



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



In the matter of	)	
	)	
	)	ISCR Case No. 09-08700
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank, Esquire, Department Counsel

For Applicant: *Pro se*

January 31, 2011

**Decision**

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O'BRIEN, Rita C., Administrative Judge:

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

**Statement of the Case**

On April 14, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to request a security clearance required for his employment with a defense contractor. 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 May 17, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG).<sup>2</sup> In his Answer to the SOR, signed and notarized on August 3, 2010, Applicant admitted all the allegations under Guideline F except subparagraphs 1.k., 1.x., and 1.y. He also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on August 31, 2010, and the case was assigned to me on September 7, 2010. DOHA issued a Notice of Hearing on September 15, 2010, and I convened the hearing as scheduled on October 13, 2010. During the hearing, the Government offered seven exhibits, marked as Government Exhibits (GE) 1 through 7.<sup>3</sup> Applicant objected to the 1996 bankruptcy petition as irrelevant. I overruled the objection, and admitted the seven Government exhibits. Applicant testified, and offered eight exhibits, admitted without objection as Applicant's Exhibits (AE) A through H. I held the record open for Applicant to submit additional documentation. He timely submitted seven documents, admitted without objection as AE I through O. DOHA received the transcript on January 21, 2011.

### **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 evidence presented by both parties, I make the following additional findings of fact.

Applicant, who is 37 years old, completed all but ten credits required for a bachelors degree. He served in the U.S. Army from 1992 to 1996, where he held a security clearance. He received an Army Certificate of Achievement in 1995, as well as three Army Commendation Medals in 1994 and 1995. He married in 1995, and has two adopted sons, four and nine years of age. He spent approximately \$4,000 to \$6,000 on the two adoptions. The four-year-old boy is a special-needs child who requires occupational, educational, and speech therapy. Applicant's health insurance covers most of the costs. Applicant has been a

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

<sup>2</sup> Adjudication of this case is controlled by the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

<sup>3</sup> The Government presented a 1996 bankruptcy petition and a 2005 bankruptcy petition, combined in one document. For administrative convenience, I separated the two petitions, which were admitted as GE 4 and 5, respectively.

surrogate father to his wife's three stepchildren, and supported two of them for several years. In addition, several years ago he learned that a friend of his stepdaughter was being neglected by her parents. He has provided a home for her since she was 15 years old. Now 21, she remains in Applicant's home, and he continues to support her financially. (AE E; Tr. 60, 64, 81-91, 92-96)

Applicant has worked for a defense contractor since November 2008, currently holding the position of lead network engineer. The information assurance manager at the federal agency where Applicant works has known him for two years. He submitted a letter citing Applicant's professionalism and dedication to protecting government assets. He trusts Applicant's judgment. Another co-worker who has worked with Applicant for two years notes Applicant's expertise and willingness to share his knowledge. He describes Applicant as reliable, conscientious, and hard-working. (GE 1; AE E, F, G; Tr. 79-80, 97-99)

While in military service, Applicant testified he had a substantial income because he received additional allowances for his family, meals, and his "airborne" status. However, in 1996, after leaving the Army, Applicant had accrued debts and filed a Chapter 13 bankruptcy petition. He paid approximately \$800 per month under the wage-earner plan. The bankruptcy was discharged successfully in 1999. Subsequently, Applicant was unemployed for about 10 months between 2001 and 2002, and then for about three months in 2004. He obtained financial help from family and friends. Between 2002 and 2005, he was continuously employed on a number of short-term contracts. He then obtained a permanent job in January 2005. His delinquencies had mounted between 2001 and 2005, and in May 2005, he filed a Chapter 7 bankruptcy petition to have his debts discharged. However, the bankruptcy court determined that he had sufficient funds to support a wage-earner plan, and Applicant converted to a Chapter 13. He was unable to meet the payments, and the bankruptcy was dismissed in 2007. The bankruptcy trustee advised him to negotiate settlements with any creditor who subsequently sought payment, but not to pay those who did not contact him, because the statute of limitations would soon make the debts uncollectible. (GE 4, 5, 6, 7; Tr. 28-39, 106, 112-116)

