



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



In the matter of: )  
)  
) ISCR Case No. 08-09111  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Paul M. Delaney, Esquire, Department Counsel

For Applicant: *Pro se*

March 31, 2009

**Decision**

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, I conclude that Applicant has not mitigated the security concerns raised under the guidelines for financial considerations and personal conduct. Accordingly, his request for a security clearance is denied.

On April 8, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to request a security clearance required as part of his employment with a defense contractor (Item 5). After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to grant Applicant's request.

On November 24, 2008, DOHA issued to Applicant a Statement of Reasons (SOR) (Item 1), that specified the basis for its decision: security concerns addressed in

<sup>1</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

the Directive under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Revised Adjudicative Guidelines (AG).

Applicant received the SOR on December 9, 2008. He signed his Answer on December 17, 2008, and requested a decision without a hearing. On January 13, 2009, DOHA Department Counsel submitted a file of relevant materials (FORM)<sup>2</sup> in support of the government's preliminary decision. Applicant was given 30 days from the date he received the FORM to file a response. He did not respond.

Applicant's Answer to the SOR did not provide clear-cut admissions or denials to each allegation. He answered each allegation under Guideline F by denying any "failure or inability to satisfy debts and meet financial obligations" and providing explanations regarding each allegation. I construe Applicant's Answer as follows: he admits with explanation allegations 1.a., and 1.b. He denies allegation 1.c. because he considers it to be a duplicate of 1.b. Applicant admits 1.d. and 1.e., which he refers to as "State and Municipal charges." Applicant admits with explanation the medical debts at allegations 1.f., 1.g., 1.h., and 1.i. Under Guideline E, he denied allegations 2.a. and 2.b.

The case was assigned to me on March 24, 2009, for an administrative decision based on the record.

### **Findings of Fact**

Applicant's admissions in response to the SOR are admitted as fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the FORM, I make the following additional findings of fact.

Applicant is 47 years old and has been married for 24 years. He is the father of a 21-year-old son and a 17-year-old daughter (Item 14). He earned a Bachelor of Science degree in 2006 and is currently employed as a senior systems engineer. Applicant was unemployed for approximately 9 months between 2002 and 2003 (Item 5). The record is silent as to Applicant's annual income or monthly net remainder after meeting expenses and debts. During his security interview, he stated that he meets his current obligations, other than the debts alleged in the SOR (Item 4). The SOR debts amount to \$43,735.

Applicant filed a Chapter 13 bankruptcy petition in 1997, which resulted from the failure of his delivery business (Item 4). He met his obligations under the Chapter 13 payment plan and the bankruptcy was discharged in 2000 (Item 9). In 1998, the year after he filed for bankruptcy, Applicant started a software-consulting business. This business failed in 1999. After filing his 1999 tax return, the IRS informed him that he owed \$15,256 because he failed to pay workman's compensation taxes. Applicant

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<sup>2</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included 14 documents (Items 1 - 14) proffered in support of the government's case.

contacted a financial professional in approximately 2000 (Item 6). This professional<sup>3</sup> submitted a letter confirming that Applicant has been working with him since that time regarding his “federal tax payment short-fall [that] occurred in 1998, 1999, and 2000” while Applicant was a “self-employed independent contractor.” (Item 4). The EA also noted that “Prior to this period you owned a freight expediting company which incurred significant losses and you accumulated significant personal debt as a result of these business losses.” (Item 4). It is unclear from the record whether this business is the same as the one that resulted in the 1997 bankruptcy.

According to the EA, Applicant has overpaid his taxes since the IRS lien was filed. His resulting tax refunds have been applied to the debt, but this has not substantially decreased Applicant's liability because of the

IRS practice of applying payments you make to your oldest balance. This has the effect of causing the outstanding balance to increase because the greatest penalty rates for underpayments apply to the most current tax periods.” (Item 4).

Both Applicant and the EA noted that the IRS has transferred his case file to several different IRS offices and different case workers, causing delay in resolving the issue (Items 4 and 6). The EA stated that he and Applicant had approximately monthly contact with the IRS in 2001; thereafter, the pace decreased to about twice per year between 2002 and 2008. Efforts have been increased as of December 2008 (Item 4). When Applicant met with an agent for his Subject Interview for this investigation, he reported that the EA advised him of a 10-year statute of limitations on IRS debts. Applicant was “hopeful the debts will be resolved as a result of the statute of limitation rule.” (Item 4).

Applicant claims in his Answer that the \$15,000 lien at allegation at 1.b. and the \$21,000 lien at 1.c. are the same IRS lien for Tax Year 1999, the difference being added penalties and interest (Item 4). However, the EA referred to tax liabilities for Tax Years 1998, 1999 and 2000 (Item 4). In addition, the IRS Notice of Lien indicates that the \$21,000 debt results from liabilities for Tax Years 1999 (approximately \$19,000) and 2001 (approximately \$2,000) (Item 11). I find that allegation 1.c. is not a duplicate of allegation 1.b.

In July 2008, Applicant learned that he also incurred a state tax lien as a result of failing to pay state workman's compensation taxes. Applicant has not paid this debt because the EA advised him to resolve the federal liens before paying the state lien (Item 6). The EA's letter does not refer to the state tax lien (Item 4).

