



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-04380
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Stephanie Hess, Esq., Department Counsel  
For Applicant: *Pro Se*

December 23, 2009

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant has six unpaid state and federal tax liens totaling in excess of \$260,000. He asserts his federal tax obligation is approximately \$175,000. He has made no payments or arrangements to make payments on the tax liens. Applicant has failed to rebut or mitigate the government’s security concerns under financial considerations and personal conduct. Clearance is denied.

**Statement of the Case**

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a

<sup>1</sup> 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)

Statement of Reasons (SOR) on August 5, 2009, detailing security concerns under financial considerations and personal conduct.

On August 20, 2009, Applicant answered the SOR and requested a hearing. On December 3, 2009, I was assigned the case. On December 4, 2009, DOHA issued a notice of hearing scheduling the hearing which was held on December 9, 2009.

The government offered Exhibits (Ex.) 1 through 6, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through D, which were admitted into evidence. The record was held open to allow additional information from Applicant. On December 10, 2009, additional material was submitted. Department Counsel had no objection to the material; it was admitted into the record as Ex. E. On December 15, 2009, the transcript (Tr.) was received.

### **Procedural Matters**

At the hearing, Government Counsel asked to be allowed to make two amendments to the SOR. Applicant did not oppose the motion and the changes were made. Change one related to the amount of delinquent child support listed in SOR ¶ 1.h. The SOR reads \$24,730 and the government asserted the true amount was \$2,473. (Tr. 22) The change was made.

In April 2009, Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP). The SOR asserted that in response to question 28, he failed to indicate he had been more than 180 days delinquent on his debts. Applicant had actually answered “yes” to that question. (Tr. 23) Government moved that the allegations in SOR ¶ 2.a be changed to conform to the evidence. The motion requested the following words be deleted, “a. In the last 7 years, have you been over 180 days delinquent on any debt(s)?; [and] b.” And in the next sentence “both of those” be changed to “this” and “questions” be changed from plural to singular form.

In pertinent part, the allegation now reads “. . . in response to Section 28. Your Financial Delinquencies: Are you currently over 90 days delinquent on any debt(s)?” You answered “No” to this question; whereas in truth, you deliberately failed to disclose that you were delinquent on the accounts set forth in paragraph 1, above.

### **Findings of Fact**

In Applicant’s Answer to the SOR, he admits he was two months behind on the credit card account listed in SOR ¶ 1.g (\$407). He also admitted that at one time he may have been \$2,400 behind in his child support obligation. He denied the remaining allegations. Applicant’s admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following additional findings of fact:

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promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant is a 49-year-old electronics installer who has worked for a defense contractor since September 2008, and is seeking to obtain a security clearance. Applicant served honorably for nine years in the U.S. Marine Corps, leaving in February 1988 at the rank of E-5. (Tr. 74)

From September 1995 through September 2005, Applicant was an owner-operator trucker working for various over-the-road trucking firms. In September 2005, Applicant went to Iraq to work as a truck driver for a defense contractor. In September 2009, he obtained his current job as an electronics installer working overseas, making \$180,000 per year. (Tr. 61, 73)

From at least August 1995 until late August 2005, Applicant lived in Louisiana. On August 29, 2005, Hurricane Katrina struck. Applicant was working in Iraq, but his family was living in New Orleans. His home suffered from 13 feet of flood water. He incurred \$27,000 in hotel expenses for his family. Applicant's family relocated to Texas until they returned to New Orleans in May 2008. Not only his immediately family, but also his extended family was displaced. At the new location, Applicant supported 17 family members and paid \$150 per hotel room to rent six rooms per day for 30 days. (Tr. 62) Applicant and his family currently live in an apartment. He has been by his old home, at which time he found mail addressed to him at that address lying on the ground. He is trying to rebuild his home, but his income prevents him from receiving government assistance. (Tr. 63)

Applicant was two months behind on the military credit card (SOR ¶ 1.g, \$407). Applicant asserts he has paid this debt. The CBRs reflect the account was transferred or sold and had a zero balance. (Ex. 2, 4) Following the hearing, Applicant presented a CBR dated December 8, 2009, which indicates the account was sold or transferred. (Ex. E)

