



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-04323
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard Stevens, Esquire, Department Counsel  
For Applicant: Pro Se

February 17, 2010

**Decision**

---

HOGAN, Erin C., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on June 24, 2007. On August 10, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, for Applicant. 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.

On September 21, 2009, Applicant answered the SOR and requested his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on October 19, 2009. The FORM was forwarded to Applicant and Applicant received the FORM on October 26, 2009. He had 30 days from receipt of the FORM to submit any additional material. He did not respond. The FORM was forwarded to the hearing office on January 7, 2010, and assigned to me on January 8, 2010.

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

In his Answer to the SOR, dated September 21, 2009, Applicant admitted the allegations in SOR ¶¶ 1.a and 1.b. He denies the allegations in SOR ¶¶ 1.c – 1.g, and 2.a. (Item 5)

Applicant is a 56-year-old production test technician employed with a Department of Defense contractor seeking a security clearance. He has been employed with the defense contractor since May 2007. He is married and has two adult children. (Item 6)

Applicant's background investigation revealed several financial issues. Applicant filed for Chapter 7 bankruptcy in April 1995. His debts were discharged in July 1995. (SOR ¶ 1.a: Item 5) On July 21, 2004, Appellant filed for Chapter 13 bankruptcy. His Chapter 13 bankruptcy was dismissed on August 29, 2006, because he was unable to make the monthly payments. (SOR ¶ 1.b: Item 5, section 27; Item 7 at 2; Item 9; Item 10 at 4)

Applicant owes back taxes to the Internal Revenue Service (IRS). In February 2004, the IRS filed a tax lien in the amount of \$91,085 for taxes owed for tax years 1996--2000. (SOR ¶ 1.c: Item 5, section 27; Item 7; Item 8; Item 9 at 1; Item 10 at 4; Item 11 at 1). In March 2008, the IRS filed a federal tax lien in the amount of \$7,534. (SOR ¶ 1.d: Item 11 at 1). The IRS also filed a federal tax lien in the amount of \$28,096 that same month. (SOR ¶ 1.e: Item 11 at 1)

Applicant does not believe the federal or state governments have the right to tax his earnings. He has no intentions of paying the taxes owed to the federal government and has no intention to file tax returns in the future. (Item 7)

The record evidence contains no information about Applicant's current financial situation. There is no information in the record regarding Applicant's work performance.

### **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 must be considered 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 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 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 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 disqualifying conditions that could raise security concerns. The following Financial Considerations Disqualifying Conditions (FC DC) apply to Applicant's case:

FC DC ¶19(a) (an inability or unwillingness to satisfy debts);

FC DC ¶19(c) (a history of not meeting financial obligations);

FC DC ¶ 19(d) (deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust); and

FC DC ¶ 19(g) (failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same).

Applicant has three federal tax liens filed against him, totaling \$126,715. He has no intention of paying his federal taxes and does not intend to file federal income taxes in the future. His two bankruptcies reveal that Applicant has had a history of financial irresponsibility.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. None of the mitigating conditions apply in Applicant's case. He is a tax protester and refuses to pay his federal income taxes. He has no legal basis for refusing to pay his taxes. The concern under financial considerations is not mitigated.

## **Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶15:

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.

Personal conduct concerns are raised because Applicant's refusal to file his federal income tax returns and pay income taxes indicates questionable judgment and an unwillingness to comply with rules and regulations. Individuals entrusted with our nation's secrets are required to fulfill their duties as U.S. citizens. One of the utmost important duties of a U.S. citizen is to file returns, and pay federal income taxes. Applicant's refusal to do so raises questions about his reliability, trustworthiness, and good judgment.

None of the mitigating conditions apply under Guideline E. Guideline E is found against Applicant.

### **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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant provided no information about his work performance. His tax debts remain unresolved. Applicant's past history of financial irresponsibility, his refusal to pay his tax debts, and his expressed intent that he will not file federal income tax returns in the future raise questions about his judgment, trustworthiness, and reliability. Applicant failed to mitigate the security concerns arising under financial considerations and personal conduct.

### **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:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraph 2.a:

Against 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.

---

ERIN C. HOGAN  
Administrative Judge