Around 1999, Applicant became an independent contractor. After September 11, 2001, he did not receive as much business as he had expected. In addition, he did not understand the proper tax-filing procedures for independent contractors. His father-in-law and his wife handled the family tax returns. Applicant also sought assistance from a commercial tax counseling company, but was unsatisfied and discontinued the service. His documentation shows that he paid self-employment tax in tax years 1999 through 2001, but none in 2002 through 2006. He received notices of delinquencies from both the IRS and his state of residence until, in 2004, both the IRS and the state filed liens for unpaid taxes. Applicant testified that he had a payment arrangement with the IRS "for quite a period of time." He testified that he made payments by check to both the IRS and the state. However, he did not provide copies of checks, or

copies of IRS or state payment histories to support his claim. He did provide evidence of two payments made to the IRS in 2010. (GE 2; AE B, M; Tr. 118-123)

Applicant admitted in his December 2009 interrogatory response that he did not follow up on his statements during his security interview that he would work on several debts within the next 60 days. He testified that he only recently contacted some of his creditors because he was not sure how to proceed, and he was not in a position to pay them until he had adjusted his budget by reducing other expenses. (GE 2; Tr. 110-111)

Applicant's net pay in 2009 was \$129,862; as of October 2010, he had earned net pay of \$86,565. His net monthly income is \$9,412. His monthly expenses and debt payments total \$9,318, leaving a monthly net remainder of \$94. His personal financial statement does not indicate Applicant spends money frivolously. He does not have a savings account, and does not contribute to a retirement plan. Applicant's wife handles the family's finances. (AE I, N, O; Tr. 183)

The 28 debts listed in the SOR accrued between 2003 and 2009, and total approximately \$72,583. The delinquencies appear in Applicant's credit reports of April 2009 and January 2010. (GE 6, 7) The status of the SOR debts follows.

- **Bankruptcies (allegations 1.a, 1.b.)** Applicant filed a Chapter 13 bankruptcy petition in 1996, which was discharged in 1999. He filed a Chapter 7 petition in May 2005, but the court required him to convert it to a Chapter 13. He was unable to meet the payments, and the bankruptcy was dismissed in 2007. (GE 1; Tr. 28-39)
- **Judgment re property debt, \$1,689 (allegation 1.c)** Applicant bought a timeshare, and fell behind in his payments. After he surrendered the deed, the creditor re-sold the timeshare. Applicant believes the debt represents annual maintenance fees. He contacted the creditor and, as of the hearing date, he was awaiting a final balance so that he could arrange a payment plan. He provided the name of his contact, but no supporting documentation. (Tr. 39-42)
- **State tax liens: \$21,174 alleged; \$18,488 currently owed: (allegations 1.d, e, f, h)** In approximately 2006, Applicant began a payment plan for his unpaid state taxes. He paid \$250 per month by automatic deduction from his salary. When he changed employers, he notified the state comptroller's office of his new contact information, but the state did not resume deductions. He did not pursue the matter. The day before the hearing, he set up a plan for \$270 per month to be deducted from his pay. The state comptroller notified his employer of the lien on October 13, 2010. The debt will be satisfied in eight-and-one-half years. As of

November 3, 2010, his unpaid taxes for tax years 2000 through 2007, with interest and penalties, totaled \$18,488.47.<sup>4</sup> (GE 3; AE A, J, K; Tr. 44-49)

