



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 08-11772
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esq., Department Counsel  
For Applicant: *Pro se*

December 8, 2010

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has not mitigated Financial Considerations security concerns created by his delinquent tax debt. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 30, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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) effective for cases after September 1, 2006.

Applicant answered the SOR on June 7, 2010, and requested a hearing before an administrative judge. The case was assigned to me on August 9, 2010. DOHA issued a notice of hearing on August 27, 2010, and the hearing was convened as scheduled on September 24, 2010. The Government offered Exhibit (GE) 1 through 8,

which were admitted without objection. The Applicant offered Exhibit (AE) A through F, which were admitted without objection, and testified on his own behalf. The record was held open for Applicant to submit additional information until close of business November 5, 2010. Applicant submitted AE G through AE M, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on October 1, 2010.

### **Procedural Ruling**

At the hearing on September 24, 2010, Department Counsel made a motion to amend the SOR, in order to conform to the evidence, by adding ¶¶1.b., through 1.d., pursuant to Directive ¶ E3.1.17. These allegations were part of the SOR dated April 30, 2010, however neither the administrative judge's file nor the department counsel's file contained a complete copy of the original SOR. Applicant had no objections to the amendment and previously admitted these allegations in his Answer. In an abundance of caution, the motion to amend was granted. (Tr. 33-34.) The allegations are as follows:

1.b. You are indebted to Elitreceserv for an account that has been placed for collection by HSBC in the approximate amount of \$2,012.00. As of the date of this Statement of Reasons, it remains unpaid.

1.c. You are indebted to the Internal Revenue Service for a tax lien entered against you in June 2004 in the approximate amount of \$7,745.00. As of the date of this Statement of Reasons, it remains unpaid.

1.d. You are indebted to a creditor identified as medical account #563255 on your credit report dated May 08, 2008 in the approximate amount of \$101.00. As of the date of this Statement of Reasons, it remains unpaid.

### **Findings of Fact**

Applicant admits all of the SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 54-year-old employee of a defense contractor. He has never been married and has no children. Both of his parents passed away by the time he was eight-years old. He was raised by his grandparents. He is a college graduate, with a degree in industrial technology. (GE 1; Tr. 39-42.)

Applicant has had a tumultuous past, involving an addiction to drugs and alcohol in the late 1980's. In 1999, he was incarcerated for 51 days in county jail after he was convicted for shoplifting. During the same time frame, he became involved in Alcoholics Anonymous and he has been sober since May 17, 1999. He received recovery assistance through a residential recovery house, which he volunteers with currently. He serves on the board of directors for the recovery house, and from 2004-2007, he was the President of the board. He is also a Mason Shiner. (GE 1; Tr. 42-52.)

Applicant has a long history of failing to satisfy his Federal tax obligations in a timely manner. A statement from the Internal Revenue Service (IRS) shows a tax lien, filed in February 1997, against Applicant for tax years 1986, 1989-1991, and 1994. It was released in June 2008. As alleged in SOR allegation 1.a., Applicant is indebted to the IRS for a tax lien entered against him in February 2009, in the approximate amount of \$14,306. Further, as alleged in SOR allegation 1.c., an IRS tax lien was filed against the Applicant in June 2004 and released in August 2007. Applicant did not pay that debt. He believes that the \$7,745 debt on the 2004 released tax lien was added to the present lien, totaling \$14,306. (GE 1; GE 2; GE 3; GE 4; GE 5; GE 6; GE 8; AE A; Tr. 36-39, 54-74, 79-80, 84.)

Applicant has been in communication with the IRS over his tax debt. In 2003, he attempted to resolve his delinquent tax obligations through an offer in compromise. It was rejected. There is no evidence that from 2003 to 2007, he took any further actions on his tax debt. In 2007, he again sought an offer in compromise. He was informed that his tax account was in an "uncollectible status" and would be "released by 2014." Therefore, he made no payments on his debt. On October 1, 2010, five months after receiving the SOR, he sent the IRS a new offer in compromise, proposing to pay the IRS \$300 per month. The IRS responded on October 25, 2010, requesting Applicant complete additional documentation. On October 26, 2010, he sent in the necessary paperwork to process his proposed offer in compromise. Applicant failed to provide documentation establishing if the offer in compromise had been accepted by the IRS by close of the record. He attributes his tax debt to "understating his taxes" on his income tax returns. (GE 1; GE 2; GE 3; GE 4; GE 5; GE 6; GE 8; AE A; AE G; AE H; AE I; AE J; AE K; AE L; AE M; Tr. 36-39, 54-74, 79-80, 84.)

