



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 14-02207
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

03/03/2015

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate security concerns raised by his financial situation. He has a long history of financial problems and has amassed a substantial amount of past-due federal tax debt that remains unresolved. His financial situation raises concerns about his suitability to hold a security clearance. Clearance is denied.

**Statement of the Case**

On July 29, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR), alleging that Applicant’s conduct and circumstances raised security concerns under the financial considerations guideline (Guideline F).<sup>1</sup> On August 14, 2014, Applicant answered the SOR and requested a hearing to establish his continued eligibility for access to classified information.

On October 8, 2014, Department Counsel notified the Hearing Office that the Government was prepared to proceed with a hearing in this case. On October 15, 2014,

---

<sup>1</sup> This action was taken under Executive Order (E.O.) 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 implemented by the Department of Defense on September 1, 2006.

the Defense Office of Hearings and Appeals issued a notice scheduling the hearing for October 31, 2014. The hearing was held as scheduled. Department Counsel offered exhibits (Gx.) 1 – 3 in its case-in-chief, and all three exhibits were admitted into evidence without objection.<sup>2</sup> Applicant testified and offered exhibits (Ax.) A – S, which were admitted into evidence without objection.<sup>3</sup> Department Counsel offered Gx. 4 – 8 in rebuttal, and these four exhibits were admitted into evidence over Applicant's objection. See, *infra.*, *Evidentiary Ruling*.

Applicant was granted additional time post hearing to submit further evidence in support of his case.<sup>4</sup> He timely submitted Ax. T, a letter dated November 25, 2014, with five enclosures. Ax. T was admitted without objection.<sup>5</sup> Applicant submitted two additional exhibits after the record closed: Ax. U is a letter dated January 27, 2015, with three enclosures, and Ax. V is a letter dated February 9, 2015, with one enclosure. Notwithstanding the untimeliness of these post-hearing submissions, I admitted Ax. U and V. The hearing transcript (Tr.) was received on November 10, 2014.<sup>6</sup>

### **Evidentiary Ruling**

Applicant objected to the exhibits offered by the Government in rebuttal, claiming surprise. I overruled the objection, because the evidence tended to counter and rebut Applicant's portrayal in his case-in-chief that his financial problems were of limited scope and duration. In addition, Applicant had previously been provided or had in his possession the documents offered in rebuttal. However, since Applicant is *pro se* and Department Counsel did not provide him the documents before the hearing, I limited the Government's scope of cross-examination. Tr. at 99-100, 175-180, 185-200.

Furthermore, the extensive amount of time Applicant has now been afforded post hearing, eliminated any potential surprise and provided him a full opportunity to rebut, explain, or mitigate the evidence. Cf. ISCR Case No. 12-01266 (App. Bd. Apr. 4, 2014) (Directive requires fair notice and opportunity to litigate issues). Moreover, in his security clearance application (SCA), which was admitted without objection, Applicant states that one of the exhibits offered in rebuttal, Gx. 6, was attached to his SCA. (Gx. 1 at 35) It would be unfair to consider the SCA without also considering the referenced

---

<sup>2</sup> Hearing Exhibit (Hx.) I is the list of exhibits the Government offered in its case-in-chief.

<sup>3</sup> Applicant's exhibits were admitted into evidence notwithstanding his belated disclosure to the Government of the voluminous documents he intended to offer at the hearing and failure to comply with the scheduling order. Hx. II (scheduling order); Hx. III (Department Counsel's compliance with scheduling order). See *also*, Tr. at 169-171 (Applicant reviewed and confirmed that the exhibits admitted at hearing, Ax. A – S, were a complete and accurate copy of what he offered.).

<sup>4</sup> The record was originally kept open until December 1, 2014. Applicant requested additional time. His request was partially granted and December 15, 2014 was set as the new deadline for the submission of post-hearing evidence. See Hx. IV. Applicant submitted Ax. U and V after the deadline, but both exhibits were admitted to make a determination regarding his eligibility based on the most up-to-date information.

<sup>5</sup> The Government's position regarding Applicant's timely post-hearing exhibit was marked Hx. V.

