



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 14-05159

**Appearances**

For Government: Adrienne Strzelczyk, Esquire, Department Counsel  
For Applicant: *Pro se*

07/17/2015

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges he failed to file his state tax returns for 2004 through 2006 in state A, and state A filed a tax lien in 2014, for \$28,795. Applicant believed he was a resident of state B and had no obligation to file a tax return in state A. In April 2014, he paid the state tax debt owed to state A. He has no delinquent debts. Financial considerations concerns are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On March 12, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (Item 2) On November 14, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline F (financial considerations). (Item 1) The SOR detailed reasons why DOD could not make the affirmative finding

under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (Item 1)

On May 29, 2014, Applicant responded to the SOR allegations, and he did not request a hearing. (Item 1) A complete copy of the file of relevant material (FORM), dated May 7, 2015, was provided to him on June 4, 2015. On June 29, 2014, DOHA received Applicant's undated response to the FORM and provided additional mitigating evidence. On July 1, 2015, Department Counsel did not object to consideration of the additional evidence. On July 14, 2015, the case was assigned to me.

### **Findings of Fact<sup>1</sup>**

In his Answer to the SOR, Applicant admitted he failed to file his state tax returns for 2004 through 2006 in state A, and state A filed a tax lien in 2014 for \$28,795. (Item 1) He also provided extenuating and mitigating information. (Item 1) His admissions are accepted as findings of fact.

Applicant is a 50-year-old maritime engineer, who has worked for defense contractors and ship owners since 2000. In 2009, he married. His children were born in 2009 and 2013. Applicant's parents live in state A, and from 1980 through 1983, he attended high school in state A. He served in the Navy from 1983 to 1992, and he received an honorable discharge. From 1996 through 2000, Applicant lived in state B to attend college, and he became "a voting resident" of state B. (FORM response) In 2000, he received a bachelor's degree, and in 2000, he moved to a foreign country. He asserts he became a state B resident for tax purposes in 2000. There is no evidence of disciplinary problems with his employer, illegal drug use, criminal offenses, or alcohol abuse.

Applicant did not file his state tax returns for 2004 through 2006 in state A, and state A filed a tax lien in 2014, for \$28,795 for tax years 2004 through 2006.<sup>2</sup> In April 2014, Applicant paid the state tax debt owed to state A, and, on June 9, 2015, state A wrote that the balance owed was zero. Applicant has about \$300,000 in an investment account. He has lived in a foreign country with his spouse and children or aboard U.S. flagged ships the previous 15 years. His 2015 credit report indicates "pays as agreed" for all debts with a balance, and it does not indicate any delinquent accounts or negative

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<sup>1</sup>Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits. Unless stated otherwise, the source for the information in this paragraph and the next paragraph is his Office of Personnel Management (OPM) personal subject interview (PSI), SOR response, and his March 12, 2014, Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (Items 1-3)

<sup>2</sup>Applicant's April 9, 2014 OPM PSI indicates he did not file state A income tax returns for the previous seven years; however, he has not received a lien or other evidence of state A collection efforts for tax years after 2006. (Item 3) The SOR and FORM do not raise the issue of whether he failed to file state A tax returns from 2000 to 2004 or from 2007 to present. See note 5, *infra*.

financial entries. (FORM response) Aside from the state A tax debt, there is no evidence of delinquent debts.

There is no evidence of credit counseling. Applicant did not provide a budget or comprehensive information about his income or expenses the last several years. His employment evaluations show outstanding ratings. (FORM response)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v.*

*Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(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." Applicant's history of delinquent debt is documented in his SF 86, SOR response, Office of Personnel Management (OPM) personal subject interview (PSI), and FORM response. He failed to file his state tax returns for 2004 through 2006 in state A, and state A filed a tax lien in 2014 for \$28,795. The Government established the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(g) requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(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.

Applicant's conduct in resolving his debts warrants application of AG ¶¶ 20(a), 20(b), and 20(d). His delinquent debts "occurred under such circumstances that [are] unlikely to recur and [do] not cast doubt on [her] current reliability, trustworthiness, or good judgment." He had a subjective belief that he was not a resident of state A, and as such, he did not have to file state A tax returns after 2000. In April 2014, he paid the state tax debt owed to state A for tax years 2004 through 2006. On June 9, 2015, state A wrote that the balance owed was zero. He has no delinquent debts. He acted responsibly under the circumstances by paying his debts. Although he did not receive financial counseling, there are clear indications that the problem is being resolved or is under control. Applicant admitted responsibility for and took reasonable and responsible actions to resolve his SOR debt, establishing his good faith. His efforts are sufficient to mitigate financial considerations security concerns.

### **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.

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. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

Applicant is a 50-year-old maritime engineer, who has worked for defense contractors and ship owners since 2000. In 2000, he received a bachelor's degree, and in 2000, he moved to a foreign country. He served in the Navy from 1983 to 1992, and he received an honorable discharge. His employment evaluations show outstanding ratings. There is no evidence of disciplinary problems with his employer, illegal drug use, criminal offenses, or alcohol abuse.

Applicant lived in state B while attending college from 1996 to 2000 and in a foreign country from 2000 to present. He failed to file his state tax returns for 2004 through 2006 in state A, and state A filed a tax lien in 2014, for \$28,795. Applicant believed he was a resident of state B for state tax purposes, and he had no obligation to file a tax return in state A. In April 2014, he paid the state tax debt owed to state A. His credit report indicates all of his credit accounts are in good standing, and he has no delinquent debts.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

Applicant understands what he needs to do to establish and maintain his financial responsibility. His efforts at debt resolution have established a "meaningful

track record” of debt re-payment. I am confident he will maintain his financial responsibility.<sup>3</sup>

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations concerns are mitigated, and 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 and 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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Mark Harvey  
Administrative Judge

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<sup>3</sup>The Government has the option of following-up with more questions about Applicant's state taxes from 2000 to 2005 and from 2007 to present. The Government can re-validate Applicant's financial status at any time through credit reports, investigation, and interrogatories. Approval of a clearance now does not bar the Government from subsequently revoking it, if warranted. "The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E, and may support future revocation of a security clearance. An administrative judge does not have "authority to grant an interim, conditional, or probationary clearance." ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, "The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow her the opportunity to have a security clearance while she works on her financial problems."). This footnote does not imply that this decision to grant Applicant's security clearance is conditional.