



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



In the matter of: )  
 )  
----- ) ISCR Case No. 09-02461  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Candace L. Garcia, Esquire, Department Counsel  
For Applicant: *Pro se*

September 29, 2010

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant owes delinquent state taxes of almost \$26,000 due in part to his failure to file timely income tax returns for tax years 1998 through 2004. He has made no payments on his delinquent taxes since 2008 and is operating at a net monthly deficit of \$700 as of March 2010. He is currently making payments on two student loans that had been delinquent. It is too soon to conclude that his financial problems are safely in the past. Clearance denied.

**Statement of the Case**

On November 5, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a statement of reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, that provided the basis for its preliminary decision to deny him a security clearance and to refer the matter to an administrative judge. 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) effective within the Department of Defense on September 1, 2006.

On December 17, 2009, Applicant answered the SOR allegations and requested a hearing. The case was assigned to me on December 31, 2009, to conduct a hearing and to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for him. With the agreement of the parties, on February 11, 2010, I scheduled a hearing for March 4, 2010.

I convened the hearing as scheduled. Four Government exhibits (Ex. 1-4) and one Applicant exhibit (Ex. A) were admitted into evidence without objection, and Applicant testified, as reflected in a transcript (Tr.) received on March 19, 2010. At Applicant's request, I held the record open until March 19, 2010, for him to update the record about his state tax debt, but no documents were received.

### **Findings of Fact**

The SOR alleged under Guideline F, Financial Considerations, that as of November 2009, Applicant owed delinquent state taxes of \$25,862 for tax years 1998 through 2004 (SOR 1.a), was past due \$790 on student loan debt totaling \$16,000 (SOR 1.b), and owed collection debt of \$227 (SOR 1.c) and \$282 (SOR 1.d), and a judgment debt of \$8,643 to a student loan lender (SOR 1.e). Applicant admitted incurring the debts but added that he had been trying to resolve the state tax debt since 2002, was making payments on the student loan debts in SOR 1.b and 1.e, and had paid the collection debts in SOR 1.c and 1.d. After considering the pleadings, exhibits, and transcript, I make the following factual findings.

Applicant is a 62-year-old test engineer, who has worked for his present employer since November 2009. (Ex. 1, Tr. 32.) He and his spouse have been married for 39 years, and have owned the home where they currently reside in state X since 1982. (Ex. 1.) They have three grown children. (Tr. 66.)

Applicant worked for one company for 25 years, until 1998. (Tr. 40) He was unemployed for six months thereafter. (Tr. 46.) In June 2000, Applicant began working for employers and at facilities located outside of state X. (Ex. 1.) Until April 2004, Applicant and his spouse rented living quarters outside of state X while their son and some renters resided in the family home in state X. Applicant incurred about \$500 to \$600 per month in additional household expenses. (Tr. 47, 74.) After undergoing cancer treatment in 2001, Applicant worked until July 2002 in state Y. (Ex. 1, 2.) He collected unemployment compensation until March 2003. Over the next year, he held a succession of short term contract engineer positions in state Z at pay less than that of a qualified engineer, and for a few months, supplemented his income by substitute teaching. In April 2004, Applicant and his spouse returned to state X to live, and he relied on unemployment from state Z to cover their expenses. (Ex. 1, 2.)

From August 2004 until September 2008, Applicant worked as a test engineer for a succession of employers located in states Y and Z. After a few months of

unemployment, he took a position with a defense contractor in November 2008. (Ex. 1.) He was let go after only three weeks because of his lack of a security clearance.<sup>1</sup> (Tr. 32.) Applicant then collected unemployment compensation from state Y at \$600 weekly until November 2009, when he started his present employment. (Tr. 52-53.)

Due to unemployment, illness, and periods of nonresidency in state X, Applicant did not file his state X income tax returns on time.<sup>2</sup> Applicant had taxes withheld and had previously received refunds, so he assumed he owed a small amount if he owed anything. (Tr. 37.) While he filed most of his delinquent returns by 2004, he did not pay the taxes owed. (Tr. 46.)