<sup>6</sup> The transcript incorrectly identifies Ax. D, a Treasury Inspector General Report for Fiscal Year 2006.

exhibit. See *generally*, Fed. R. Evid. 106; Directive, ¶ E3.1.19.<sup>7</sup> Accordingly, Gx. 4 – 8 were admitted into evidence.

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:<sup>8</sup>

Applicant is in his early fifties. He is single, never married, and has an adult child. He served in the U.S. military, and has been with his current employer since about 2001. He was first granted a security clearance in about 1982, when he was in the military. He was diagnosed with a serious medical condition in about 1998, and has had other health issues throughout the years. (Tr. at 143-162; Gx. 1 at 5, 9, 12, 14, 16, 26, 34; Ax. S)

Applicant's financial trouble dates back to at least 1995, when the IRS filed a federal tax lien against him for over \$18,000. (Gx. 5) In 2006, Applicant was granted a clearance by another DOHA administrative judge. The judge determined that Applicant mitigated security concerns raised by his past-due debts by "settling several large debts and discharging the remainder in Chapter 7 bankruptcy."<sup>9</sup> (Gx. 6 at 1)

Applicant incurred a sizeable amount of delinquent debt after the issuance of the favorable clearance decision. Federal tax liens, totaling over \$150,000, were filed against him in 2006 and 2014. (Gx. 2 at 4; Gx. 3 at 2) He became aware of the 2006 tax lien, which was originally for over \$110,000, while purchasing a vehicle in 2006. He took no action to resolve the 2006 tax lien until recently, when he filed a request with the IRS for an administrative hearing to resolve the lien. He is currently pending an appeal of the IRS's decision denying his untimely request for a hearing. (Tr. at 46, 58-63; Ax. T, Atch 4; Ax. V) The IRS determined that, "including penalty and interest figured to Feb. 12, 2015," he owes over \$158,000 for the 2006 tax lien. (Ax. U, Atch 2 at 2)

In July 2014, the IRS sent Applicant a notice that his past-due tax debt for tax years 2003, 2004, and 2006 – 2011 totaled over \$175,000. Applicant's IRS account transcripts indicates that he failed to file his federal tax returns for tax years 2006 and 2007, and the IRS filed a substitute tax return for those tax years on his behalf. Applicant filed his tax return for the 2011 tax year in May 2014. His IRS account transcripts for tax years 2006, 2007, and 2011 reflect that his annual gross income was over \$110,000. (Ax. C)

---

<sup>7</sup> At the same time, the Government should take no solace in this ruling. Although security clearance hearings are adversarial in nature, the overall purpose of the industrial security clearance process is not well served when either side waits until rebuttal to offer documents that are pertinent to an individual's security worthiness.

<sup>8</sup> In reaching the above findings of fact, I have made only those reasonable inferences supported by the evidence and, where necessary, resolved any potential conflict raised by the evidence.

<sup>9</sup> The other judge also found that Applicant did not deliberately falsify a previous security clearance application, when he failed to report numerous delinquent debts and liens. (Gx. 6)

Applicant testified that he is “current on filing all Federal tax returns from 2007 to 2013.” (Tr. at 54) He stated that he was unable to produce the returns for the tax years at issue because they were “so long ago,” and he no longer had copies of the returns. (Tr. at 61)

Applicant disputes the amount the IRS states he owes in past-due taxes. He surmises the tax debt was a result of identity theft, but submitted no credible evidence that the debt for the tax years at issue was a result of identity theft or other matters beyond his control. (Tr. at 33-63, 183-185; Gx. 1 – Gx. 3; Ax. C; Ax. F – Ax. H) At hearing, Applicant acknowledged owing past-due federal taxes. He first testified that his overdue federal tax debt totaled approximately less than \$10,000, but then changed his estimate to \$30,000. He submitted no credible evidence to substantiate his testimony. He does not have a payment plan to resolve his past-due federal tax debt, and the debt remains unresolved. (Tr. at 59-63, 182-183)

