



ISCR Case: 10-02453

# Applicant for Security Clearance

For Government: Julie Mendez, Esquire, Department Counsel  
For Applicant: Jon L. Roberts, Esquire

January 31, 2011

## Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is denied.

On October 30, 2009, Applicant submitted a Questionnaire for National Security Positions (SF 86). On June 16, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on August 4, 2010, and requested a hearing before an administrative judge. On August 17, 2010, DOHA assigned the case to me. On August 23, 2010, DOHA issued a Notice of Hearing, setting the case for

October 5, 2010. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence without objection. Applicant testified and called four witnesses. He offered Applicant Exhibits (AE) 1 through 13 into evidence without objection. The record remained open until November 1, 2010, to give Applicant an opportunity to submit additional documents. DOHA received the hearing transcript on October 13, 2010. On November 1, 2010, Applicant submitted three exhibits that I marked as AE 14 through AE 16, and admitted into the record without objection.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted in part and denied in part the allegations contained in ¶¶ 1.a, 1.b, and 1.c. He denied the allegations contained in ¶¶ 1.d and 1.e, and offered an explanation.

Applicant is 56 years old. He divorced his first wife in 1991 and has one adult daughter from that marriage. He married his second wife in 1992 and has two adult stepsons. He continues to support his daughter and two grandchildren. He provided financial support for his stepsons' college.

From 1976 to the present, Applicant has worked in the incinerator business. In 1986, Applicant took over his father's business. As part of his work over the years, he has serviced a defense facility. In the early 1990's his business experienced a downturn and created financial problems for him. Despite financial difficulties, he managed to keep the business afloat and pay his employees. (Tr. 84.) In January 1999, his company was awarded a maintenance contract for a government facility. (Tr. 88.) However, because of his previous financial problems, he laid off all but one part-time employee. (Tr. 89.) When the contract term ended in August 2004, the government did not renew it. Upon the advice of the Internal Revenue Service (IRS), he closed his business and started a new company the following year. For the next year, he worked as an employee for a company that manufactured machinery and also had short-term contracts through his company for incinerator services. In 2006, the government awarded him another contract to perform work at the facility where he previously worked.

Applicant has a history of tax problems. As a result of a business downturn in 1995, Applicant started having tax issues in 1997 when he did not pay all employment taxes. In September 1999, the state filed a \$6,526 tax lien against him for unpaid employer withholding taxes that accrued from January 1997 to February 1998. In July 2010, he completed payments on that lien and it was subsequently released. (AE 10.)

In September 2004, the Internal Revenue Service (IRS) filed a tax lien against Applicant for \$29,551 for his unpaid employment taxes for the years of 2000 to 2003. (He was the sole employee of his company during those years.) He subsequently reduced the balance on that debt to \$22,000. The taxes for years 2000 and 2003 are paid, but those for 2001 and 2002 remain. In May 2010, Applicant entered into an

installment agreement with the government and began making monthly payments of \$500 on the balance of the debt. (GE 4 at 128; AE 16 at 5.)

In 2009, Applicant began discussions with the IRS to resolve his unpaid personal taxes. In January 2010, the IRS filed a tax lien against Applicant for \$45,676 for unpaid income taxes for the years 2005, 2006, and 2007. In February 2010, the IRS filed a tax lien against Applicant for \$73,972, which included the previous January lien and also unpaid taxes for 2008. On October 13, 2010, Applicant and his attorney had a conference call with the IRS, confirming that the amount due is \$73,972. (AE 16 at 2.) He is negotiating an offer and compromise to resolve the \$73,972 and \$29,551 liens.<sup>1</sup> (*Id.*) To-date, he has paid all personal taxes for the years 2000 to 2004, and he has made partial payments for tax years 2005 to 2009. (*Id.*) In 2004, he paid off personal income taxes for the year 1997 and 2000. (Tr. 119.)

Applicant's salary for 2000 was \$91,000; for 2001 it was \$90,000; for 2002 it was \$103,000; for 2003 it was \$107,000; for 2004 it was \$42,000; for 2005 it was \$39,000; for 2006 it was \$67,000; for 2007 it was \$87,000; and for 2009 it was \$81,000. (AE 14.)

Applicant submitted his budget as of May 2010. (GE 4 at 111.) After deducting business expenses and taxes, he and his wife had a net monthly income of \$6,193.<sup>2</sup> His total expenses were \$4,204, from which he made payments on seven credit card accounts, five of which relate to his business. The budget did not list a total of his monthly payments on those accounts, so a net remainder at the end of May 2010 was not available.

Applicant submitted his budget as of October 2010. His net income is \$4,872 after deductions that include a \$1,000 repayment for unpaid taxes. (He did not include his wife's net income in this budget.) His monthly expenses are \$2,867 and current. He makes payments of \$1,595 on 11 outstanding obligations. He paid off two accounts that were included in the May budget after selling a motorcycle. (Tr. 123.) His net remainder at the end of the month is \$400. He has made various lifestyle changes since 2009 in order to pay taxes and reduce debt. (Tr. 132.) He has not obtained financial counseling, but his accountant now manages his estimated tax payments through an account that Applicant set up at work and into which he makes monthly deposits. (AE 16 at 6, 7; GE 4 at 104.)

Applicant acknowledged that he failed to timely file his state income tax returns for the years 2004, 2005, 2006, 2007, and 2008. He admitted that he did not have a good explanation for not doing so, other than he was trying to deal with his federal tax issues. (Tr. 107.) To-date, all those returns have been filed, as well as his 2009 return. (Tr. 106-107.) All state taxes are paid for those years. (Tr. 108.)

