



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



In the matter of:	)	
	)	
	)	ISCR Case No. 15--03487
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rhett E. Petcher, Esquire, Department Counsel  
For Applicant: Alan V. Edmunds, Esquire

03/31/2016

**Decision**

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on May 17, 2014. On May 16, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. The action was taken under Executive Order 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) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on June 22, 2015. He answered the SOR, and requested a hearing before an Administrative Judge. I received the case assignment on October 28, 2015. DOD issued a notice of hearing on December 8, 2015, and I convened the hearing as scheduled on January 14, 2016. The government offered Exhibits (Ex.) 1 through 6, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through N, without objection. DOHA

received the transcript of the hearing (Tr.) on January 22, 2016. I granted Applicant's request to keep the record open until February 8, 2016, to submit additional matters. He timely submitted Exhibits O through X, without objection. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his Answer to the SOR, Applicant denied the factual allegations in ¶¶ 1.a, 1.b, 1.c, and 1.d of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 48 years old. He obtained his undergraduate degree in 2003, and his masters of business administration in 2009. (AX L and M) He is married and has two children. He served in the U.S. Air Force from 1985 until 1989 and was honorably discharged. (AX K) From 1989 to 1993, he served in the Air National Guard (active reserve). He is the president and principal business owner of a company which he started in 2000. He has held a security clearance since 2003. (GX 1)

The SOR alleges four financial concerns, which consist of a second mortgage charged off in the amount of \$60,448; a 2013 state tax lien in the amount of \$11,624; a 2010 judgment in the amount of \$2,333; and failure to file federal and state tax returns for tax years 2010, 2011, and 2012, as required.

As to SOR 1.a, Applicant disputes that the second mortgage was ever delinquent. The account was paid as agreed during the term of the loan. He submitted information that showed his payment history with the bank. (AX A) In addition, he held approximately seven mortgage accounts with the bank during the same period and all were paid as agreed. Applicant submitted a dispute to the credit reporting agencies on June 9, 2015. (AX R) In addition, Applicant contacted the bank for information regarding this loan. (AX O) He has received notification by email that the mortgage does not appear in his file.

As to SOR 1.b, Applicant denied an indebtedness to the state for a 2013 tax lien in the approximate amount of \$11,624. He was never liable for tax for individual income to that state. (AX F) His company performed services in that state and paid taxes in the amount of \$27,727 in 2011. His company has paid unemployment and other taxes since 2008. He provided documentation to support his position. (AX B) His accountant had given him poor advice and told Applicant that he would owe tax in each state where his company did business. (Tr. 16)

As to SOR 1.c, Applicant denied that this account for a homeowner association fee is delinquent. Applicant had tenants in the home and they were responsible for the fee. (AX C) Since the renters vacated the property before paying the fee, Applicant resolved the issue by paying \$3,388.99. (AX E)

As to SOR 1.d, Applicant's failure to timely file federal and state tax returns for tax years 2010, 2011, and 2012, as required was the result of poor tax advice from his accountant. He filed for an extension each year, but a complication arose as the tax filings were joint with his wife. The personal and business tax returns were joint due to the structure of his company as an LLC. He paid the estimated tax before the actual filing of the tax returns. He notified the IRS each year of the filing status. (AX T) The returns were filed in 2014. (AX D)

The delay was caused because the original accountant for Applicant and his wife did not provide certain business documents in a timely manner. Although the accountant worked for the company for about two years in 2010, they did not advise Applicant that the structure of the company should not be an LLC, but rather an S corporation so that the personal tax returns could be filed separately from the business tax returns.

Applicant stated that it took six months to find another accountant to do the complex return. The new company had to analyze the prior filings and prepare the business portion of the 2010 return before completing 2010, 2011, and 2012 filings. Based on the level of complexity of the filing, Applicant was not able to file himself. He needed the services of a seasoned tax professional. Currently all tax returns are filed. In addition, Applicant was advised to change the structure of his business to an S corporation to avoid future problems. (AX P)

Applicant is in sound financial status. He has total assets worth approximately \$2 million dollars. He has a monthly net remainder of about \$6,000. He attended and completed a financial course. (AX J)

Applicant submitted letters of recommendation from colleagues who describe him as an exceptional student and an extremely committed and patriotic citizen. He is trustworthy and displays exceptional performance. (AX W)

### **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 useful 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 over-arching 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. 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 applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining 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 the Applicant may deliberately or inadvertently fail to protect or 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 Executive Order 10865 provides that 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 relating to the guideline for Financial Considerations is set out in 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 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 concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Also under AG ¶ 19(g) “failure to file annual Federal, state, or local income tax returns as required or fraudulent filing of same” is a disqualifying condition. Applicant did not timely file tax returns for tax years 2010, 2011, and 2012, He accumulated some delinquent debt and disputes a charged-off account. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant’s tax filing issues occurred due to the inaccurate advice of his accountant. He has changed accountants and restructured his company. This was also the reason for a state tax lien. Renters vacated his property and did not pay the homeowner fee. These circumstances are no longer extant. I find the behavior occurred under such unusual circumstances that it is unlikely to recur, and it does not raise concerns about his current reliability, trustworthiness, or good judgment. The evidence raises this potentially mitigating condition.

Under AG ¶ 20(b), it may be mitigating where “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.” As noted above, some of the financial problems arose from his accounting company’s bad advice. He has resolved the issues. He acted responsibly in identifying and resolving these debts. I find this potentially mitigating condition is a factor for consideration in this case.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant received counseling and resolved all the delinquent debts, either by payment or settlement. He has disputed the charged-off account and has contacted the bank. He has shown a payment history to that bank. He is now financially sound and prepared for future contingencies. I conclude these potentially mitigating conditions apply.

### **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) 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 the facts and circumstances surrounding this case. Applicant is an educated, mature individual who has owned his own company since 2000. He had an issue with filing Federal and state tax returns in 2010, 2011, and 2012, when his then accountant failed to produce necessary business documents and gave poor advice concerning the structure of his company. Applicant rectified the problem as soon as he could by hiring a new company. However, they had to analyze the prior documents before proceeding with filing. Applicant advised the IRS of the status and filed for extensions. The taxes were filed in 2014. As to the other financial issues, Applicant was misguided about state tax issues, and a state tax lien was filed against him. He has taken care of that. He had renters who did not pay the home owner association fees. They vacated the property and when Applicant learned of the debt, he satisfied the judgment. He has been proactive with the issue of the charged-off bank account. He has disputed the amount and is working with the bank. He has good credit with the bank.

Applicant served in the U.S. military and received an honorable discharge. He has recommendations from his colleagues. He has taken a financial course and he is financially stable. He is married and has two children. As a result, he has focused his attention on providing a stable domestic environment for his family. Most significantly, he has taken affirmative action to pay or resolve most of the delinquent debts raising security concerns. Of course, the issue is not simply whether all his debts are paid – it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. While the charged-off debt is still in dispute, it is insufficient to raise security concerns. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations.

### **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-1d: For Applicant

### **Conclusion**

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

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NOREEN A. LYNCH  
Administrative Judge