Applicant incurred other, non-tax related delinquent debt around the time or shortly after the favorable clearance decision was issued. Applicant admits in his Answer the 24 non-tax related delinquent debts listed in the SOR totaling over \$30,000 (SOR a – b, g – bb). A number of these debts were for credit cards that Applicant opened in 2006 and stopped paying in about 2008. (Tr. at 79-99, 102-103; 107 – 110) Another of the debts was for a luxury vehicle that he purchased in 2006, and was subsequently repossessed for non-payment of the monthly debt payments. (SOR ¶ 1.v). (Tr. at 100-102) He testified that the repayment of the car debt had “zero priority in my life.” (Tr. at 102) In 2010, two separate judgments totaling over \$5,000 were entered against him. The judgments were satisfied through involuntary wage garnishment. (Tr. at 26-33; Ax. A; Ax. B) He took no action to voluntarily pay his delinquent debts because he was using his disposable income to pay for his daughter’s education, as well as her day-to-day living expenses. (Tr. at 33, 100-101, 128-129, 135; Gx. 1 at 34-35) He recently filed and had a substantial amount of delinquent debt, to include the remaining non-tax related SOR debts, discharged through Chapter 7 bankruptcy. (Tr. at 162-165; Ax. U, Atch 1) His bankruptcy petition lists some 60 overdue creditors. (Gx. 8) He completed the bankruptcy-mandated financial counseling courses. (Ax. S – Ax. U)

## **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are only eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.<sup>10</sup> However, as no two cases are alike and there is no *per se* rule requiring disqualification, each case must be decided on its own merits.<sup>11</sup>

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. 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.<sup>12</sup>

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

## **Analysis**

### **Guideline F, Financial Considerations**

Applicant’s admissions, coupled with the record evidence, raise the financial considerations security concern, which is explained at 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

---

<sup>10</sup> See *also* ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (“Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.”).

<sup>11</sup> ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

<sup>12</sup> Security clearance determinations are “not an exact science, but rather predicative judgments about a person’s security suitability.” ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004). An administrative judge is required to examine an individual’s past history and current circumstances to make a predictive judgment about an individual’s ability and willingness to protect and safeguard classified information. ISCR Case No. 11-12202; ISCR Case No. 11-13626 (App. Bd. Nov. 7, 2013).

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.

Applicant has a long history of incurring debt and then disregarding his financial obligation to pay his debts. Over the past decade, he has twice secured Chapter 7 bankruptcy discharges to eliminate his debts. He filed and had his debts discharged through Chapter 7 bankruptcy notwithstanding full time employment as a federal contractor since 2001 and earning a six-figure salary since at least 2006. He continued to incur delinquent debt even after going through a previous security clearance hearing that should have squarely placed him on notice as to the Government's concerns regarding his finances. Instead of taking the opportunity offered to him through the 2005 bankruptcy and 2006 favorable clearance decision, Applicant decided to exhibit the same level of poor judgment and reckless spending that led him to financial problems in the first place.<sup>13</sup> He purchased a luxury vehicle, amassed credit card debt, and repeatedly failed to pay his taxes. Of particular concern is Applicant's failure to file his federal tax returns for tax years 2006 and 2007,<sup>14</sup> and the significant amount of past-due federal tax debt that remains unresolved. The record evidence establishes the following disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(b): indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;

AG ¶ 19(c): a history of not meeting financial obligations;

AG ¶ 19(e): consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis; and

AG ¶ 19(g): failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

---

<sup>13</sup> ISCR Case No. 13-01241 (App. Bd. Dec. 29, 2014) (adverse decision sustained where applicant's delinquent debts increased after previous favorable security clearance decision).

<sup>14</sup> SOR 1.e states that Applicant failed to file his federal tax returns for at least tax years 2007 through 2011. Applicant denied this allegation and the record evidence did not establish the allegation as written. However, the evidence established that he failed to file his federal tax returns for tax years 2006 and 2007. Ax. C, IRS Account Transcripts. Applicant was on notice that his failure to file his tax returns was a security concern. Accordingly, the allegation is amended to conform to the evidence presented at hearing and my adverse findings regarding this allegation are consistent with the amended allegation, to wit: Applicant failed to file his federal tax returns for tax years 2006 and 2007. ISCR Case No. 12-01266 at 3.

