



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12--09404
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

12/10/2015

**Decision**

LYNCH, Noreen A., Administrative Judge:

On February 21, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on July 1, 2015. A notice of hearing was issued on September 11, 2015, scheduling the case for November 5, 2015. Government Exhibits (GX) 1-5 were admitted into evidence without objection. Applicant testified, and presented documents (AX A-F) for the record. The transcript was received on November 13, 2015. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

## Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations of the SOR under Guideline F, with the exception of ¶ 1.b. He provided additional explanations.

Applicant is 59 years old. He is an analyst for a government contractor. He obtained his undergraduate degree in 2004. He served in the U.S. Navy from 1974 to 1983. Applicant has been with his current employer since 1998. He has held a security clearance since 1975. (GX 1).

Applicant married in 1981 and as a result of his marriage, he has two sons. His wife decided to leave him after he was transferred to another state for his employment in 1996. The divorce occurred in 2005. (Tr. )

The SOR alleges two delinquent debts, which include a 2011 federal tax lien in the amount of \$101,000, and a 1999 state tax lien in the amount of \$1,080. It also alleges failure to file federal and state income tax returns for tax years 1996 until 2004. (GX 2)

Applicant candidly stated that he failed to maturely handle a failed marriage and divorce. He lives within his means, but when he learned that his wife was unfaithful to him and wanted to leave the marriage, he became despondent, never recovering from the humiliation of an unfaithful wife. He did not focus and was lax in filing his income tax returns. His father was ill and his son was seriously ill. He stated that he has been given many chances, but has finally taken action with respect to the financial issues. He did not make excuses for his behavior. He accepts responsibility for the delay in filing the federal and state taxes. He notes that this is a work in progress.

As to the allegation in SOR 1.a, Applicant believes the federal tax lien filed in 2011 is not the accurate amount.<sup>1</sup> The IRS contacted him for many years, but he did not respond. (Tr. 36) He believes he owes about \$33,000. Since he just filed the returns, he has to wait for a response to validate the amount. Applicant has moved money (\$203,000) from his investment account so that he can pay whatever will be due. (AX F)

As to the allegation in SOR 1.b, Applicant took action to resolve the state tax lien for another state. He submitted a copy of the tax return. (AX B) He also provided a copy of his check register for an amount of \$3,053 to that state. (AX E)

As to the allegation in SOR 1.c, Applicant recently filed his federal income tax returns for the tax years 1996 to 2002. (AX A) He wanted to file all of them as a package. Since he just filed them, he has no idea what he owes in taxes with penalty and interest. He provided copies of the tax returns. He does not have a payment plan in place. He had already filed 2003 and 2004 many years ago. (Tr. 20, AX D)

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<sup>1</sup>In 2002 the federal government garnished about \$33,000 from Applicant's pay for tax year 1996.

As to the allegation in SOR 1.d, Applicant recently filed his state income tax returns for the tax years 1996 to 2002. (AX C) He believes that for some years, he owes no tax.

Applicant has been aware of the bad decisions that he has made. He admits that he is the sole person at fault. He realizes that he acted irrationally when his marriage was ending. He sought marital counseling. He disclosed the information in his security clearance application. He has no other debts. He emphasized that each time he began to address the tax filings, he found a reason to do something else. (Tr. 53) He has filed his federal and state tax returns since 2004. (Tr. 41)

Applicant's current position is stable. He earns \$116,000 a year. He has supported his two sons since the end of his marriage. He paid his son's medical bills and helped him with some legal issues. He has taken money from his investment account and set it aside to pay the taxes when he learns of the amount he owes. (AX F)

### **Policies**

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .<sup>2</sup> The burden of proof is something less than a preponderance of evidence.<sup>3</sup> The ultimate burden of persuasion is on the applicant.<sup>4</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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.”<sup>5</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>6</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>7</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## Analysis

### Guideline F, Financial Considerations

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

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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<sup>2</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>3</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>4</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>5</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>6</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>7</sup> *Id.*

Applicant has a federal tax lien that reflects a balance of \$101,000. He had a 1999 state tax lien in the amount of \$1,080. He failed to file his federal and state income tax returns from 1996 until 2004. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), FC DC AG ¶ 19(c) (a history of not meeting financial obligations) and FC DC AG ¶ 19(g) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

Applicant cites his separation and divorce (2005) as a cause for the despondency that prevented him from filing his federal and states taxes from 1996 until 2004. Even after a garnishment, he did not begin to file the returns. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. As noted above, Applicant's financial difficulties are blamed on his inability to focus after his divorce. However, he had almost 16 years to focus and he just recently decided to file his tax returns. He did not act responsibly in this case.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has no application. Applicant just filed his federal and state tax returns and he does not know what amount he owes. He has no payment plan in place, but he does have the money set aside to pay. FC MC AG ¶ 20(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) does not apply.

### **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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 59 years old. He is an educated man. He served in the U.S. Navy. He has held a security clearance for many years. He has provided for his two sons after his divorce. He admits his mistakes. He accepts responsibility for not filing his tax returns for many years. He intends to pay his taxes and has set aside money to do so. However, he has had years to establish a plan and a promise to pay in the future is not sufficient.

Applicant submitted insufficient documentation to meet his burden of proof. I have doubts about his judgment and reliability. Applicant has not mitigated the security concerns under the financial considerations guideline. Any doubts must be resolved in favor of the Government.

### **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
Subparagraphs 1.a-1.d:	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 a security clearance. Clearance is denied.

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NOREEN A. LYNCH.  
Administrative Judge