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<sup>1</sup>Applicant owes \$13,192 for unpaid taxes for 2009. Because that has not been alleged as a potential security concern, it will not be considered as a disqualifying condition, but may be considered in the Whole-Person Analysis.

<sup>2</sup>Applicant's wife works for the county tax collection department.

Some of Applicant's tax problems are related to family matters. In 2004, his daughter became very sick. He has continued to pay some of her living expenses since then. (Tr. 152.) He also helped pay for his two stepsons' college expenses. He admitted that at times he chose to pay bills rather than taxes. (GE 4 at 102.)

Based on credit bureau reports (CBR) dated November 2009 and June 2010, the SOR alleged five security concerns relating to taxes. The status of each allegation is as follows:

1. The federal tax liability alleged in ¶ 1.a for \$73,972 is unresolved.
2. The federal tax liability alleged in ¶ 1.b for \$45,972 is included in the above lien.
3. The federal tax liability alleged in ¶ 1.c for \$29,551 is being paid in monthly installments. The balance is \$22,000.
4. The \$6,526 state tax lien filed in 1999 and alleged in ¶ 1.d is paid.
5. All state tax returns for years 2004 through 2008 have been filed.

Four witnesses testified for Applicant. All of them have security clearances and are aware of Applicant's tax problems. His first witness is a retired supervisor of the facility for which Applicant provides services. He met Applicant in 1991 and retired in 2007. He never received any complaint about Applicant and considers him to be a trustworthy individual, capable of handling classified information. (Tr. 45.) His second witness is his accountant who prepares Applicant's tax returns. He is also Applicant's neighbor and has known him for 42 years. Based on his knowledge of Applicant's character and tax situation, he does not have any reservations in recommending Applicant for a security clearance. (Tr. 57.) The third witness is a retired military policeman for the U.S. Army. He is the current supervisor of the facility where Applicant provides services. He has known Applicant since March 2007. He has never witnessed any questionable behavior by Applicant. He considers him to be trustworthy and has no reservations in recommending Applicant for a security clearance. (Tr. 69.) The fourth witness is currently a self-employed locksmith. He has known Applicant since 1981 when Applicant helped him secure a position with an incinerator company. He later became Applicant's employee. He believes that Applicant should be trusted with classified information. (Tr. 79.)

Applicant was candid about his tax problems. He appeared remorseful and embarrassed by the situation. He acknowledged his liabilities and intends to resolve them. He has made positive changes in his financial life to accomplish that goal.

## 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 and mitigating conditions, which are useful 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtaining a favorable clearance 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 an 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."

## **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.

AG ¶ 19 describes three conditions that could raise a security concern and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Beginning in 1997, Applicant began accruing tax liabilities, a large portion of which he has been unable or unwilling to manage to-date. In 1999, the state filed a lien for unpaid employment taxes. In 2004 and 2010, the federal government filed liens for unpaid personal income taxes arising from different tax years. He also failed to timely file state returns for 2004, 2005, 2006, 2007, and 2008. The evidence is sufficient to raise these disqualifying conditions.

After the Government produced substantial evidence of those potential disqualifications, the burden shifted to Applicant to produce evidence to rebut and prove mitigation. AG ¶ 20 provides conditions that could potentially mitigate the above security concerns:

- (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;

(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; and

(f) the affluence resulted from a legal source of income.

The evidence does not support the application of AG ¶ 20(a). Applicant's tax obligations are ongoing and not isolated to one or two years. There is insufficient evidence to prove that the delinquencies that arose for tax years 2000, 2001, 2002, 2003, 2005, 2006, 2007, and 2008 are all the result of circumstances beyond his control, which proof is necessary to trigger the full application of AG ¶ 20(b). Additionally, there is little evidence that he took responsible steps to manage those liabilities each year as they were accruing. The facts warrant a partial application of AG ¶ 20(c). There is evidence that Applicant has paid some of his tax liability over the past couple years and that his accountant now handles his quarterly tax payments. He has also filed all state returns. Because the largest tax liability of \$73,972, for the years 2005 to 2008, remains unresolved with the IRS, the tax matters cannot be considered to be under control at this time, as required for full application of said mitigating condition.

Based on Applicant's payment and resolution of the state 1999 lien and his past payments and current installment plan to resolve the 2004 lien, AG ¶ 20(d) has some application as he has demonstrated a good-faith effort to pay those two debts. There is no evidence to support the application of AG ¶ 20(e) and AG ¶ 20(f).

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

(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 include 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 facts and circumstances surrounding this case. Applicant is a mature individual, who decided not to promptly address tax liabilities while they began accruing in 1997, some of which remain unresolved up to tax year 2008. The scope of his negligence to timely address these unpaid liabilities and file five years of state tax returns is startling. In 1999, the state filed a lien for unpaid taxes for 1997 and 1998. In 2004, the federal government filed a lien for unpaid taxes for years 2000 to 2003. In 2010, the federal government filed a large lien for the most recent years of 2005 through 2008. By the time the second lien was filed, Applicant should have realized that he needed to begin responsibly addressing his taxes or seek help in doing so. However, he did not do that, because in 2010 he received a third lien. Applicant has a long history of not managing his tax obligations and finances, despite earning a sufficient salary for most years to warrant responsible action to address his taxes.

Applicant has been making payments on his outstanding tax liabilities and hopes to negotiate another installment agreement. However, at this time he has not presented sufficient evidence of financial rehabilitation or the establishment of a track record of managing his tax obligations that outweighs his long history of delinquencies and failure to timely file state returns. Although his colleagues uniformly asserted that he is trustworthy, his financial record exhibits a pattern of poor financial judgment and lack of financial reliability.

Overall, the record evidence creates doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not fully mitigate the security concerns arising under 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, 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 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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SHARI DAM  
Administrative Judge