The guideline also sets forth a number of conditions that could mitigate the concern. The mitigating conditions that are potentially relevant in this case are:

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;

AG ¶ 20(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;

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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt and provides documented proof to substantiate the basis of the dispute.

Applicant's delinquent debts were not incurred under unique circumstances. To the contrary, Applicant has demonstrated over the past three decades that he incurs debt and then refuses to pay his debts despite having the financial means to pay his financial obligations. The record evidence raises significant doubts about Applicant's judgment, reliability, and trustworthiness. AG ¶ 20(a) does not apply.

Applicant's medical condition is a matter beyond his control. However, the overwhelming amount of SOR debt is not medically related. Rather, they are for past-due taxes, credit cards, and a repossessed luxury vehicle. Furthermore, Applicant failed to establish that given the circumstances beyond his control he responsibly managed his finances and in good-faith attempted to address his debts. He disregarded his past-due debts, to include a substantial federal tax debt, until relatively recently in an obvious attempt to maintain a clearance.<sup>15</sup> The only SOR debts that were satisfied before the hearing were the two judgments from 2010, which were only satisfied after Applicant's pay was involuntarily garnished. Applicant's resolution of the remaining non-tax related delinquent debt through Chapter 7 bankruptcy does not mitigate the substantial security concerns at issue. Although bankruptcy is a legal avenue through which an individual can resolve their debts, under the circumstances of this case Applicant's bankruptcy

---

<sup>15</sup> ISCR Case No. 12-02315 (App. Bd. Aug. 8, 2014)

discharge does not constitute evidence of true financial reform.<sup>16</sup> AG ¶ 20(b) and 20(d) do not apply.

Applicant's completion of bankruptcy-mandated financial counseling does not appear to have had any discernible effect on the way he manages his finances. The receipt of financial counseling alone without evidence that such counseling has a meaningful impact on the way an individual manages their finances does not mitigate concerns raised by a history of delinquent debts. AG ¶ 20(c) does not apply.

Applicant's claim that identity theft may be the source of his substantial past-due tax debt was unconvincing. Although identity theft impacted the validity of a recent tax return that was filed in his name, the substantial tax debts at issue predate this recent issue. Applicant's past-due federal tax debt was a result of his failure to file his 2006 and 2007 tax returns, and utter disregard (until relatively recently) for his overdue federal tax liability, to include a 2006 tax lien. AG ¶ 20(e) does not apply.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).<sup>17</sup>

I considered Applicant's military service, employment as a federal contractor, and that he has held a security clearance for many years. I also took into account the financial support he has provided his daughter. At the same time, Applicant's largesse towards his daughter came at the expense of his financial obligations, to include the legal obligation to pay his federal taxes. At hearing, he was evasive and attempted to mislead, to include submitting a portion of a credit report that he had manipulated to make it appear that he had resolved one of the debts before the SOR was issued.<sup>18</sup> After having an opportunity to observe Applicant's demeanor and review all the evidence, I found his testimony not credible. After weighing all the evidence, favorable and unfavorable, I find that Applicant failed to mitigate the security concerns raised by his financial situation.

---

<sup>16</sup> This unfavorable finding is not intended to impugn or contradict the other judge's earlier favorable finding regarding the 2005 bankruptcy discharge. The other judge did not have the benefit of the current record, to include Applicant's subsequent conduct which places in context his overall financial situation.

<sup>17</sup> The non-exhaustive list of adjudicative 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.

<sup>18</sup> See Tr. at 87-89 (After being confronted, Applicant admits that he altered the section of the credit report that he submitted with Ax. L).



Applicant has long a history of disregarding his financial obligations, to include the obligation of all citizens to pay their taxes. This record evidence raises serious concerns that he may treat his security obligations in a similar manner. Overall, the record evidence leaves me with serious doubts about his continued eligibility for access to classified information.

### **Formal Findings**

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations):      **AGAINST APPLICANT**

Subparagraphs 1.a – 1.bb:      **Against Applicant**

### **Conclusion**

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is denied.

---

Francisco Mendez  
Administrative Judge