manner. He stated that he had trouble maintaining an adequate cash flow, and was “robbing Peter to pay Paul.” He never had enough money at the end of the year to set aside to pay his federal income taxes. He also did not make periodic estimated payments. Consequently, when he filed his returns, he lacked the resources to pay the taxes. (Ex. B; Tr. 61-62, 76-77.)

As an attachment to his answer to the SOR, Applicant provided documentation showing he had an installment plan in place with the Internal Revenue Service (IRS) to pay his federal income tax for tax year 2000. Applicant’s documentation shows that he entered into an installment plan with the IRS in March 2009 to make monthly payments of \$400 to satisfy his delinquent 2000 federal income taxes. The documentation shows that Applicant made regular monthly payments through April 2012. (Ex. A.)

In June 2012, Applicant retained the services of an attorney, who provided information for the record stating that he was negotiating with the IRS on Applicant’s behalf to arrange an installment plan for the remaining federal income tax delinquencies. However, Applicant’s delinquent federal tax debts for tax years 2003 through 2009 remain unresolved. (Ex. O.)

The SOR also alleged that Applicant was responsible for a judgment debt of \$6,765, entered against him in 2006. The debt arose in 2003 or 2004 when he cosigned a loan agreement with his stepdaughter for the purchase of an automobile. The stepdaughter did not repay the loan, and the automobile was repossessed. While Applicant acknowledged that he cosigned the loan, he emphasized that it was his stepdaughter’s obligation to pay the debt. In 2006, a judgment was entered against Applicant for the debt. The debt was not addressed until Applicant’s stepdaughter made \$100 payments in September and October 2012. Applicant stated that if his stepdaughter failed to make timely monthly payments, the creditor intended to garnish her wages. (Answer to SOR; Ex. 3; Tr. 41-42, 74-75.)

Applicant provided a financial statement for the record. He reported only his individual expenses and not those shared with or attributable to his wife. Applicant’s net monthly pay from his employment is \$3,924. His food, personal care, and miscellaneous expenses each month total \$750. His transportation expenses total \$946; his housing and utility expenses total \$1,313; and his medical expenses total \$326. Additionally, Applicant’s monthly expenses include \$196 paid each month to satisfy a state tax debt and \$400 paid each month for legal representation on his federal tax delinquency matter.<sup>2</sup> Applicant’s monthly expenses total \$3,931. His expenses exceed his income each month by approximately seven dollars. (Ex. P at 5.)

---

<sup>2</sup> It is unclear from the record whether this represents Applicant’s \$400 monthly installment payment to the IRS in satisfaction of his tax year 2000 federal tax delinquency, or if represents a \$400 retainer paid monthly to his tax attorney for representation. If the payment is a retainer to his attorney, Applicant still must pay the \$400 monthly payment to the IRS for his 2000 tax delinquency, thus increasing his total monthly deficit to \$407. (Ex. P.)

Applicant's wife testified on his behalf. She stated that Applicant intended to pay his federal income taxes, but experienced cash flow problems when he was not paid timely for his work and nevertheless believed he should pay his workers on time. Applicant provided 13 letters of character reference from coworkers and associates who had worked with him, some for many years. The letters all reflected respect for Applicant as a positive, pleasant, reliable, and trustworthy worker. (Ex. C through Ex. O; Tr. 47-50.)

Applicant does not have a savings account. He has four checking accounts with assets totaling \$1,092.75. He also has a money market account totaling \$267 and a 401(k) plan totaling \$597. He has not had financial credit counseling. (Ex. P at 5; Tr. 92-95.)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider and apply the revised adjudicative guidelines (AG). 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, the administrative judge applies these guidelines 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 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 in seeking 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 relating to the guideline 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. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated substantial delinquent debt and was unable or unwilling to pay his creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "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." (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if "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." (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence that "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" (AG ¶ 20(c)) or "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (AG ¶ 20(d)) Finally, if "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 options to resolve the issue," then AG ¶ 20(e) might apply.

Applicant admitted a history of federal income tax delinquencies associated with his painting business. Additionally, he co-signed a note with his stepdaughter in 2003 or 2004 in which he promised to pay her automobile debt if she did not. When the stepdaughter failed to pay the debt, a judgment was entered against Applicant in 2006. Applicant did not address this debt, even though he had a legal responsibility as a co-debtor to do so. In September and October 2012, the stepdaughter made two \$100 payments on the \$6,765 debt.

Applicant's delinquent federal income tax debts total approximately \$59,308. To his credit, he has entered into an agreement with the IRS to make monthly payments of \$400 on the federal income tax debt for tax year 2000. He provided documentation to corroborate monthly payments on this debt since 2009. However, Applicant has not yet made payments on his federal income tax delinquencies for tax years 2003, 2004, 2005, 2006, 2007, 2008, and 2009. While he has hired an attorney to represent him and negotiate a payment plan for these federal tax delinquencies, no payment determination had been made at the time the record in this case closed. Additionally, since Applicant's current living expenses surpass his current income, it is not clear that he has the financial resources to carry out a payment plan if the IRS were to suggest one. The record reflects that seven of the eight federal tax delinquencies alleged on the SOR remain unpaid and have occurred under circumstances that are likely to recur. Applicant has not had financial counseling, and he lacks a clear and timely strategy for resolving his delinquent debts.

I conclude that AG ¶ 20(d) applies to the delinquent federal income tax debt alleged at SOR ¶ 1.a. However, I also conclude that none of the other Guideline F mitigating factors applies to the remaining debts alleged in the SOR.

## **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. Applicant is a mature person of 55 years. He failed for several years to pay federal income taxes he owed as a result of his painting business. While he has recently sought legal help to resolve this indebtedness, it is not clear that he will have the financial resources to resolve these debts.

Applicant also failed for several years to act upon a debt that arose when he co-signed a loan payment agreement with his stepdaughter. Applicant's financial problems began several years ago and are ongoing. Despite a steady and reliable income as an employee for at least two years, Applicant has failed to budget his income to satisfy his debts, and his financial statement indicates that each month he spends more than he earns. Despite this, he has not sought credit counseling. This raises concerns about his judgment and reliability.

Overall, the record evidence leaves me with questions and doubts about Applicant's judgment as well as his eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

## **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

Subparagraph 1.a.:           For Applicant

Subparagraphs 1.b. - 1.i.: 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.

---

Joan Caton Anthony  
Administrative Judge