



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



In the matter of:)	
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)	ISCR Case No. 12-08047
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

June 24, 2015

Decision

MOGUL, Martin H., Administrative Judge:

On July 10, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. (Item 1.) 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 Department of Defense after September 1, 2006.

Applicant furnished an undated written reply to the SOR (RSOR), and he requested that his case be decided on the written record in lieu of a hearing. (Item 2.) On March 17, 2015, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered eight documentary exhibits. (Items 1-8.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on May 13, 2015. Applicant did submit additional evidence, which has been marked and entered into evidence as Item A. The case was assigned to this Administrative Judge on June 4, 2015. Based upon a review

of the pleadings and exhibits, including Applicant's RSOR and the FORM, eligibility for access to classified information is denied.

Findings of Fact

After a complete and thorough review of the evidence in the record as described above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 51 years old. He was married to his second wife from January 1998 to January 2014, and he has two children. He attended college from September 1981 to May 1983, and he served in the United States Marine Corps from June 1984 to June 2004.

Applicant has been employed as an IT Specialist since June 2005, by a DoD Contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector. (Items 3 and 6.)

Guideline F, Financial Considerations

The SOR lists nine allegations (1.a. through 1.i.) regarding financial difficulties, specifically overdue debts, and failure to file timely Federal tax returns. The allegations will be discussed below in the same order as they were listed on the SOR:

1.a. The SOR alleges that Applicant failed to file his Federal tax return for tax year 2012 until about March 2014, and he is indebted to the Federal Government for delinquent taxes for this tax year in the amount of \$10,901.99. Applicant admitted this allegation in his RSOR. (Item 2.)

In Applicant's response to interrogatories, dated March 19, 2014, he included the Internal Revenue Service (IRS) tax transcript, which establishes that this debt is owed and shows no payments have been made toward this tax debt. (Item 6.)

1.b. The SOR alleges that Applicant failed to file his Federal tax return for tax year 2011 until about March 2014, and he is indebted to the Federal Government for delinquent taxes for this tax year in the amount of \$12,396.13. Applicant admitted this allegation in his RSOR. (Item 2.)

The IRS tax transcript also establishes this debt is owed and shows that no payments have been made toward this tax debt. (Item 6.)

1.c. The SOR alleges that Applicant failed to file his Federal tax return for tax year 2010 until about May 2012, and he is indebted to the Federal Government for delinquent taxes for this tax year in the amount of \$5,810.03. Applicant admitted this allegation in his RSOR. (Item 2.)

The IRS tax transcript also establishes this debt is owed and shows that no payments have been made toward this tax debt. (Item 6.)

1.d. The SOR alleges that Applicant failed to file his Federal tax return for tax year 2009 until about May 2012, and he is indebted to the Federal Government for delinquent taxes for this tax year in the amount of \$12,730.67. Applicant admitted this allegation in his RSOR. (Item 2.)

The IRS tax transcript also establishes this debt is owed and shows that no payments have been made toward this tax debt. (Item 6.)

1.e. The SOR alleges that Applicant failed to file his Federal tax return for tax year 2008 until about December 2009, and he is indebted to the Federal Government for delinquent taxes for this tax year in the amount of \$5,092.76.

The IRS tax transcript also establishes this debt is owed and shows that some payments were made in 2011 and 2012, but no evidence was furnished to show additional payments were made after 2012. (Item 6.) I do not find any evidence has been introduced to establish that this debt has been resolved.

1.f. The SOR alleges that Applicant failed to file his Federal tax return for tax year 2007 until about December 2009, and he is indebted to the Federal Government for delinquent taxes for this tax year in the amount of \$13,445.11. Applicant admitted this allegation in his RSOR. (Item 2.)

The IRS tax transcript also establishes this debt is owed and shows that three payments were made in 2011 and one payment in 2014, but no evidence was furnished to show additional payments were made to resolve this debt. (Item 6.) I do not find any evidence has been introduced to establish that this debt has been resolved.

