



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



In the matter of: )  
)  
) ISCR Case No. 10-04657  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

October 24, 2011

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his eligibility for a security clearance to work in the defense industry. Although Applicant has resolved the \$382 of delinquent debts alleged in the SOR, the status of the debts included in his Chapter 13 bankruptcy petition dismissed in December 2003 and an IRS tax lien entered against him in May 2004 for over \$18,000 remain unresolved. Accordingly, clearance is denied.

**Statement of the Case**

Acting under the relevant Executive Order (EO) and DoD Directive,<sup>1</sup> on April 4, 2011, the Defense Office of Hearings and Appeals (the Agency) issued a Statement of

<sup>1</sup> This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to*

Reasons (SOR) explaining that it was not clearly consistent with the national interest to continue Applicant's access to classified information. The SOR detailed the factual basis for the action under the security guideline known as Guideline F (financial considerations).

Applicant answered the SOR and requested a hearing. The case was assigned to me on June 24, 2011. The hearing proceeded as scheduled on July 13, 2011. Department Counsel offered Government's Exhibits (GE) 1 through 10, which were admitted without objection. Applicant's Exhibits (AE) A through N were also admitted without objection. I admitted as Hearing Exhibit (HE 1) a demonstrative exhibit prepared by Department Counsel.

After the hearing, I left the record open until August 15, 2011, to allow Applicant to submit additional documentation about his finances. He did not. I received the transcript (Tr.) on July 21, 2011.

### **Findings of Fact**

Applicant is a 50-year-old employee of a government contractor. He previously worked for this employer for 13 years between 1979 and 1992. He returned in February 2010.<sup>2</sup>

In 1992, Applicant moved with his wife and two children to another state to avoid layoffs. Between 1992 and 2000, Applicant and his wife lived a financially comfortable lifestyle. They were able to purchase a nice home and enjoyed a strong credit rating. His circumstances changed dramatically when his wife decided to leave the family in 2000. After his wife left, Applicant became solely responsible for the marital bills, including the taxes and mortgage. He also became the custodial parent for the couple's two children. Because Applicant worked as an independent contractor, he often paid his federal taxes with a bonus he received each summer. In the summer of 2000, however, he used his summer bonus to pay his living expenses, not his taxes due for the 1999 tax year. He is unable to recall how or if this tax liability was paid.<sup>3</sup>

Soon after his wife left the marriage, Applicant's employer died unexpectedly, sending the company Applicant worked for into a downward spiral. By 2002, Applicant found himself without steady employment. He often relied on payday loans to help him make ends meet. At the advice of his parents, he filed for Chapter 13 bankruptcy protection in February 2003. When he was unable to make the payments, the petition was dismissed in December 2003. At the time the petition was dismissed, Applicant had paid only \$1,000 to the trustee. His bankruptcy petition included \$20,000 in federal

---

*Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines contained in Enclosure 2 to the Directive.

<sup>2</sup> Tr. 25.

<sup>3</sup> Tr. 25-26, 29,38, 53

taxes and \$44,510 in delinquent debt. Once the petition was dismissed, Applicant did not take any steps to repay the debts listed in his Chapter 13 petition. In 2004, the IRS filed a tax lien against the Applicant for \$10,997. There is no indication if this tax lien is the same as the lien alleged in the SOR.<sup>4</sup>

For the next six years, Applicant worked, but was underemployed. He used whatever money he earned to pay his family's basic living expenses. In 2006, he tried to start his own business, but it was not successful. In 2008, Applicant lost his home to foreclosure. Soon after, he began to rely on his family members and unemployment compensation for financial support.<sup>5</sup>

In 2010, Applicant decided to return to his former employer. Upon doing so, he applied for a security clearance. During his background investigation, Applicant reported negative financial information on his security clearance application. His credit bureau report revealed that, in addition to the Chapter 13 bankruptcy petition in February 2003, the IRS filed a tax lien for \$18,715 against him in May 2004. He also owed \$382 in delinquent debt to three creditors. Applicant denies that he owes the unpaid taxes. At hearing, however, he was unable to provide any information on the current status of his tax debt. Nor did he provide any post-hearing submissions on the issue. He submitted evidence establishing that delinquent debts alleged in the SOR are paid. Currently, Applicant lives within his means and pays his bills on time.<sup>6</sup>

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines 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

---

<sup>4</sup> Tr. 31, 38, 42-44, 75-76.

<sup>5</sup> Tr. 45-46, 58.

<sup>6</sup> Tr. 23, 50-52, 63; GE 1; AE C, E.

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 the 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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 conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Between 2000 and 2010, Applicant experienced financial problems that resulted in the dismissal of a Chapter 13 bankruptcy petition with unresolved delinquent debt, federal tax debt, and a home foreclosure.

Of the mitigating conditions available under AG ¶ 20, four are partially applicable to this case:

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

Applicant's financial problems occurred under circumstances beyond his control. Prior to 2000, he maintained strong finances. He began to experience problems only after his wife left him, an event compounded by the death of his employer, which caused employment issues that plagued Applicant for the next 10 years. This combination of incidents seems unlikely to recur in the future. As a result of these circumstances, Applicant receives partial mitigation under AG ¶¶ 20(a) and (b). His circumstances also merit partial mitigation under AG ¶¶ 20 (c) and (d). He has resolved the \$382 in delinquent debts alleged in the SOR and has shown that his finances are currently under control.

However, full mitigation is not available under the conditions cited above because of the unresolved debts included in Applicant's dismissed Chapter 13 bankruptcy petition, as well as unresolved questions regarding his outstanding federal tax liabilities. An applicant is reasonably expected to have or get documentation concerning his financial interests.<sup>7</sup> At hearing, Applicant was unable to provide dispositive information on either issue. He failed to do so, even though he was given almost one month after the hearing to provide additional information.

To conclude, the evidence as a whole justifies current doubts about Applicant's judgment, reliability, and trustworthiness. Following *Egan*<sup>8</sup> and the clearly-consistent

---

<sup>7</sup> ISCR Case No. 00-0104 (App. Bd. Mar. 21, 2001).

<sup>8</sup> *Navy v. Egan*, 484 U.S. 518 (1988).

standard, I resolve these doubts in favor of protecting national security. In reaching this conclusion, I gave due consideration to the whole-person concept. Nevertheless, Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided against Applicant.

### **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
Subparagraphs 1.a - 1.b	Against Applicant
Subparagraphs 1.c – 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 a security clearance. Eligibility for access to classified information is denied.

---

Nichole L. Noel  
Administrative Judge