Around November 2003, state X assessed unpaid income taxes against Applicant and his spouse for tax years 1997 through 2000.<sup>3</sup> Applicant requested reconsideration of the assessment in January 2004. In September 2004, state X filed a \$35,588 tax lien against him for unpaid state X income taxes and penalties assessed for tax years 1997 through 2000. In 2006, state X filed three liens totaling \$41,280. Applicant again appealed the assessment on the basis that he was a nonresident from June 20, 2000 through April 2004, and derived all his income from out-of-state sources. In September 2006, Applicant received a decision from the state that addressed his tax liability only for 2004. (Ex. 2.) In 2007, the state filed liens of \$18,250 and \$3,078. (Ex. 4.) Applicant retained an attorney to address his tax debt with state X. In November 2007, Applicant and his attorney met with a state X tax official, and provided documentary evidence of Applicant's residency and employment in states Y and Z between June 2000 and April 2004. (Ex. 2, Tr. 45-47.)

On July 18, 2008, Applicant submitted an offer in compromise to state X's department of revenue. Applicant requested, in part, that all tax, interest, and penalties be abated for the period that he was a nonresident between June 2000 and April 2004, and that his remaining liability be recalculated to credit him with \$3,740 in payments and applied refunds to date.<sup>4</sup> Applicant expressed his willingness to pay the tax and interest balance within 10 days of state X's acceptance of his offer in compromise. Applicant

---

<sup>1</sup>Jurisdiction was retained based on the Government's assertion that Applicant was still being sponsored by the defense contractor and Applicant's testimony that he would be reinstated to his defense contractor position if he is granted a security clearance. (Tr. 33-34.)

<sup>2</sup>Applicant testified that he had filed most of his delinquent returns by 2004. He was delinquent in most cases only about a year "because they go about three years before they do a demand and one of the filings was about a year after the demand." Then, after he filed, state X did not accept a credit for taxes paid through withholding. (Tr. 37-38.)

<sup>3</sup>State tax records show delinquencies due for tax years 1998 through 2004. According to his attorney, Applicant met with the state to discuss resolution of his tax issues for tax years 1997 through 2006. (Ex. 2.) There is no evidence that Applicant currently owes for 1997, 2005, or 2006, although they may have been at issue in the past.

<sup>4</sup>The payments consisted of around \$1,000 in 2005, and another \$500 in April 2008. Otherwise, state X intercepted state refunds and federal refunds and economic stimulus payments. (Ex. 2.)

intended to withdraw funds from his pension to pay the tax debt. (Ex. 2.) Applicant did not receive a response from state X to his offer in compromise. (Ex. A.)

Applicant also did not make his student loan payments on time. As of January 2001, Applicant was legally obligated to repay a student loan of \$12,883.52 that he took out for an adult daughter (Tr. 66.), with repayment terms of \$142.83 per month from June 14, 2003 through October 14, 2017, and a final payment of \$141.19 on November 14, 2017 (SOR 1.b). He fell behind ninety days 13 times, and was 150 days past due in October 2008 when he was unemployed. (Ex. 2.) Applicant made a payment of \$300 in November 2008 on a balance around \$20,000. In February 2009, he was granted a deferment from March 1, 2009 to September 15, 2009. Interest continued to accrue on the \$20,738.35 balance. (Ex. 2.) He has been paying \$200 per month on the debt since it came out of deferment. (Tr. 59.)

Applicant claimed he did not receive notice from another student lender about his repayment of a second loan for his daughter (SOR 1.e). (Tr. 62, 66-67.) In January 2004, the lender obtained a judgment against him of \$9,374.86. In July 2004, the assignee filed a lien against him in the amount of \$12,372.99. Applicant began repaying the debt at \$80.77 biweekly in November 2004, and he had reduced the balance to \$8,642.55 as of May 2009. (Ex. 2, A.)

Applicant completed an Electronic Questionnaire for Investigations Processing on November 10, 2008, for a test engineer position with a defense contractor. He disclosed a \$20,000 tax lien filed by state X that he was attempting to resolve through an offer in compromise. In response to the financial delinquency inquiries, he responded "Yes" to any debts delinquent over 180 days in the last seven years, but "No" to whether he was currently delinquent over 90 days on any debts. Applicant listed only one debt, the student loan in SOR 1.b on which he was \$1,200 past due as of March 2008. He listed his other student loan (SOR 1.e) in response to the public records inquiry, as a "judgment on student loan default." (Ex. 1.) He was making payments on his student loan in SOR 1.e but made no payments on the student loan in SOR 1.b in December 2008 or January 2009. (Ex. 2, A.)

In April 2009, state X's department of revenue sent Applicant billing notices of tax delinquency totaling \$25,861.71 for tax years 1998 through 2004 (\$20,182.75 on original returns filed by Applicant for tax years 1998, 1999, 2000, 2003, and 2004, and \$5,679.04 in estimated taxes for 2001 and 2002).<sup>5</sup> Applicant did not pursue resolution because he did not want to commit funds while he was unemployed. (Tr. 48.)