Applicant incurred a child support obligation for a son born in November 1987. (Ex. 1) At some point, Applicant's child support was increased from \$400 per month to \$955 per month. (Tr. 42) He made his payment by payroll deduction. (Ex. 2, Tr. 56) Applicant admits he was, at one time, behind on his support obligations. He stated he may have been \$2,400 (SOR ¶ 1.h) in arrears. (Ex. 3) In June 2009, Applicant's child support obligation terminated and he made his last payment. (Ex. D) His CBRs reflect a zero balance on this account. (Ex. 2, 4)

From June 1998 to March 2001, Applicant worked for a trucking firm. In April 2000, he leased 1997 Freightliner truck through a "lease operator program" where the company would finance the truck and he would repay the company. (Tr. 42, 54, 69) Applicant did not own the truck. (Tr. 68) In March 2001, the trucking firm went bankrupt and was liquidated. The trucking company called Applicant and told him he needed to surrender the truck to the lending institution. At the time, Applicant was on the road and arranged to leave the truck at a truck stop. (Tr. 54) As of February 2003, Applicant owes the lender \$21,332 (SOR ¶ 1.f) for what is listed on his CBR as a repossession. (Ex. 3) Applicant believed he owed nothing further once he surrendered the truck.

Applicant's June 2009 CBR and December 2007 CBR list this debt as a "closed or paid" account with a zero balance. (Tr. 2, 4) Following the hearing, Applicant submitted a single page from his credit report related to this obligation. (Ex. E) The Equifax report lists the account as paid as agreed with a zero balance. The Transunion report lists the account as a \$21,332 repossession. Applicant did not provide any documentation from the creditor as to the status of this account.

Applicant did not file tax returns for year 1998, 1999, 2000, and 2001.<sup>2</sup> (Tr. 51, 100) Applicant also stated he failed to file his 1997 taxes. (Tr. 43, 49) When Applicant's child support obligation doubled, Applicant believed he had to choose between paying his child support and paying his taxes. Applicant chose to make his child support payments. (Ex. 1) In October 1997, the state filed a \$3,386 state tax lien (SOR ¶ 1.a) against Applicant. (Ex. 6) The filing date of the lien is known, however the year of the tax return for the amount owed is unknown. The court number, case number, address of the court, and the court's telephone number for this tax lien appears in his November 2008 credit bureau report (CBR). (Ex. 3, Tr. 76) He became aware of this obligation in December 2008. (Tr. 44) He has not paid this lien because he has yet to file his federal return for the year in question. Without completing his federal return he cannot complete his state return. He has not contacted the state concerning this debt.

In September 2006, the state filed a \$1,810 state tax lien (SOR ¶ 1.b) against Applicant. (Ex. 6) In his August 2009 answer to the SOR, Applicant stated he did not know about this debt, but would investigate it. The court number, case number, address of the court, and the court's telephone number for this tax lien appear in his November 2008 CBR. (Ex. 3) The tax lien has not been paid.

On August 2005, two weeks before Hurricane Katrina struck, the Internal Revenue Service (IRS) filed a \$238,763 federal tax lien (SOR ¶ 1.c) against Applicant's property. (Ex. 6) In July 2007, Applicant paid \$2,500 to an individual Applicant asserts is an accountant who was to assist him in the filing of his taxes. (Tr. 45, Ex. E) Applicant contacts this individual every two or three months. (Tr. 83) Applicant failed to show what, if anything, this individual as done related to the filing of Applicant's past due tax returns. There is no evidence any tax returns have been filed by the accountant and the federal tax liens have not been paid. Applicant did not know which tax years the tax liens represented. Following the hearing, Applicant asserted he had made an appointment to see a CPA. (Ex. E)

In April 2007, two additional federal tax liens of \$5,881 (SOR ¶ 1.d) and \$18,571 (SOR ¶ 1.e) were filed. (Ex. 3, 6) Applicant asserts that once he files tax returns for the years in question, the amount of taxes owed will be less than that claimed by the IRS.

Applicant provided a copy of his IRS Form 1040 (Ex. A) for tax year 2006. Applicant's wages that year were \$110,000 and he claimed \$82,400 for foreign earned

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<sup>2</sup> These taxes would not be barred by any statute of limitation for the statute of limitation starts to run for taxes on the date the returns were filed. Since the returns have yet to be filed, the statute has not commenced to run.

income. A copy of the IRS Form 2555, Foreign Earned Income, was not attached to his return. Applicant owed \$3,502 in federal tax and the IRS stated it would not charge additional penalty or interest if this amount was paid by September 3, 2007. A copy of a check in that amount is part of Ex. A. The return is not signed or dated by Applicant, his spouse, or the tax preparer. Applicant's wife and child were living in Texas during the tax year and there was no state tax return filed because Texas has no state income tax.