- **IRS tax liens: \$43,958 alleged; \$31,838 currently owed: (allegation 1.g.)** Applicant's April 2009 credit bureau report shows his IRS debt to be \$28,888. Applicant's wages were garnished, until he made payment arrangements with the IRS. In his interrogatory response of December 2009, Applicant indicated the debt was \$43,958.65. He did not have a payment plan in place at that time. AE B shows that he submitted no payments to the IRS between July 2009 and July 2010. At the hearing, he testified that he has been negotiating with the IRS for about one year. In 2010, he amended his past returns, resulting in a credit to his account of \$12,964. The outstanding balance as of July 2010 is \$31,838.50. In July 2010, he established a payment plan of \$300 per month. He provided evidence of two payments made in September and October 2010, each credited to the 2003 tax year. (GE 1, 3, 6; AE B, M; Tr. 49-53)
- **Utilities debts totaling \$1,482 (allegations 1.i., 1.j., 1.k.)** – Applicant was not aware of final bills for two cable service companies (allegations 1.i. and 1.j.). He contacted the creditors before the hearing, but could not negotiate payment arrangements. Applicant plans to pay one by February 2011 and the other by March 2011. He was also unaware that his current cable provider charged him when he changed his service (allegation 1.k.). In October 2010, Applicant negotiated a payment plan with the collection agency to deduct four monthly installments of \$165 from his checking account, starting in October 2010. (AE C; Tr. 54-57)
- **Student loans totaling \$2,431 (allegations 1.l. through 1.w.)** – Applicant's student loans were deferred while he was attending college. After he left school, the loans became due, and went into default when he did not pay them.<sup>5</sup> He tried to extend his deferment, but his request was denied. Two weeks before the hearing, Applicant contacted the guarantor for five of his student loans. He negotiated a payment plan of \$100 per month starting in October 25, 2010, after the hearing. If he makes the payments for nine months, five of his loans will be rehabilitated. After six months of payments, he will be in good standing and can obtain student loans to finish his degree. He might return to school, which will return the loans to a deferred status. (AE D; Tr. 59-66)

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<sup>4</sup> Applicant did not owe back taxes for 2002 and 2008 because his withholding exceeded his tax obligation. The IRS seized refunds and applied them to his unpaid tax obligations. (AE J; Tr. 122)

<sup>5</sup> The loans listed in the SOR amount to \$2,431. However, the total loan balance Applicant owes to the creditor with whom he arranged his plan, is \$20,957. He has seven additional student loans guaranteed by another company, which total approximately \$30,000. (Tr. 65-66)

- **Auto loan, \$1,109 (allegation 1.x)** – Applicant denied this allegation. He admits he was late on two car payments that totaled \$1,109, stating that at the time he had an unexpected expense of moving his family to a new location. He testified that he subsequently brought the loan up to date, but provided no evidence to support his claim. (GE 7; Tr. 67-68)
- **Medical debts totaling \$352 (allegations 1.z. and 1.aa)** – Applicant admits the hospital bill alleged at 1.z. (\$97). He expected his health insurance to cover it, but he changed jobs and it was not covered by his previous employer’s plan. He expects to pay it in February 2011. (AE H; Tr. 69-71) As to allegation 1.aa. (\$255), the week of the hearing Applicant set up a three-month payment plan for \$85 per month, starting November 2010. He noted these planned payments in his future budget, but did not provide documentation at or after the hearing supporting his statements or payments. (AE H; Tr. 71-72)
- **Miscellaneous debts totaling \$388 (allegations 1.y. and 1.bb)** Applicant denied allegation 1.y., (\$174) which relates to a debt to a music service company because he did not open the account. However, his research showed that an account was opened in his name and at his address. A few days before the hearing, he arranged a plan to pay three installments of \$58 per month, starting November 2010. He noted these planned payments in his future budget, but did not provide documentation at or after the hearing showing payments. Applicant disputes owing the library fine alleged at 1.bb. (\$214). If his dispute is not successful, he plans to pay the debt in January 2011. (AE H: Tr. 68-69, 72-73)

### **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 AG.<sup>6</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 does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when 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) at AG ¶ 18.

