



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 14-04831

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Applicant for Security Clearance

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**Appearances**

For Government: Adrienne M. Strzelczyk, Esq., Department Counsel

For Applicant: *Pro se*

08/17/2015

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate financial security concerns.

**Statement of the Case**

On September 19, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. An investigation was conducted by the Office of Personnel Management (OPM), and Applicant responded to interrogatories from the Department of Defense (DOD). After considering the results of the investigation and the answers to the interrogatories, the DOD could not make the affirmative findings required to issue a security clearance. The DOD issued Applicant a Statement of Reasons (SOR), dated January 26, 2015, detailing security concerns for financial considerations under Guideline F. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2,

1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR in an undated response. He admitted the two financial allegations with an explanation. Department Counsel was prepared to proceed on May 27, 2015, and the case was assigned to me on June 8, 2015. The DOD issued a notice of hearing on July 1, 2015, scheduling a hearing for July 27, 2015. I convened the hearing as scheduled. The Government offered four exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 4. Applicant and two witnesses testified, and Applicant submitted 26 exhibits that I marked and admitted into the record without objection as Applicant Exhibits (AX) A through Z. I received the transcript of the hearing (Tr.) on August 4, 2015.

### **Ruling on Procedure**

Applicant moved for dismissal of the allegations in the SOR because the issue had already been decided. Applicant was of the opinion that since his command temporarily suspended and then reinstated his access to classified information, the issue of his eligibility for a security clearance had been decided. The motion was denied. (Tr. 11-18; GX 1, JPAS; dated July 23, 2015)

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is a 50-year-old retired chief petty officer who has been employed by a defense contractor for over 12 years as a senior systems engineer. His duties require him to deploy. He served on active duty in the Navy from January 1983 until February 2004, as a yeoman and data technician, and received an honorable discharge on his retirement. While on active duty, Applicant received excellent fitness reports, and many awards and decorations including two Navy Commendation medals and three Navy Achievement medals. He held a security clearance since entering active duty in 1983, which he carried over with him to his civilian employment. (Tr. 18-19, 42-44; GX 2, e-QIP, dated September 19, 2011; AX H, Security Clearance Record; AX I, Certificates; AX J, Certificate of Retirement; AX K, DD 214; AX L, Enlisted Fitness Reports)

Applicant married in October 1988 and separated in June 2006. He has two children, one still at home. Applicant did not attend college. His current total monthly income is \$6,000, consisting of his salary, retired military pay, and disability compensation. His recurring monthly expenses are approximately \$4,910, leaving approximately \$1,300 in discretionary funds. (Tr. 58-62; AX G, Disability Award, dated March 23, 2015)

After his retirement, Applicant immediately started employment with the defense contractor. His performance evaluations have been excellent. He has been briefed by

his employer on security procedures and he signed the appropriate agreement not to disclose classified information. (AX M, Civilian Performance Evaluations, dated May 15, 2015; AX V, Information Brief, undated; AX W, Classified Information Nondisclosure Agreement; AX X, Security Briefing; AX Y, Training Certificate, dated March 10, 2015; AX X, Training Certificate, dated May 23, 2015)

The SOR alleges, and Applicant's admits, that he failed to file federal and state income tax returns for tax years 2006 through 2011 (SOR 1.a). As a result, he is indebted to the IRS for approximately \$39,000 in back taxes (SOR 1.b). (GX 3, Response to Interrogatories, dated May 15, 2014)

When Applicant and his wife separated in 2006, he did not know how he should calculate and file his income tax returns. His wife was caring for the children, and they could not agree who would claim and file returns as head of household. Applicant tried to reach an agreement with his wife numerous times about their taxes, but she either did not agree with his view or did not respond to his questions. Since he did not have the information he was seeking and did not know what to do, he did not file his tax returns. He thought he would receive a refund on his taxes since he had received a refund every year in the past. Since he thought he would receive a refund, he did not seek professional tax advice. He did not think he was doing anything illegal or wrong. He thought that in time he would be contacted by the IRS and the details of his taxes would be resolved. He was not contacted by the IRS about filing his tax returns until 2012. Once he was informed that he was required to file tax returns, he immediately contacted his attorney, hired a tax preparation firm, and had the forms prepared and filed. His taxes with fees, interest, and penalties were determined by the IRS to be approximately \$39,000. He now understands the requirement to file a tax return even though he believes he is due a refund. Applicant filed his 2012 and 2013 tax reruns on time and paid the taxes due. (Tr. 43-50; GX 4, Letter, dated Jun2 2, 2014)

Applicant timely filed his 2012 federal tax return and was due a refund, but the refund was applied to the back taxes. He timely filed his 2013 federal tax return and owed \$900. He paid the taxes owed for that year. He changed his federal tax withholding and now pays an extra \$75 monthly so he would not owe any federal taxes in the future. As for his state taxes, he filed his state tax returns for 2006 until 2011 and was due a refund for each year. He timely filed his 2012 and 2013 state tax returns and was due a refund for each year.

Applicant reached a payment plan with the IRS. He pays \$425 a month which is automatically taken from his checking account. The current balance of his tax debt is \$28,139.03. He is not sure when he will have his taxes paid since in the future any tax refund will be applied to his past-due taxes. His present plan is to keep making the agreed payments and to file his returns on time. He is current with all of his debts and payments including his rent. His credit score has increased. (Tr. 51-58; AX A, Letter, dated October 1, 2014; AX B, checks, dated 1 October 2014 and 1 November 2014; AX C, e-mail, dated May 21, 2015; AX D, e-mail, dated May 15, 2012; AX E, Credit Score,

dated July 15, 2015; AX F, Credit Report, dated April 24, 2015; AX N, letter, dated March 15, 2015)

Applicant's wife testified that Applicant has always been current with his child support payments since they separated in 2006. He also was always consistent in paying his debts. He meets his financial obligation to her and the children. Applicant requested tax information from her many times in 2006 to 2011 either personally or through his attorney. There was miscommunication between them as well as with their lawyers. They separated under horrible conditions, much of which was not Applicant's fault. It was a rough time for both of them and they did not agree on much including how to handle their taxes. She was angry at the time so she did not respond. She was going to do what she wanted to do, so she filed her tax returns as head of household and did not provide him a lot of information. They started to communicate better starting in 2011, and she provided him with some of the information he requested. (Tr. 58-69; AX O, e-mail, dated November 10, 2011)

Applicant's friend testified that he has known Applicant for over 15 years. Applicant is a superior technician with a true love for the job, and he is a pleasure to work with. The witness characterizes Applicant as a hard worker, eager to get the job done, and a problem solver. He does not think Applicant would divulge classified information, and recommends that he be granted eligibility for access to classified information. (Tr. 69-72) Applicant provided recommendations from his coworkers who give him high marks and praise for his performance. (AX P, Recommendations, September 3, 2013; AX S, AX T, and AX U, Recommendations, various dates)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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 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 this

decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

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 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 that 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.

## **Analysis**

### **Financial Considerations**

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 a person’s reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) The financial security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual’s responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual’s reliability and trustworthiness. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Applicant did not file his federal or state tax returns for tax years 2006 through 2011. He filed his past-due tax returns in 2012, and it was determined that he was indebted to the IRS for over \$39,000. Applicant’s failure to timely file tax returns and his indebtedness to the IRS are a security concern. The evidence is sufficient to raise the following security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and

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

I considered the following Financial Considerations Mitigating Conditions under 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;

(b) the conditions that resulted in the financial problems 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; and

(d) the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

These mitigating conditions apply. Applicant failed to file his federal and state income tax returns for tax years 2006 through 2011 after he and his wife separated in 2006. Applicant did not have sufficient information from his wife to file his tax returns, and his wife refused to provide him with the information. Rather than seeking professional help and advice, Applicant just did not file the returns. When contacted by the IRS in 2012, Applicant filed his past due tax returns. The IRS determined that he owed approximately \$39,000 in federal taxes. He had sufficient funds withheld for state taxes, so he did not owe any state taxes.

He is paying his federal back taxes based on a payment plan with the IRS. He is current with his payments and the debt has been reduced to approximately \$28,000. His failure to timely file the tax returns was under the unusual circumstance of his wife not providing him with the information he needed to file. He did not believe he owed taxes and thought he may be due a refund since he always received a refund in the past. He did not know what to do, and he did not seek professional help and advice. The conditions that led to his delinquent debt were partially beyond his control and are unlikely to recur. Applicant could have sought assistance and filed the returns with the information he had available. He acted reasonably and responsibly when advised by the IRS of the tax debt. He consulted his lawyer, finally received information from his wife, and filed his past-due tax returns. The IRS determined he owed approximately \$39,000 in back taxes.

Applicant established a good-faith effort to repay his back taxes. For a good-faith effort, there must be an ability to repay the debts, the desire to repay, and evidence of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that he has a reasonable plan to resolve financial problems and has taken significant action to implement that plan.

Applicant has a payment plan with the IRS. He has a meaningful track record of payments, and he is current with the payments under the plan. Applicant has shown that he acted with reasonableness, prudence, honesty, and an adherence to duty and obligation towards his finances. His federal back tax problems are being paid and resolved. There is ample evidence of responsible behavior, good judgment, and reliability. Based on all of the financial information, I conclude that Applicant has mitigated security concerns based on financial considerations.

### **Whole-Person Analysis**

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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. I considered Applicant's 20-year career in the Navy ending in an honorable discharge. I considered the views of Applicant's supervisors and his excellent job performance. Applicant is now current with the filing of his federal and state tax returns. He is paying his past-due taxes under a payment plan with the IRS. Applicant presented sufficient information to establish that

he is acting reasonably and responsibly towards his finances, and that he will continue to responsibly manage his financial obligations. Overall, the record evidence leaves me without questions or doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has mitigated security concerns arising under the financial considerations guideline. Eligibility for access to classified information is granted.

### **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:           FOR APPLICANT

Subparagraphs 1.a – 1.b           For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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THOMAS M. CREAN  
Administrative Judge