Applicant provided a copy of his electronically filed federal tax return for 2007. (Ex. B) It was signed by the tax preparer on April 14, 2008. Applicant's income was \$156,600 with an \$85,700 deduction claimed for foreign earned income. No IRS Form 2555 was provided. Applicant had \$23,300 in federal tax withheld from his wages and he claimed an \$11,533 refund. There is no evidence Applicant ever received a refund in this amount from the IRS.

Applicant provided a copy of his federal tax return for 2008. (Ex. C) The copy provided was not signed by the tax preparer. Applicant's and his spouse's signature were not on the return because a Form 8879 was filed. Applicant's income was \$59,500 and a \$59,500 deduction was claimed for foreign earned income. No IRS Form 2555 was provided. Applicant had to include an approximately \$11,000 payment of his IRA or pension. Applicant had a break in service from his contractor job and was paid his accrued retirement funds. (Tr. 61) Applicant had approximately \$15,000 in federal tax withheld from his wages and he claimed a refund of approximately \$14,000. There is no evidence Applicant ever received a refund from the IRS.

Applicant states his family returned to Louisiana in May 2008. However, his federal return (Ex. C) lists a Louisiana address. If he were living in Louisiana he would have been required to file a state income tax return. The receipt, from the tax preparer (Ex. C), indicates Applicant was charged for the preparation of a state return, however, Applicant submitted no state return.

In April 2009, Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP). (Ex. 1) Applicant answered "no", which asked if he had any tax liens. However, he did list that he owed past due taxes. He answered "yes", which asked if he had been more than 180 days delinquent on any debts, but answered "no", which asked if he was currently 90 days delinquent on any debts. He also indicated he had been delinquent on court-imposed child support in response to question. On his e-QIP, he further explained his problems he had in making his child support payments. Applicant states he answered "no" when asked about being 90 days delinquent because he had already stated he was 180 days delinquent and thought his answer was sufficient to cover the 90 day question. (Tr. 59) He asserts he was not being evasive or trying to be deceptive.

Following the hearing, Applicant submitted a form (Ex. E) asking that the federal tax lien be withdrawn because the notice was filed prematurely, or not in accordance with IRS procedure. Applicant did not explain why the notice was premature; the tax lien had been filed in a court of law.

Applicant sent a letter (Ex. E) to an unidentified party disputing three tax liens on his credit report. He asserts the federal tax lien is \$174,606 and not \$238,763 as listed on his CBR. He also asserts, but failed to provide documentation, that two additional tax liens in the amounts of \$18,571 and \$5,581 are included in the \$174,606 amount. Applicant asserts this was based on information he obtained by contacting the IRS. However, he provided no documentation from the IRS supporting his assertions.

Applicant filed an IRS form (Ex. E) requesting a transcript of tax returns for tax years 1998, 1999, 2000, and 2001. Since Applicant filed no tax returns for these years, it is uncertain what he hopes to receive from the IRS. He may wish to discover how the IRS figured his taxes when the IRS completed the returns when no returns were received from Applicant.

On December 8, 2009, Applicant made a request to the state for a tax assessment and lien pay-off. (Ex. E) The amounts of the two tax liens are \$3,386 and \$1,810. Applicant failed to provide any documentation establishing any amounts have been paid to the state taxing authority. Applicant asserts that once the state informs him what is owed, he will pay it.

## **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. 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. . . ." 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**

Revised Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems. Applicant failed to file federal income tax returns for tax years 1998 through

2001. Applicant has two unpaid state tax liens totaling approximately \$5,000 and three unpaid IRS tax liens totaling approximately \$263,000. Applicant's history of delinquent debt is documented in his credit reports, state and federal judgments, and lien filings. (Ex. 6) Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(g), "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same," apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) 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; or

(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 asserts his federal tax lien is \$174,606, but will be reduced once he actually files his returns.