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<sup>6</sup> Directive 6.3

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>7</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 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>8</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 judgment, reliability and trustworthiness to protect the national interests as his or her 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>9</sup>

## Analysis

### Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern about 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 supports application of disqualifying conditions AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*). The SOR alleges \$65,132 in unpaid back taxes owed to the federal and state governments. After filing amendments to his federal returns, his total taxes amount to \$50,326. He also owes approximately

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<sup>7</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>8</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>9</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

\$4,600 in other debts. He had two bankruptcies in 1996 and 2005. His current debts became delinquent starting in 2003. Applicant's history demonstrates a failure to meet financial obligations.

Under AG ¶ 20, the following potentially mitigating factors 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;

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Although Applicant's debts have been accruing for years, they are not in the distant past, as approximately \$55,000 remains unpaid. His past inattention to his financial obligations may recur in the future. His failure to make consistent attempts to resolve his debts over the years, until recently, raises questions as to his reliability and judgment. AG ¶ 20(a) does not apply.

AG ¶ 20(b) focuses on situations where conditions beyond an applicant's control affect his ability to meet his financial obligations. Although one of Applicant's children has needs that require continuous health care, Applicant admits that his medical insurance has covered most of those costs. Applicant cites a decrease in business after September 11, and two periods of unemployment as events beyond his control. However, the business downturn due to September 11 occurred ten years ago. Applicant was unemployed for a total of about one year between 2001 and 2004. This unemployment occurred more than six years ago; it should not have an affect on his ability to pay current debts, especially in light of Applicant's substantial income. AG ¶ 20(b) does not apply.

AG ¶ 20(d) requires a good-faith effort to resolve debts. Applicant displayed such efforts when he met the requirements of his Chapter 13 wage-earner plan bankruptcy, and it was successfully discharged in 1999. However, by 2005, he had accrued enough new debt that he sought a discharge through a Chapter 7 petition. The bankruptcy court found that he had sufficient income to support another wage-earner plan. However, he did not meet the payment requirements, and it was dismissed.



Applicant testified that he made payments on his state and IRS tax liens in the past. However, he did not follow through to ensure that the state re-established its garnishment when he changed employers. He did not provide proof of his claim of payments made years ago to the IRS.

Several events placed Applicant on notice that his current delinquent debts were a security concern: his security clearance application in April 2009, his security interview shortly thereafter, and the DOHA interrogatories he completed in December 2009. Yet most of his efforts to contact creditors and establish payment plans occurred in late 2010, just before the hearing. He has not sought financial counselling. He has made no effort to pay even relatively small debts. He placed his finances in the hands of his father-in-law and wife, without taking action once their efforts resulted in tax liens. He let his unpaid taxes mount and accrue interest charges and penalties. Applicant has established some payment plans, but they are so recent that he cannot provide evidence that he has implemented them, or demonstrate a track record of payments. AG ¶ 20(d) does not apply.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant 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) 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole person concept. Under the appropriate guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant has demonstrated character and generosity in his personal life, adopting two children, including a special needs child, and supporting his wife's stepchildren, as well as a friend of the family. He successfully discharged a

wage-earner bankruptcy, which required that he meet payments for a period of three years. In addition, his coworkers laud his trustworthiness and dependability.

However, other record evidence indicates that Applicant has not demonstrated reliability in handling his financial obligations since the Chapter 13 was discharged in 1999. His reliance on others to manage his debts and his tax returns, as well as his failure to stay abreast of numerous debts, can be ascribed in part to his youth: he was 23 at the time of his first bankruptcy, and 27 when his tax problems began. But he is now 37, a mature adult, and his lack of diligence about his obligations to the state and federal governments for the past several years is a serious concern. Before amending his federal returns, he owed more than \$43,000 to the federal government. He provided no proof of the payments he said he made in the past on the IRS debt. He allowed his delinquent state tax debt to grow to more than \$21,000. He did set up several payment plans, but not until just before his hearing. Applicant appears to have responded only because he was prodded by the security process. His lack of attention to some debts, and sporadic efforts on others, do not demonstrate reliability and good judgment.

A fair and commonsense assessment of the available information shows that Applicant has not satisfied the doubts raised about his suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guideline.

### **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
Subparagraphs 1.b. - 1.bb.	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