1.g. The SOR alleges that a judgment was entered against Applicant in 2008 in the approximate amount of \$5,606, and, as of the date of the SOR, the judgment remains unpaid. Applicant admitted this allegation in his RSOR, but wrote the debt was charged off. However, he also wrote that he has been on a payment plan with this creditor. (Item 2.) A Credit Report, dated March 13, 2015, establishes that this judgment is still outstanding and has not been satisfied. (Item 7.) I do not find any evidence has been introduced to establish that this debt has been resolved or reduced.

1.h. The SOR alleges that a judgment was entered against Applicant in 2009 in the approximate amount of \$8,524, and as of the date of the SOR, the judgment remains unpaid. Applicant denied this allegation in his RSOR, writing that this judgment was satisfied and paid in full in January 2014. (Item 2.) A Credit Report, dated March 13, 2015, establishes that this judgment has been satisfied. (Item 7.) I find that this debt has been resolved.

1.i. The SOR alleges that Applicant is indebted for a collection account in the approximate amount of \$48, and as of the date of the SOR, the debt remains unpaid.

Applicant denied this allegation in his RSOR, writing that this account was paid in full in March 2014. A letter from the creditor of this debt, included with the RSOR, shows that this debt was settled in full on March 19, 2014. (Item 2.) I find that this debt has been resolved.

With regard to all of the Federal tax debt listed on the SOR as 1.a, through 1.f., above, and totaling more than \$60,000, Applicant included some documentation with his RSOR showing that he had made 18 payments of approximately \$7,200 from November 2010 to August 2012. However, no evidence was introduced to show Applicant has made any payments since 2012. Additionally, Applicant wrote that he has sought counseling with a tax relief service that is assisting him in receiving a low settlement, and that there is clear indication that the tax problem is being resolved. (Item 2.) However, in his post-FORM submission, he wrote that he has been working with the tax relief service to come to a settlement plan, but no indication was given by Applicant that any settlement with the IRS has yet been reached. (Item A.)

Applicant wrote that his financial problems occurred because of a failing marriage and his ultimate divorce. (Item 2.) However, Applicant did not explain how or why his failing marriage kept him from filing his Federal tax returns in a timely manner.

In a Personal Financial Statement that Applicant prepared on March 15, 2014, his monthly net remainder, after subtracting his expenses and debts from his income, was \$46.21. (Item 6.) No explanation was given by Applicant as to how he would be able to resolve his overdue debts with a net monthly remainder of \$46.21.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 AG ¶ 2 describing the adjudicative process. The administrative judge's over-arching 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. Likewise, I have avoided drawing 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.

A person who applies for access to classified information seeks to enter 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 adverse 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 and could potentially apply in this case. 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. I find that both of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant accumulated significant delinquent debt, especially to the Federal Government, which has not been satisfied. Additionally, AG ¶ 19(g), “failure to file Federal, state or local income tax returns as required” is applicable in this case as

Applicant failed to file timely Federal tax returns for several years, from 2007 through 2012.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties. Under AG ¶ 20(b), it may be mitigating where, “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.” As reviewed above, Applicant explained his financial difficulties occurred because of his marital problems which ultimately resulted in a divorce, although Applicant failed to explain why this situation kept him from filing his Federal tax returns, or paying the substantial taxes due, in a timely manner. Also while Applicant did make some payments toward his tax debts, he does not currently have an agreement with the IRS to resolve this very large Federal tax debt. Therefore, I do not find that Applicant has been responsible under the circumstances, and I do not find that this mitigating condition warrants significant consideration in this case.

AG ¶ 20(d) is also not applicable because more than \$60,000 is still owed to the IRS for Federal tax debt, and while Applicant did make some payments from 2010 to 2012, he has made no payments since then. Therefore, Applicant he has not “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” and I do not find this or any other mitigating condition applicable in this case.

Finally, I cannot conclude that Applicant will be able to pay off his past debts or keep up to date on his current debts and expenses, especially if any new or unexpected debts are incurred. Therefore, I find that Applicant has not mitigated the Financial Consideration concerns, which are found against Applicant.

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(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. Based on all of the reasons cited above as to why the disqualifying conditions apply and no mitigating conditions are established, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. - 1g.:	Against Applicant
Subparagraphs 1.h. - 1i.:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge