



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 14-01105
	)	
Applicant for Security Clearance	)	

**Appearances**

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

10/14/2014

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his failure to file his federal income tax returns for multiple tax years. He also accrued multiple liens for unpaid taxes. His request for continued security clearance eligibility is denied.

**Statement of the Case**

On July 9, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain a security clearance required for his work as a defense contractor. Based on the results of the ensuing background investigation, which included Applicant's responses to interrogatories from Department of Defense

(DOD) adjudicators,<sup>1</sup> it could not be determined that it was clearly consistent with the national interest for Applicant to continue to hold a security clearance.<sup>2</sup>

On April 29, 2014, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guideline<sup>3</sup> for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. However, on July 28, 2014, Department Counsel requested a hearing.<sup>4</sup> The case was assigned to me on August 15, 2014, and I convened a hearing on September 9, 2014. Department Counsel presented Government Exhibits (Gx.) 1 - 7. Applicant testified and presented Applicant's Exhibits (Ax.) A - I. All exhibits were admitted without objection. Also, I held the record open after the hearing to receive from Applicant additional relevant information. The record closed on September 17, 2014, when I admitted without objection as Ax. J, Applicant's post-hearing submission. DOHA received the transcript of hearing (Tr.) on September 16, 2014.

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant failed to timely file his federal income tax returns for tax years 2009 and 2010 (SOR 1.a); that he owed the Internal Revenue Service \$24,093 for unpaid federal taxes (SOR 1.b); that he failed to timely file his federal income tax returns for tax year 2011 (SOR 1.c); and that he owed \$1,309 for a delinquent credit card account (SOR 1.d). In response, Applicant denied, with explanations, all of the allegations. (Answer) Having reviewed all of the available information, I make the following findings of fact.

Applicant is 71 years old and works as an aircraft mechanic for a defense contractor in support of overseas military missions. Applicant served in the United States Navy as an Aviation Boatswain's Mate between 1961 and 1964. After being honorably discharged, he worked in a variety of jobs before completing technical training that qualifies him to work in the aviation industry. (Gx. 1)

Since 2002, Applicant has worked for three defense contractors at work sites in South America, Southwest Asia, and Africa. Generally, he works for about two months overseas, followed by a month in the United States on leave. Applicant maintains a U.S. residence consisting of a mobile home, for which he owes nothing, located on a lot for

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<sup>1</sup> Authorized by DOD Directive 5220.6 (Directive), Section E3.1.2.2.

<sup>2</sup> Required by Executive Order 10865, as amended, and by the Directive.

<sup>3</sup> The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

<sup>4</sup> See Directive, E3.1.7.

which he pays \$345 monthly. While he is overseas, all of his food and lodging are provided free of charge. (Gx. 1; Tr. 51)

Applicant has been married three times. His first marriage began in 1970 and ended by divorce in 1974. Applicant has one child, now age 42, from that marriage. Applicant remarried in 1996, and divorced in 2001. In 2005, while working in South America, he established a relationship with a foreign national whom he married in 2009. She still lives in her home country, and has two children in college. Applicant supports his current wife and children by sending them about \$3,500 each month. He also still supports his child from his first marriage by sending almost \$1,000 each month for rent and other expenses. (Gx. 1; Gx. 2; Gx. 3; Ax. I; Tr. 15 - 16, 42 - 44)

The first defense contractor Applicant worked for, between 2002 and 2005, withheld income taxes from his paychecks. Applicant's employer from 2005 until November 2010 did not withhold any taxes. At the end of each tax year, Applicant received a Form 1099 summarizing the taxable income attributed to Applicant, who was required to pay estimated taxes on a quarterly basis each year. Since he was hired by his current employer in November 2010, Applicant's income taxes have again been withheld from each paycheck. (Ax. J; Tr. 47 - 48)

Applicant did not file his income tax returns for tax years 2009, 2010, and 2011 on time. As to his 2009 return, he did not pay his estimated quarterly taxes on time, choosing instead to pay all of his taxes, along with interest and penalties, with his return in early 2010. However, he found that he did not have enough money to pay his 2009 taxes, so he did not file his return. As to his 2010 and 2011 returns, despite the fact he was often in remote locations, he frequently had access to the Internet, and he was on leave in the United States sufficiently often to arrange for his returns to be filed. Applicant simply procrastinated. (Answer; Gx. 3; Tr. 50 - 54, 58 - 59, 62 - 63)

On September 5, 2012, Applicant was interviewed as part of his background investigation. Among the topics discussed was his failure to timely file his income tax returns. Applicant testified he had retained a certified public accountant in 2010 to resolve his tax issues, but it was not until December 2012 that Applicant actually filed his 2009, 2010, and 2011 tax returns. He has filed his 2012 and 2013 returns as required. (Gx. 3; Ax. D; Ax. G; Ax. J; Tr. 54)

Applicant also accrued a \$24,093 debt for failure to pay taxes owed from 2009 and 2010. Initially, the IRS levied his bank account. But in early 2013, he started a repayment plan with the IRS requiring him to pay \$1,000 monthly on his tax debt. Additionally, his tax refunds for the past few years were diverted to satisfy his tax debt. Applicant finished repaying his tax debt in May 2014. (Answer; Ax. D; Ax. E; Tr. 49, 65 - 66)

Applicant testified that his only current income is a \$2,100 Social Security benefit he receives each month. This is enough for the time being to live on but he will not be able to continue supporting his foreign family or his adult child. He also represented in a

personal financial statement submitted in January 2014, that he had about \$1,000 in savings, but an average monthly cash flow of about \$11,000. A review of bank statements he provided after the hearing shows in 2013 Applicant had an average balance at the end of each month of \$10,952.53 in his checking account. On July 18, 2013, he withdrew \$20,000 from that account. (Gx. 4; Ax. J; Tr. 46)

Applicant also accrued tax debts for tax years 1993, 1996, and 2001. He testified those debts, which totaled \$30,936, resulted from not having enough taxes withheld from his paychecks. He does not remember where he was employed during those years, but he knows he was not working for defense contractors. Those tax debts were resolved several years ago. (Gx. 6; Tr. 55 - 56, 68 - 69)

Finally, as alleged in SOR 1.d, Applicant owed \$1,309 for a delinquent credit card account. The debt is documented in a 2012 credit report, but Applicant claims it was paid through a collection agency. He did not present any other information on this debt. (Answer; Gx. 7)

Applicant's job performance has been satisfactory. Outside of work, he volunteers his mechanical abilities for a private aviation organization that restores vintage combat aircraft, organizes air shows, and operates an aviation museum to educate the public about combat aviation history. Two members of that organization, with whom Applicant has worked closely, hold him in high regard for his expertise, dedication, trustworthiness, and reliability. (Ax. A; Ax. B; Ax. H)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>5</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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.

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<sup>5</sup> See Directive. 6.3.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>6</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.<sup>7</sup>

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.<sup>8</sup>

## **Analysis**

### **Financial Considerations**

Available information is sufficient to support all of the SOR allegations. The facts established raise a security concern about Applicant's finances that is addressed at 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of

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<sup>6</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>7</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>8</sup> See *Egan*; AG ¶ 2(b).

income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*); 19(c) (*a history of not meeting financial obligations*), and 19(g) (*failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same*). In 1993, 1996, 2001, 2009, and 2010, Applicant either did not file his income tax returns as required, or he did not pay his taxes, or both. Little information is available about the tax debts between 1993 and 2001. And he is credited with having resolved those matters. However, his more recent failures to comply with his income tax obligations arose solely from procrastination.

I have also considered the following pertinent AG ¶ 20 mitigating conditions:

(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.

None of these mitigating conditions apply. The payments made on his past-due taxes were initiated only after Applicant was interviewed for his clearance. It is a positive sign that he is again current on his income tax obligations; however, procrastination is not an acceptable reason for failing to at least file one's returns on time. Applicant acknowledged that, although he worked in remote locations, he had access to the necessary resources for filing and paying his taxes.

Although not alleged in the SOR, his earlier tax liens are probative of his suitability for a clearance as they suggest he may be indifferent to meeting his tax

obligations. That same indifference may also affect his conduct when handling classified information. Further, Applicant provided information about his current finances, including his checking account history for 2013. It is clear that Applicant had ample funds to repay his debts without waiting for his 2012 and 2013 income tax refunds to be diverted. For example, his withdrawal of \$20,000 in July 2013 raises more questions than it answers. On balance, Applicant did not mitigate the security concerns about his failure to comply with his tax obligations or pay his debts.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is a good worker with a wealth of expertise in aircraft maintenance and repair. He has willingly sought work in harsh and remote environments to support vital U.S. military missions. He also is a dedicated and reliable volunteer for an aviation history organization. However, this information is not sufficient to overcome the remaining doubts about his finances and willingness to comply with his tax reporting obligations. Because protection of the national interest is the principal goal of these adjudications, those doubts must be resolved against the Applicant.

### **Formal Findings**

Formal findings 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 foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

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MATTHEW E. MALONE  
Administrative Judge