In 2009, state X enacted a 2009 tax reduction receivables initiative open to most taxpayers who had state X tax liabilities assessed as of September 1, 2009. Under the initiative, 90% of the penalties would be waived provided payment of taxes, interest, and

---

<sup>5</sup>The notice for tax years 1998, 1999, 2000, 2003, and 2004 was issued to Applicant and his spouse jointly. The notice for tax years 2001 and 2002 was issued to Applicant in his name only. (Ex. 2.) Applicant has maintained that the state improperly assessed his taxes based on status as a single taxpayer and the billing notices tend to substantiate his assertion. (Tr. 71-72.)

10% of the penalties by November 30, 2009. Applicant was notified by state X that his tax liability would be reduced to \$16,630.98 contingent on his full payment by November 30, 2009. (Ex. A.) Applicant did not feel he was in a position to make the payment. (Tr. 49.)

In November 2009, Applicant began working for a commercial company at net pay of \$2,400 per month. (Tr. 33-34, 53-54.) His spouse took home around \$2,004 from her job. (Tr. 54.) In early March 2010, Applicant asked his attorney to pursue a reduction in his state X tax liability based on “new legislation pending to forgive all (95%) of interest and penalties.” Applicant had \$22,974.27 in savings that he planned to use to pay off his state tax X debt “should they come up with a reasonable settlement.” (Ex. A, Tr. 35.) He hopes to settle his tax debt for \$11,000 but he understands he will have to meet the state’s “final offer.” (Tr. 50.)

While Applicant was unemployed, he paid off some smaller debts that had been due for some time. Applicant owed a couple of utility balances from 2003 in the amounts of \$227.31 (SOR 1.c) and \$281.78 (SOR 1.d). The latter debt was supposed to be repaid in early March 2004 through refinancing of his mortgage loan,<sup>6</sup> but the funds were never disbursed. Applicant paid the utility debts between May and August 2009. (Ex. A, Tr. 43.) On January 1, 2008, a collection agency offered to settle a \$404.24 debt (not alleged) for a lump sum payment of \$202.12 within 45 days. Applicant settled the debt in May 2009, on payment of \$305.14. Also in May 2009, he paid \$55.96 to satisfy an insufficient funds check (not alleged) from July 2002. (Ex. 2, A.) Applicant has been late 30 days 19 times in his mortgage payment, most recently in April 2009. He managed to avoid foreclosure, and had brought the loan current as of August 2009. (Ex. 4, Tr. 41.) In September 2008, he took out an automobile loan of \$13,000, to be repaid at \$374 per month. He has not been late in his car payments. (Ex. 4.) Applicant had submitted tax returns for tax years 2005 through 2008 as of March 2010. He owes state X around \$700 for tax year 2008. (Tr. 51.) Applicant estimates that he was operating at a monthly deficit of around \$700 each month after payment of living expenses and debts, including \$200 on the student loan in SOR 1.b and \$175 on the student loan in SOR 1.e. (Tr. 55-56.) He has been using savings to pay his financial obligations. (Tr. 56.)

## Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered in evaluating an applicant’s eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the

---

<sup>6</sup>Applicant took out a mortgage of \$117,000 in February 2004. (Ex. 4.)

complexities of human behavior, these guidelines are applied 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 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 that the applicant may deliberately or inadvertently fail to 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 about finances 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.

Applicant did not file timely tax returns to state X for tax years 1998 through 2004, and in September 2004, state X filed a \$35,588 tax lien. Additional liens were filed

by the state for delinquent taxes totaling around \$98,000. Applicant filed his delinquent returns for all but 2001 and 2002, where the state filed substitute returns. After he disputed the assessments, his liability was assessed at \$25,861.79 in delinquent taxes, interest, and penalties for tax years 1998 through 2004. Applicant also defaulted on a student loan taken out for a grown daughter in or before October 2001, and the assignee obtained a judgment against him in January 2004. In July 2004, a lien was filed against him for failure to pay the judgment balance, which had increased to \$12,372.99. Applicant fell behind 150 days in his payments of an even larger student loan, and a couple of utility debts were placed for collection. Some other delinquent debts, including a sewer lien, were settled before November 2009 and not alleged in the SOR. Potentially disqualifying conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts,” AG ¶ 19(c), “a history of not meeting financial obligations,” and 19(g), “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same,” are pertinent.

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,” cannot reasonably apply in mitigation. Applicant failed to take advantage of state X’s offer to reduce the penalties assessed on his delinquent taxes, and he has made no payments on his tax debt since the offer in compromise. Furthermore, concerning the larger of his student loan debts, his account was reportedly past due in 2009 before he obtained a hardship deferment due to unemployment.

AG ¶ 20(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,” applies in part. Applicant was out of work from July 2002 to March 2003, April 2004 to August 2004, September 2008 to November 2008, and from December 2008 until November 2009. But AG ¶ 20(b) does not mitigate the poor judgment exhibited by Applicant when he failed to file his state X tax returns for several years, including for a couple of years before he commenced employment in state Y in June 2000. While he disputed the assessments beginning in January 2004, and belatedly filed some returns, there is no indication that he had filed his returns for tax years 2001 and 2002 by April 2009. He made only about \$1,500 in payments himself toward his tax delinquency when he was gainfully employed. Other payments were through state X’s interception of refunds or economic stimulus payments. He made no effort to resolve his tax debt after his offer in compromise in July 2008 until March 2010, when he told his attorney to pursue negotiate a further reduction of his liabilities. So he bears some responsibility for accrued interest and penalties, even if the state can be faulted for failing to respond in a timely manner to his offer in compromise. Moreover, despite his recent unemployment, he had accumulated \$22,974.27 in savings as of March 2010. Some of those funds could have been paid to the state department of revenue or toward his student loan debt in SOR 1.b, which was at least sixty days past due when he obtained the deferment (see Ex. 2.).

AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” applies to the student loan debt in SOR 1.e, and to the utility debts in SOR 1.c and 1.d. Applicant paid \$9,386.57 on his defaulted student loan (SOR 1.e) between November 2004 and May 2009. These documented payments enable me to accept his testimony that he has continued to make his payments on that loan since May 2009. Applicant was late in resolving the utility debts from 2003 alleged in SOR 1.c and 1.d in that he did not satisfy them until the summer of 2009. However, the evidence shows that he made a good-faith effort to satisfy at least the debt in SOR 1.d, if not both debts, in the refinancing of his mortgage in 2004. Applicant was apparently unaware that the debts had not been paid until they became an issue for his clearance. (Tr. 43.)

However, even if I accept Applicant’s uncorroborated testimony that he has been paying \$200 per month on the student loan in SOR 1.b since it came out of deferment in late September 2009, five months of payments is not enough to resolve the financial concerns about Applicant’s handling of that debt, or for me to conclude that “the problem is being resolved or is under control.” See AG ¶ 20(c) (stating, “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”). The debt was delinquent as of February 2009, when he was granted a deferment, and there is no guarantee that he will continue to make \$200 monthly payments, given he is operating at a deficit each month.

As for the tax debt, Applicant appears to have had legitimate grounds to dispute state X’s initial assessments. AG ¶ 20(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,” must be considered based on Applicant’s evidence that he maintained a residence and employment outside of state X from June 2000 until April 2004. Also, the state may well have erred in calculating Applicant’s tax liabilities for 2001 and 2002. The billing notice was issued only to him rather than jointly to him and his spouse, although it does not prove that Applicant owes less for those years. After Applicant and his attorney met with the state in November 2007, the state reduced his liability from about \$98,000 to around \$25,000. While he has about \$22,974 that he saved to resolve his tax debt, he is holding out for a further reduction in his tax liability to \$11,000. Neither AG ¶ 20(c) nor AG ¶ 20(d) applies in mitigation of his state tax delinquency.

### **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 conduct and all the relevant circumstances in light of the nine adjudicative process factors listed



at AG ¶ 2(a).<sup>7</sup> Applicant continues to owe a substantial amount of delinquent debt, most notably the \$25,861 in state tax debt, but also more than \$30,000 in student loan debt on which he has a history of late payments. While he has been regularly repaying the smaller student loan since a judgment was awarded against him in 2004, he has yet to demonstrate an acceptable track record of repayment of the taxes or his larger student loan. Despite repeated unemployment, including from around December 2008 to November 2009, Applicant accumulated \$22,974.27 in savings by March 2010. The source of those savings was not clear. While he plans to use these savings to pay off his tax debts, he is operating at a monthly deficit of about \$700 and relying on savings to cover his shortfall. His financial situation presents an unacceptable risk.

### **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:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant

### **Conclusion**

In light of 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.

---

Elizabeth M. Matchinski  
Administrative Judge

---

<sup>7</sup>The factors under AG ¶ 2(a) are:

(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.