



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-05699
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Paul M. DeLaney, Esquire  
For Applicant: *Pro se*

January 12, 2010

**Decision**

CURRY, Marc E., Administrative Judge:

Over the past twenty years, Applicant has filed for Chapter 7 bankruptcy protection twice, and is currently behind on his federal and state income taxes. Although he recently established a payment plan, it is too soon to conclude that he has mitigated the Financial Considerations security concern. Clearance is denied.

On May 26, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its denial of Applicant's security clearance. Specifically, it alleged facts which raise concerns under Guidelines F, Financial Considerations. 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 revised 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 answered the SOR on June 15, 2009, and requested an administrative determination. On August 14, 2009, the government prepared a File of Relevant Materials (FORM). Applicant received the FORM on September 28, 2009, and prepared a response that day. The government received Applicant's response on October 1, 2009, and the case was assigned to me on October 8, 2009.

### **Findings of Fact**

Applicant is a 56-year-old married man with three adult children. He was born and raised in Iraq, immigrated to the United States (U.S.) in the 1970s, and became a naturalized U.S. citizen in 1982 (Item 8 at 10). Since 2006, he has worked for various defense contractors as a translator and bi-cultural advisor in support of Operation Iraqi Freedom (*Id.*).

In the late 1980s, Applicant was a successful real estate investor (FORM Response, Exhibit C at 9). By 1991, he was a partner in a company that owned 14 shopping centers (*Id.*). He financed the purchase of these shopping centers through loans that he had personally guaranteed (*Id.*). In 1992, the commercial real estate market "fell apart" (*Id.*; FORM Response, Exhibit A at 1). As vacancies mounted, Applicant became unable to pay his creditors (*Id.*).

In 1994, Applicant filed for Chapter 7 bankruptcy. Later that year, the bankruptcy court discharged his debts (Item 4 at 1). The amount of debt discharged is unknown from the record.

After Applicant's real estate venture failed, he switched careers and became a stockbroker (FORM Response, Exhibit C at 9). As Applicant's expertise grew, his client base expanded and his business prospered (Item 8 at 41). By the end of the decade, he was earning, on average, approximately \$150,000 per year (FORM, Exhibit C at 6). Shortly after 9/11, however, "the stock market tanked" and Applicant's income decreased (Item 16 at 27). Also, the investments that he was managing for his clients began to fail. (*Id.*). Subsequently, some of his clients became disgruntled and sued him (*Id.*).

At or about the time Applicant began having financial difficulties, his mother and brother died (*Id.*). Applicant was solely responsible for their funeral arrangements. Also, he had to support his brother's children (*Id.*).

Applicant's debts, including his federal and state income tax payments, gradually became delinquent. In March 2004, the U.S. Internal Revenue Service (IRS) filed a lien against his property for approximately \$60,000 in unpaid taxes (Item 15). In 2005, two of Applicant's cars were repossessed, and his mortgage was foreclosed (Item 16 at 17-18, 29). In July 2006, Applicant filed for Chapter 7 bankruptcy protection (Item 9 at 4). He listed on the petition \$482,000 in liabilities, including \$140,000 of delinquent state and federal income taxes spanning tax years 1998 to 2005 (Item 16 at 15). As part of the bankruptcy process, Applicant completed a budget and credit counseling course (Item

16 at 2). Later in 2006, all of Applicant's debts, except approximately \$66,000 of back federal and state income taxes, were discharged (Item 16 at 42).

In December 2006, the state revenue taxing authority entered a lien against Applicant's property in the amount of approximately \$8,700 for back income taxes (Item 8 at 40). In November 2007, Applicant entered into a payment plan to resolve his back state income taxes (FORM Response, Exhibit C at 1). Under the plan, he is to pay \$100 monthly (*Id.*). Applicant provided no evidence supporting his contention that he has been complying with the plan.

In January 2007, the IRS obtained a lien against Applicant's property for approximately \$41,000 (Item 14 at 1). In May 2009, Applicant entered into a payment plan with the IRS (FORM Response, Exhibit C at 3). As of September 2009, he owed the federal government approximately \$76,000 of back income taxes for tax years 2002 through 2005 (FORM Response, Exhibit B). Under the plan, he is to pay \$1,000 monthly. He provided no evidence of payments.

Applicant maintains a budget. As of September 2008, he earns approximately \$8,900 monthly and has \$34,000 in savings (Item 9 at 3).

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised 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 together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a 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 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. 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 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**

Under this guideline, “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” (AG ¶ 18). Moreover, “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds” (*Id.*). Applicant’s history of financial delinquencies triggers the application of AG ¶¶ 19(a), “an inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

At different periods during Applicant’s career, his financial well-being was dependent on the viability of both the commercial real estate market and the stock market. Consequently, his contention that his financial hardship corresponded with downturns in these respective markets was credible. Applicant, however, provided neither specific evidence detailing the relationship of these market factors to his financial difficulties, nor specific evidence detailing any steps he took to stabilize his finances before filing for bankruptcy protection. Also, he offered no explanation as to why his delinquencies, which were most recently discharged, were so extensive. Moreover, not all of Applicant’s financial difficulties corresponded with downturns in the U.S. economy. For example, Applicant attributes the cause of his most recent financial struggles to the post-9/11 stock market downturn; however, the evidence indicates that some of his delinquencies predate 9/11 by three years.

In 2006, Applicant obtained a discharge of all of his delinquent commercial debts and a partial discharge of his back state and federal income taxes. He is paying the remaining tax debt through installment agreements. However, Applicant still owes

approximately \$85,000 of delinquent federal and state income tax debt, and just began paying the federal tax debt in September 2009. Although he arranged the state tax payment plan two years ago, he provided no evidence that he has been complying with the plan.

The cause of Applicant's delinquencies and the steps he has taken to address them, including counseling, are sufficient to merit application of AG ¶ 20(a), "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(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," and the first prong of AG ¶ 20(c), "the person has received or is receiving counseling for the problem . . . ." However, the amount of his outstanding delinquent debt and his failure to provide evidence demonstrating compliance with the income tax installment payment agreements compel me to conclude that the second prong of AG ¶ 20(c), ". . . there are clear indications that the problem is being resolved or is under control," does not 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) 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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

Applicant deserves credit for assisting the U.S. war effort by returning to his native country to work as a translator and bi-cultural advisor. Circumstances beyond his control contributed to his financial difficulties. Absent more detail about these circumstances, this mitigating factor is outweighed by the recurrent nature of his financial difficulties, the amount of debt Applicant accrued before filing for bankruptcy protection in 2006, the amount of delinquent debt that remains outstanding, and the lack of documentation supporting Applicant's contention that he has been satisfying the remaining income tax delinquencies. Upon evaluating the whole person factors, I

conclude that it is not clearly consistent with the national interest to grant Applicant access to classified information. Clearance is denied.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.e:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY  
Administrative Judge