The four medical debts alleged at 1.f. through 1.i., which amount to \$1,081, remain unpaid. Applicant reports that he incurred these debts in 2007 for treatment for

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<sup>3</sup> Although Applicant referred to this professional as a CPA (certified public accountant), the letter (Item 4) identifies him as an “EA,” which is how he will be identified in this decision.

himself and his daughter (Item 6). However, the credit bureau reports indicate that the \$129 debt (allegation 1.f.) became delinquent in 2003 (Item 7) and the \$237 debt (allegation 1.i.) has been past due since 2004 (Item 8). His insurance provider refused to pay them because Applicant could not provide proof that he was covered by medical insurance for one year prior to the medical events (Items 4 and 6). At the time of his July 2008 security interview, he reported that he expected the issue to be resolved shortly. However, his response to the SOR in December 2008 shows that the debts remain unpaid (Item 4).

Applicant did not disclose his federal or state tax liens or his delinquent debts when he completed his security clearance application in April 2008 (Items 1, 4, and 5). In his Answer, he denied being dishonest, stating that he “did not purposely go out of my way to falsify any document.” (Item 4) He reported that he had reviewed his credit report but did not find that it contained derogatory information; he did not submit a copy of the credit report. He characterized his omission as a mistake, noting that, “People have painful problems in their lives that cause pain even today when they’re brought up....there are painful personal things in people’s lives that they don’t like to re-visit.” (Item 4). However, when Applicant met with the security investigator in July 2008, he stated that he did not disclose them because he did not think the debts would appear on his credit report (Item 6).

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG).<sup>4</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole person” concept. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (financial considerations) and Guideline E (Personal Conduct).

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>5</sup> for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an Applicant. Additionally, the government must be able

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<sup>4</sup> Directive. 6.3.

<sup>5</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the Applicant to refute, extenuate or mitigate the government's case.

Because no one has a "right" to a security clearance, an Applicant bears a heavy burden of persuasion.<sup>6</sup> A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>7</sup>

## Analysis

### Guideline F, Financial Considerations

AG ¶18 expresses the security concern pertaining to 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 an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The evidence contained in the FORM shows that Applicant has owed back taxes to the IRS since Tax Year 1998, and his medical debts go back to 2003. His nine-year history of failing to meet his financial obligations support application of disqualifying conditions AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*).

Under AG ¶ 20, the following conditions that can potentially mitigate security concerns are relevant::

(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

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<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>7</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

(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.

Applicant's failure to pay the federal and state tax liens did not occur in the distant past, because the debts are still delinquent. He has worked with a financial professional for several years, but his debts remain unresolved. Applicant was advised the statute of limitations would apply to his debt and hopes the debts will no longer be enforceable. His desire to avoid his legitimate obligation to the federal government casts doubt on his reliability and AG ¶ 20a cannot be applied.

AG ¶ 20(b) is relevant because several of Applicant's attempts at starting and maintaining various independent businesses in the late 1990s failed, a condition that he could not have predicted. Applicant lacked understanding of how workers compensation taxes should be paid, and federal and state tax liens resulted. However, to be applicable, this mitigating condition requires that the person act responsibly under the circumstances. Instead of acting responsibly, Applicant decreased his efforts to resolve the IRS tax liens after 2001 (Item 4), ignored the state tax lien completely, and hoped the statute of limitations would absolve him of the federal debt. AG ¶ 20 (b) does not apply.

Applicant worked with a financial professional on his tax liens, implicating AG 20(c). However, it cannot be applied because Applicant has not brought the problem under control, has not paid the IRS or state government, and has not set up a payment plan for any debt. In fact, it appears that he is waiting for the statute of limitations to run. For the same reasons, mitigation is unavailable under AG ¶ 20(d). Applicant has paid none of the debts alleged in the SOR, including the relatively small medical debts. As none of the mitigating conditions apply, I find against the Applicant on Guideline F.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16(a) applies (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). When he completed his security clearance application in April 2008, Applicant disclosed neither his tax liens nor his past due medical debts (Item 5). Applicant denies in his Answer that he deliberately falsified the information he provided to the government, maintaining that he made a mistake (Item 4). However, Applicant's admission during his subject interview that he knew he was required to list his delinquencies for the previous seven years (Item 4), and that he "did not reveal information regarding the liens and the delinquent accounts on his SF-86 because he did not believe the debts would show on his credit report" leaves little doubt that he had the requisite intent to hide this information from the government.

The potentially applicable mitigators are AG ¶ 17(a) (*the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*) and AG ¶ 17(c) (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*). Neither condition applies. The record contains no evidence that Applicant attempted to inform the government of his financial delinquencies. In addition, Applicant's falsification cannot be considered insignificant under AG ¶ 17(c). The government relies on information provided by Applicants, and deliberate falsification both undermines the security clearance process, and casts serious doubts on an Applicant's trustworthiness.

### **Whole Person Concept**

Under the whole person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited Guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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 Applicant is 46 years old and presumed to be a mature, responsible adult.

Applicant accrued significant debt since 1998. In response to the government's concerns, he offered proof that he has worked with a financial professional on resolving the federal tax lien. However, over approximately nine years, no resolution has been reached. It is significant that during his security investigation interview, Applicant said he hoped that the statute of limitations would resolve his federal debt. It is likely therefore, that the reason these large debts have not been resolved is due, at least in part, to Applicant's hope that they will lapse based on age. Finally, Applicant's deliberate failure to disclose his debts on his security clearance application indicates a lack of trustworthiness that is incompatible with the high standards required of those who are granted access to classified information. A fair and common-sense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has not satisfied the doubts about his ability or willingness to protect the government's interests. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.<sup>8</sup>

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline F:	AGAINST Applicant
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b: - 1.i.	Against Applicant
Paragraph 2, Guideline E:	AGAINST Applicant
Subparagraph 2.a: - 2.b.	Against Applicant

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

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RITA C. O'BRIEN  
Administrative Judge

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<sup>8</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).