



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



In the matter of: )  
)  
) ISCR Case No. 08-06522  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: *Pro Se*

March 17, 2009

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government's security concerns under Guideline C, Foreign Preference and Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is denied.

On August 29, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines C and F. 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 allegations under Guideline C in writing on September 19, 2008, but failed to respond to any of the allegations under Guideline F. Applicant requested a hearing before an administrative judge. The case was assigned

to me on February 10, 2009. DOHA issued a Notice of Hearing on February 24, 2009. I convened the hearing as scheduled on March 3, 2009 by video-conference. Applicant affirmatively waived the 15-day notice requirement.<sup>1</sup> Applicant was located at Luke AFB in Phoenix, Arizona and Department Counsel and I were located at the DOHA offices in Arlington, Virginia. The Government offered Exhibits (GE) 1 through 8. Applicant did not object and they were admitted. Applicant testified and offered Exhibits (AE) A through H. The record remained open until March 10, 2009, to allow Applicant to submit additional documents. He did not provide any additional documents and the record was closed. DOHA received the transcript of the hearing (Tr.) on March 13, 2009.

### **Findings of Fact**

Applicant admitted in his answer the allegations under Guideline C in the SOR. On the record he admitted all of the allegations under Guideline F. His admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 45-year-old helicopter pilot who is employed by a federal contractor. His employment had a rotational shift of working six weeks on and then six weeks off. He has not been able to work pending the outcome of his security clearance determination. Applicant was born in Ireland and earned the equivalent of a U.S. high school diploma. He also took post-high school courses and served as an apprentice for a period of time. He moved to the U.S. in 1987. He attended and completed flight school in 1989 and received his private pilot's license.<sup>2</sup>

Applicant married his first wife in 1990 and they divorced in 1992. He has a son from that marriage with whom he has had no contact. He married a second time in 1993 and they divorced in 1995. He has a daughter from that marriage for whom he provides support. He visits her every two to three months and spends approximately three to four weeks with her in the state where she and her mother reside. Applicant provides half of the cost of her private school tuition of \$14,500 annually and set up a savings account for her that has approximately a \$17,000 balance. Until he stopped working, he contributed a couple hundred dollars a month to the account. He also splits other expenses incurred for his daughter with his ex-wife. He estimated his annual income to be approximately \$76,000.<sup>3</sup>

Applicant was a permanent resident of the U.S. in 1987 when he applied for U.S. citizenship. Due to logistical and administrative problems, his application was delayed. He became a U.S. citizen in 2001. Applicant lived and worked in the U.S. in

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<sup>1</sup> Tr. 5-6.

<sup>2</sup> Tr. 21, 49-51.

<sup>3</sup> Tr. 52-58.

approximately 1990 to 1993. He was employed by an American company and worked for them in a foreign country from 1994 through 1997. From 1998 to 2004 he resumed employment in the U.S. Many times, his employment was seasonal and he worked only six or seven months of the year. During the off-seasons, he would return to Ireland. All of his family lives in Ireland except a sister who resides in the U.S. In 2004 he returned to Ireland to care for his aging parents. His mother died in December 2004 and his father remains in Ireland. In 2005, while residing in Ireland he accepted employment with his current employer.<sup>4</sup>

Applicant retained his Irish passport when he became a U.S. citizen. It expired in 2005 and he renewed it. It will not expire until 2015. He was aware that having a foreign passport was a potential disqualifying condition and was told prior to the hearing that he could surrender, destroy, or invalidate his passport to mitigate the condition. Although he stated he was willing to do so, he did not. He admitted that on one occasion, in July 2008, he traveled on his Irish passport because he was not in possession of his U.S. passport. Normally, he travels on his U.S. passport. Applicant permanently resides in Ireland in his father's home and travels to the U.S. to visit his daughter. Applicant travels with both his U.S. and Irish passport.<sup>5</sup>

Applicant does not own property in either the U.S. or Ireland. He does not receive health benefits in Ireland or any social services. He is not entitled to any type of work or old age pension from the Irish government.<sup>6</sup> He has not voted in Ireland and is also not registered to vote in the U.S. He has a checking account in Ireland with approximately 700-800 Euros. He maintains the savings account for his daughter in Ireland. Because she is a minor he is the custodial account owner. He does not pay taxes in Ireland.<sup>7</sup>

Applicant has a federal tax lien filed in July 2003 for tax years 1997, 1998, and 1999, in the amount of \$25,311; a federal tax lien filed in July 2004 for tax years 2000 and 2001 in the amount of \$20,663; and a federal tax lien filed in March 2008 for tax years 2002, 2003 and 2005, in the amount of \$15,039. Applicant also has a state tax lien filed in July 2001 for tax year 1999 in the amount of \$2,290.<sup>8</sup> As of the filing of the SOR, he has not provided proof that he paid any of the total outstanding tax liability of \$63,303.