Under AG ¶ 20(a), Applicant's financial problems were compounded by his child support obligations, which increased from \$400 per month to \$950 per month. He made the decision to stop paying his taxes so he could continue making his child support payments. He no longer has a child support obligation. It is unlikely he will again incur financial problems due to making child support payments. AG ¶ 20(a) partially applies. However, Applicant did not explain why an additional \$550 per month child support obligation prohibited him from making any tax payments.

While Applicant was working overseas, his family was struck by Hurricane Katrina. Applicant and his family incurred unexpected expenses. Applicant attributed



some of his financial problems to having to pay \$27,000 for his family to stay in a hotel in a different city for one month following the hurricane. (Tr. 98) Applicant asserts he was the only family member with a job at the time. He does not explain what his family members did with the assistance they received from federal and from other means to assist them with housing and other expenses. It is clear that Applicant's financial problems were far more extensive than could be attributed solely to the hotel bill. AG ¶ 20(b) has limited applicability.

The \$238,763, IRS tax lien was filed two weeks before Hurricane Katrina struck. Consequently, Applicant's testimony implying that the storm disrupted the mail and caused him not to receive notice of the tax lien has no probative value.

AG ¶ 20(c) does not apply. There is no indication Applicant has received financial counseling. A year ago, he was questioned about his tax liens. He hired an accountant in 2007 and made an appointment with another accountant, but this fails to establish his financial problems are being resolved.

Applicant had leased a truck and later surrendered it to the creditor. He asserts he owes nothing on this debt. In support of his assertion, he provided a page from his CBR with one reporting company listing the truck debt as having a zero balance and another reporting company listing the debt as a \$31,322 repossession. No documentation from the creditor as to the status of this account was presented.

Applicant asserts he paid his military credit card. In support of his assertion he presented a page from his December 8, 2009 CBR (Ex. E), which shows the account was sold or transferred. The CBR does not indicate this debt was paid. Applicant failed to provide any documentation showing this account has been paid.

AG ¶ 20(d) applies only to his child support obligation, which he has paid. It does not apply to his remaining debts. For AG ¶ 20 (d) to apply to the remaining debts there must be an "ability" to repay the debts, the "desire" to repay, and evidence of a good-faith effort to repay. A systematic, concrete method of handling his debts is needed, which is not present here. He has paid none of the debts. In 2007, he hired an accountant to assist him in filing his taxes. Following the hearing he made an appointment to see a CPA. Stating he will pay his state taxes is merely an expressed hope by Applicant.

Applicant's state and federal past due tax obligation have not been paid. Those large obligations raises concerns about his current reliability, trustworthiness, or good judgment.

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

AG ¶ 15 expresses the security concern pertaining to personal conduct, which is 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.

The government has shown Applicant's answer to question 28 on his e-QIP was incorrect, but this does not prove Applicant deliberately failed to disclose information about his finances. Applicant did list some adverse financial information in response to the questions. Specifically, he listed he had tax liens and, at one time, past due child support obligations. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government, when applying for a security clearance, is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully.

When Applicant completed his e-QIP, he stated he was more than 180 days delinquent on his debts and thought that because he had acknowledged he was 180 days delinquent the government would have known he was also 90 days delinquent. Applicant's answer was inaccurate, but was not a deliberate omission, concealment, or falsification. I find for Applicant as to the personal conduct security concern.

### **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. As of April 1999, Applicant was aware his taxes for tax year 1998 were due. Additionally, as he failed to file additional returns, he knew he had not paid his taxes for tax years 1999 through 2001. In 2007, Applicant hired an accountant to help him file his returns. Following the hearing, he made an appointment with a CPA to help him file his taxes.

In December 2008, he was questioned about his taxes. In August 2009, Applicant received the SOR expressing the government concerns over his unpaid taxes and other outstanding obligations, which are sizable. Even though Applicant has known for more than a year of the government's concern about his unpaid taxes and other delinquent debts, except for his child support obligation, he has yet to pay any of past due debts. He owes more than \$170,000 in past due taxes, a debt which continues to accumulate interest. Applicant has done too little to pay his past due obligations. 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 security concerns arising from his 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, Financial Considerations: **AGAINST APPLICANT**

Subparagraph 1.a – 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant

Paragraph 2, Personal Conduct: **FOR APPLICANT**

Subparagraph 2.a:	For Applicant
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### **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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CLAUDE R. HEINY II  
Administrative Judge