



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



In the matter of: )  
)  
) ISCR Case No. 14-00405  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

July 8, 2014

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns created by his failure to file Federal income tax returns and to pay a past-due Federal tax delinquency. Additionally, he failed to mitigate the Personal Conduct security concerns related to the falsification of his Electronic Questionnaires for Investigations Processing (e-QIP). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted his e-QIP on September 6, 2013. On March 13, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the guidelines for Financial Considerations and Personal Conduct. The action was taken under Executive Order (EO) 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 after September 1, 2006.

Applicant answered the SOR (Answer) on April 14, 2014, and requested a hearing before an administrative judge. The case was assigned to me on May 16, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 27, 2014, and the hearing was convened via video teleconference as scheduled on June 17, 2014.

The Government presented Exhibits (GE) 1 through 6, which were admitted without objection and Hearing Exhibit I. Applicant testified on his own behalf. Applicant requested that the record be left open to allow him to submit additional evidence, and said request was granted. On June 30, 2014, Applicant submitted two exhibits, marked Applicant Exhibit (AE) A and B. Department Counsel had no objection to AE A or AE B, and they were admitted into the record. DOHA received the transcript of the hearing (Tr.) on June 27, 2014. The record closed on July 1, 2014.

### **Findings of Fact**

Applicant is 56 years old. He earned an Associate's degree in 1990. He has been married twice, but is now single. He has no children. He has been employed by a Federal contractor since August 2012. Applicant's work requires him to travel both nationally and internationally for lengthy periods of time. (GE 3; Tr. 36-37.)

As stated in the SOR, Applicant was alleged to be indebted to the Federal Government for a tax lien entered against him in April 2013 in the amount of \$43,154. Applicant denied this debt. The SOR also alleged that Applicant failed to file his Federal income tax return for 2010, and intentionally omitted his tax debt and failure to file the tax return when he completed his September 6, 2013 e-QIP. He denied all allegations. (Answer.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant's September 27, 2013 credit report shows a Federal tax lien was filed in April 2013 in the amount of \$43,154. This tax lien also appears on Applicant's May 13, 2014 credit report. Applicant testified that the tax lien was related to his 2007 Federal income tax. He incurred an unanticipated tax liability that year when he withdrew money from his 401(k) to pay his debts from a failed business. He testified that the Internal Revenue Service (IRS) did not receive his 2007 income tax return, although it was properly filed by his accountant. He believes that when the IRS reviews his 2007 income tax return, he will not be indebted to the Federal Government. However, he claims that if the IRS determines he does owe the money, he has the funds to pay his debt. Applicant testified he did not learn of the alleged \$43,154 tax delinquency until 2012, because he moved around a lot. He testified that he has been in frequent contact with the IRS, and is waiting for them to process his tax return. Applicant failed to produce any documentation corroborating his assertions of frequent communications with the IRS in relation to this debt. His post-hearing exhibits included a copy of his 2007 Federal Income tax return, dated July 19, 2013. It was unsigned. It showed he was due a refund for the 2007 tax year. (GE 4; GE 5; AE A; Tr. 28-61.)

Applicant claimed that he filed his 2010 Federal income tax return by April 15, 2011. He produced no documentation to substantiate his claim. Instead the record contained evidence that shows in February 2014, he received a letter informing him that his 2010 tax return had not been signed. He failed to provide evidence showing when the 2010 Federal income tax return was initially submitted or that it was resubmitted after the February 2014 letter. (GE 6; Tr. Tr. 44-45.)

In Applicant's September 6, 2013 e-QIP, he was asked about his financial record as part of Section 26. Applicant indicated "No" to the question, "In the past seven years have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?" He testified that he always filed his tax returns in a timely manner before April 15 of the subsequent year. He repeatedly asserted that he filed both 2007 and 2010 returns as required by law. Given the record evidence, this claim is not credible. (Tr. 44, 56.)

Applicant provided no explanation for why he did not address his required Federal income tax filings or delinquent tax debt sooner than 2013, other than to note that he moved frequently. He failed to submit a budget or income statement. He testified that he is a valued employee but he submitted no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He provided no character references describing his judgment, trustworthiness, integrity, or reliability. He provided only a photograph as evidence of his good character. (AE B; Tr. 54-55, 60.)

## **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 to be 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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 the 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 to obtain a favorable clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. The 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 as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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 for Financial Considerations is set out in AG ¶ 18, as follows:

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 concern under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (g) failure to file annual Federal, state or local income tax returns as required or fraudulent filing of the same.

The record evidence shows that Applicant failed to file his 2010 Federal income tax return as required. As a result of his early withdrawal of funds from his 401(k) account, he incurred an unresolved tax lien for \$43,154. He failed to produce evidence to show this tax lien is either erroneous or being resolved. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(g). Further inquiry about the applicability of mitigating conditions is required.

Five Financial Considerations mitigating conditions under AG ¶ 20 were considered, but found inapplicable:

- (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.

In this case, Applicant's 2007 Federal Income tax return appeared to have been prepared in July 2013, despite his assertions it was filed in a timely manner. However, Applicant offered no substantive proof it was either filed or accepted as being accurate by the IRS. Further, the tax lien remains a valid debt on his May 2014 credit report. His 2010 Federal Income tax return was rejected by the IRS in February 2014, for failure to include a valid signature. He failed to show that it initially was submitted in a timely manner prior to it later being rejected by the IRS. Further, he failed to offer

documentation to show he signed and resubmitted it. Applicant has the burden of producing evidence sufficient to mitigate the Government's concerns and he failed to do so. His failure to document that he filed his 2010 Federal income tax return, and failure to pay or otherwise resolve his 2007 tax debt demonstrate a continuing course of conduct involving the failure to comply with Federal law. He has not established that his problems are being resolved or are under control, or that he made a good faith effort to resolve them. None of the mitigating conditions were sufficiently established by the record evidence.

## **Guideline E, Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied falsification of his 2013 e-QIP. He claimed he did file his 2007 and 2010 Federal income tax returns in a timely manner, albeit without proper signatures, and that his answer was truthful. However, Applicant also testified that he became aware of the lien in 2012. The Government presented sufficient information to establish that Applicant was aware that he failed to properly file his Federal income tax returns, and of the resulting \$43,154 tax lien, by at least 2012, before completing his 2013 e-QIP. His explanation that he filed his 2007 and 2010 Federal income tax returns as prescribed by law is self-serving, and inconsistent with the record evidence. The Government has established sufficient concern under AG ¶ 16(a) to disqualify Applicant from possessing a clearance.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant's falsification is unmitigated. He failed to acknowledge or correct his behavior, even after being confronted with the facts. Falsification of information provided to the Government in connection with the security clearance process cannot be considered minor. His conduct reflects negatively on his trustworthiness and good judgment. He failed to demonstrate positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress. Applicant failed to establish mitigation under AG ¶¶ 17(a), 17(c), 17(d) and 17(e).

### **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 pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 56-year-old employee of a defense contractor. He testified that he is a valued employee, works hard, and is constantly traveling in support of his employer's mission. However, as a citizen of the United States, he has a legal obligation to ensure his Federal income tax returns are filed in a timely manner and that he satisfies any and all debts to the Federal Government. His busy travel schedule is no excuse for his failure to diligently resolve tax issues. Further, he was aware in 2012 that he had not properly filed his 2007 and 2010 tax returns, and that a large tax lien had been filed against him for failing to pay 2007 taxes, but he deliberately failed to disclose this information on his e-QIP. Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Personal Conduct or Financial Considerations security concerns.

### **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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Jennifer I. Goldstein  
Administrative Judge