Applicant admitted he did not file his income taxes during certain years from 1997 to 2007. He stated: "I know I didn't file certain years, yes, I just put it on the long

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<sup>4</sup> Tr. 22-36, 59-60.

<sup>5</sup> Tr. 36-41, 62-69.

<sup>6</sup>Tr. 70-72; AE G and H.

<sup>7</sup> Tr. 41-46, 77-78, 123.

<sup>8</sup> Tr. 93-94; GE 5, 6, 7, and 8.

finger, and it was past the date, and I didn't get an extensions, I just blew it off, yes."<sup>9</sup> He admitted there were consecutive years that he did not file. He did not work in 2004. His testimony was convoluted, confusing and unconvincing. He could not remember what years he filed and what years he did not file. He testified that he paid taxes every year, but did not have enough withholding taxes taken from his pay. He became aware in 2004 that he was not having enough money withheld from his pay He testified that he believed he was entitled to a foreign tax exemption because during some of the tax years he was out of the country for more than 330 days. However, it appears the Internal Revenue Service (IRS) disallowed this exemption. He learned in 2000 that that the IRS would not allow this exemption.<sup>10</sup>

After learning in 2004 of the tax liens filed against him, Applicant attempted to resolve his tax problems. He had a friend help him. He believed she spent approximately two to three years arguing with the IRS and made no progress. He admitted he did not follow-up with this person "as tightly as I should have." In 2004, he stated he filed all of his back tax returns but was not given credit for certain years. No documentation was provided to substantiate his statements or filings, as he did not keep copies of all of his tax returns. Applicant testified that in 2007 he hired an accounting firm to address his tax problems.<sup>11</sup> Applicant provided a letter from the accountant that states the following:

We have been engaged by [Applicant] to handle, along with his attorney, matters related to outstanding tax matters for the years 2005-2008. We have prepared for [Applicant] Forms 1040 for 2006, 2007 and 2008, and an amended 1040X for 2005 to be filed for those years.<sup>12</sup>

A letter from Applicant's attorney reflects that he has been retained by Applicant and is handling "his tax matters with the Internal Revenue Service."<sup>13</sup> Applicant testified he hired his attorney in late 2007.

Applicant provided documents from his accountant labeled "Tax Return Filing Instructions," for 2008, 2007, 2006 and 2005.<sup>14</sup> It appears these are worksheets that were prepared for Applicant advising him that for tax years 2005, 2006 and 2007, he should mail his tax returns that were prepared for him as soon as possible. The return for 2008 advises him to mail the return by April 15, 2009. Based on the accountant's

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<sup>9</sup> Tr. 113.

<sup>10</sup> Tr. 47-48, 79-83, 90-101, 112-114; GE 7 notes Applicant's failure to pay his taxes and also accesses a \$500 penalty for filing a frivolous tax return.

<sup>11</sup> Tr. 46-47, 83-88.

<sup>12</sup> AE F.

<sup>13</sup> AE E.

<sup>14</sup> Tr. 87-88.AE A, B, C, and D.

letter, the tax return filed for 2005 is an amended return. It appears the other returns are being filed for the first time. Applicant did not provide copies of his tax returns for which the instructional worksheets were prepared. There is no mention by either Applicant's accountant or attorney of the status of the returns for tax years 1997 to 2004. The worksheets reflect that Applicant does not owe money, which contradicts the IRS documents. Applicant stated that his past tax refunds were garnished by the IRS and applied to his tax debt. Although this is likely, I did not receive any documentation to substantiate his claim. The only payments made towards his back taxes appear to be through an involuntary garnishment from the IRS. He did not put any money aside to pay his back tax debts.<sup>15</sup>

Applicant did not provide copies of any of his tax returns that he filed either on time or late. He did not provide any documents from the IRS reflecting the balance on his current tax lien debts. He is not proud of his actions and believed he was stupid to trust his friend in 2004. At first he could not recall ever working in the state that filed a tax lien against him. Later he admitted that he had lived in that state and that it is the likely source of the debt. He admitted he thought he could "stick his head in the sand" and that he has been slow to resolve his tax problems. No proof was provided to show Applicant has resolved his tax problems and is paying his back taxes. The worksheets provided show Applicant is entitled to refunds. The supporting documents were not provided.<sup>16</sup> I did not find Applicant's testimony credible regarding his actions on his taxes. Applicant's balance of \$63,303 owed for back taxes may be reduced due to refunds being involuntarily garnished, but he failed to provide a specific accounting of the amount.