Applicant was also indebted to a collection service for a credit card in the approximate amount of \$2,012, as alleged in SOR subparagraph 1.b. Applicant incurred this debt in approximately 2003 when he was laid off for a period of approximately nine months. On August 3, 2009, Applicant settled this account with the creditor for a payment of \$700. He introduced a letter from the creditor that advised the account was now settled. (GE 2; AE B; Tr. 81-82.)

Allegation 1.d. alleged that Applicant was indebted on a medical account in the approximate amount of \$101. This debt was incurred when Applicant bounced a check to a hospital. Applicant presented documentation from the hospital that in February 2008, he satisfied this account in full. (GE 2; AE C; Tr. 82.)

Applicant has no additional past due delinquent accounts. He currently has savings of approximately \$3,500 and total assets of \$57,855. He has a net remainder of \$111 after his monthly bills are paid. His monthly remainder does not take into account his proposed payment of \$300 per month to the IRS. (GE 8; AE H; Tr. 87-88.)

Applicant presented a letter from his friend and accountant that indicated Applicant was an "upstanding individual." He has been recognized for his "commitment and hard work" by his employer. (AE A; AE E; AE F.)

## 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 to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 EO 10865 provides that adverse 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 for Financial Considerations is set out in AG ¶ 18, as follows:

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 concern under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (b) a history of not meeting financial obligations.

Applicant has a history of not meeting his financial obligations with respect to the IRS. He has had a number of tax liens filed against him and currently owes the IRS \$14,306. From his personal financial statement, it does not appear that he has the means to satisfy his debt, with a remainder of only \$111 per month. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c). Further inquiry about the applicability of mitigating conditions is required.

Five Financial Considerations 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 has not acted responsibly, or in a timely manner, to attempt to resolve his delinquent Federal tax debt. After his 2003 attempt to resolve the debt through an offer in compromise, he ignored the debt until 2007. In 2007, instead of paying his obligation, he chose to rely on the statute of limitations that would eventually apply. His debts are “a continuing course of conduct” under Appeal Board precedent.<sup>1</sup> He did not resolve his delinquent tax debts through payment, establish payment plans, or dispute the debt. Applicant’s conduct does not warrant application of AG ¶ 20(a).

Applicant’s debt alleged in 1.b. resulted from his layoff in 2003. He was laid off for a nine month period and unable to make his credit card payments. However, he did not produce documentation showing his delinquent tax debts were affected by this period of unemployment. There is no evidence to suggest that his tax lien resulted in any circumstances beyond his control. Further, his inaction on his tax debt does not show he acted responsibly under the circumstances. AG ¶ 20(b) is only partially mitigating.

Applicant did not present any evidence of financial counseling. Further, his financial problems are not resolved or under control, despite having satisfied SOR allegations 1.b and 1.d. AG ¶ 20(c) does not apply.

Applicant has made a good faith effort to satisfy the creditors in SOR allegations 1.b. and 1.d. However, the same cannot be said with respect to his Federal tax debt. He did not adequately demonstrate his efforts to pay the tax debt when his first offer in compromise was rejected. Instead, he relied on the fact that the debt would eventually expire. The Appeal Board has long held that reliance on the statute of limitations as a defense is not normally a substitute for good-faith efforts to pay off a debt.<sup>2</sup> While he is currently attempting to negotiate an offer in compromise with the IRS, it does not appear that Applicant has the funds available to satisfy his proposed agreement, should the IRS accept the proposal. AG ¶ 20(d) only applies in part.

Applicant does not dispute the legitimacy of his debt to the IRS. AG ¶ 20(e) does not apply.

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<sup>1</sup> ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008), citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002).

<sup>2</sup> ISCR Case No. 07-16427 at 3-4 (App. Bd. Feb. 7, 2010).

## 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 relevant 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has had numerous challenges in life that he has persevered through. He is well respected by his friend and has made significant contributions to our society through his community service. However, he has failed to show that he is responsible with respect to his financial obligations. His federal tax debt is large and he does not have the funds to satisfy his debt.

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 has not mitigated the Financial Considerations security concerns.

## 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
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	For Applicant

## **Conclusion**

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

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Jennifer I. Goldstein  
Administrative Judge