## **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 in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense 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.

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<sup>15</sup> Tr. 99-109.

<sup>16</sup> Tr. 88-90, 99-105, 112-122.

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 and 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 C, Foreign Preference**

Under AG ¶ 9 the security concern involving foreign preference is as follows:

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

AG ¶ 10 describes conditions that could raise a security concern and may be disqualifying: I have specifically considered the following:

(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to: (1) possession of a current foreign passport; (2) military service or a willingness to bear arms for a

foreign country; (3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country; (4) residence in a foreign country to meet citizenship requirements; (5) using foreign citizenship to protect financial or business interests in another country; (6) seeking or holding political office in a foreign country; (7) voting in a foreign election; and

(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen.

Applicant retained his Irish passport after becoming a U.S. citizen and used it on one occasion. He then renewed his Irish passport and it remains valid and in his possession. I find both AG ¶ 10(a)(1) and (b) apply.

I have considered all six of the mitigating conditions under AG ¶ 11 and especially considered:

(a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) the individual has expressed a willingness to renounce dual citizenship;

(c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor, and

(e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated.

Applicant remained a dual citizen with Ireland after becoming a U.S. citizen. He lives in Ireland and on at least one occasion used his Irish passport for travel. He renewed his Irish passport in 2005 and it remains in his possession and valid until 2015. Applicant has not destroyed, surrendered or invalidate his Irish passport, and seemingly has no intention to do so. He has not expressed a willingness to renounce his Irish citizenship. The record was held open to allow Applicant time to provide additional evidence. None was provided. I find none of the disqualifying conditions apply.

## **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. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant has federal and state tax liens debts, totaling \$63,303 that remain unpaid. He has been aware of them for several years. He admitted he failed to file his taxes during certain years, but was uncertain which years. Despite becoming aware of his problems, he continued to act irresponsibly toward his tax debts by ignoring them. I find all of the above disqualifying conditions apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered five of the 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 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 ignored his tax problems for a number of years. He did not file his taxes during certain years. He has not kept copies of documents he stated his tax preparer completed for him. He only recently filed his 2006 and 2007 tax returns. He did not provide any evidence as to what action he has taken on the state tax lien or on the tax issues from the earlier tax years. The problem remains unresolved. I find (a) does not apply because Applicant's tax problems remain ongoing and unpaid. Applicant admitted his tax problems are due to his failures to address the issues timely, failure to file some of his taxes timely, and failure to follow-up with the person who was assisting him. None of these circumstances were beyond Applicant's control, and therefore I find (b) does not apply. Applicant hired an accountant and attorney to help address his tax problems. However, his accountant only recently prepared tax returns for 2006, 2007 and an amended return for 2005. No proof was provided that Applicant has filed the returns. It is unclear what the status is for the earlier tax years. Applicant also hired an attorney to assist him with his tax problems. I find (c) partially applies because Applicant sought assistance from an accountant and attorney. However, questions remain regarding the earlier tax years and there is insufficient evidence that his problems are under control.

Applicant has not made any voluntary payments to the IRS for his overdue taxes. Therefore, I do not find (d) applies. Applicant stated that he was not given credit for certain things, but did not articulate exactly what his dispute was, nor did he provide documentation of his dispute. He may have legitimate disputes with the IRS, but without further substantiation, I find (e) 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 common sense 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 a naturalized U.S. citizen. He retained his dual citizenship status with Ireland, maintains an Irish passport,

has renewed it, and used it for travel on at least one occasion. Applicant was aware of the foreign preference security concerns for months prior to his hearing and has not surrendered his Irish passport. He permanently resides in Ireland. Applicant failed to file and pay his taxes for certain tax years. He has federal and state tax liens filed against him in the amount of \$63,303. Although he has been aware of his tax problems for many years he has not been proactive in resolving them until 2007. He had a friend help him in 2004 but the problem remained. It is unclear whether all of his tax problems are being addressed. Although his accountant completed the tax forms for certain years, the current status of his tax liens are unclear. He did not provide sufficient documentation to support that he has resolved his financial problems.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from foreign preference and 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 C:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Paragraph, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a-2.d:	Against Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge