



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



In the matter of: )  
)  
) ISCR Case No. 10-06123  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esquire, Department Counsel  
For Applicant: *Pro se*

02/22/2012

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant did not file his federal income tax returns on time for tax years 2004 through 2009. He has since filed his delinquent returns, and through payments and IRS interception of refunds, reduced his federal income tax debt from \$10,791 to \$2,293.80 as of late September 2011. Applicant is repaying his \$463 in other past-due balances as of late August 2011. Clearance granted.

**Statement of the Case**

On August 26, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, which provided the basis for its preliminary decision to deny him a security clearance. DOHA took action 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant submitted an undated response by facsimile on October 17, 2011. He had requested a hearing, but on October 19, 2011, he converted his case to a decision based on the written record. On October 24, 2011, the Government submitted a File of Relevant Material (FORM) consisting of nine exhibits (Items 1-9). DOHA forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. Applicant elected not to respond by the December 2, 2011 due-date, and on January 19, 2012, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

### **Findings of Fact**

The SOR alleged under Guideline F that Applicant owed a delinquent medical debt of \$420 (SOR 1.a), a \$256 collection balance placed by an electric utility company (SOR 1.b), a \$10,791 federal income tax debt (SOR 1.c), and a \$377 collection balance to an insurance company (SOR 1.d). The SOR also alleged that as of August 26, 2011, Applicant had failed to file his federal income tax returns for tax years 2007 to the present (SOR 1.e). In his Answer (Item 4), Applicant admitted that he owed the medical and income tax debts, but both debts were being repaid. He denied the power company debt as it had been satisfied. Applicant also denied that he failed to file his income tax returns for tax years 2007 through 2010. He did not file a response to the alleged \$377 insurance debt, and his silence was taken as a denial by the Government.

After considering the Government's FORM, which includes Applicant's Answer (Item 4), I make the following findings of fact.

Applicant is a 44-year-old high school graduate, who has been employed by a defense contractor since December 2007. He seeks his first DOD security clearance. (Item 6.)

Around March 1992, Applicant's then girlfriend moved in with him. In January 1993, they had a daughter. Applicant supported them through his employment as a shift leader and process operator at a local factory, where he had been working since August 1988. In July 2003, he was fired from his job, apparently for not following procedures. For the next two years, until August 2005, Applicant operated his own lawn care business. (Item 6.) While he was self-employed, Applicant relied on consumer credit to pay some bills. He did not charge enough for his services, and he could not pay the debts when they came due. (Item 8.)

Applicant did not file his federal income tax returns on time. Applicant told an Office of Personnel Management (OPM) investigator on June 24, 2010, that he stopped filing his federal returns in 2004 due to poor recordkeeping, and because he was "ignorant" when it came to running his own business. (Item 7.) It is unclear whether Applicant meant that he filed no return in 2004, when his return for 2003 would have been due, or whether he stopped filing with the 2004 return. IRS records show that he owed delinquent taxes for 2003. Given Applicant began operating his own business in 2003, he may have stopped filing his returns starting with tax year 2003, although he could have filed a return and

underpaid his taxes for 2003 and then not filed for tax year 2004 in 2005. After Applicant failed to file his federal return for a second year, he feared the consequences of his noncompliance with his tax obligations. So, despite his full-time employment as a “set up-cell operator” for a manufacturing company from August 2005 to July 2007, and as telecom mechanic for his current employer since December 2007 (Item 6), Applicant did not file federal income tax returns when they were due for subsequent tax years through 2009.<sup>1</sup> (Item 7.)

Around mid-2007, Applicant and the mother of his daughter ended their relationship. Applicant was ordered to pay child support at \$460 per month. (Item 7.) In July 2007, Applicant was fired from his employment with a manufacturing company for failing to meet performance standards (“made defects on 2 different days”). (Item 6.) He fell behind in his child support during his unemployment from July 2007 to December 2007. With his income from his current job, he satisfied the arrearage as of April 2008. (Items 6, 7.)

Applicant’s work for the defense contractor has taken him to several states, where his assignments have lasted from as many as ten months to as few as two or three months. During shorter assignments, he either rented a room or lived in a hotel. (Item 6.) In October 2008, the IRS filed a \$10,791 tax lien against him.<sup>2</sup> (Items 6, 7, 8.) Around 2009, Applicant contacted the IRS, and he arranged to make \$100 monthly payments toward his federal tax delinquency.<sup>3</sup> (Item 7.)

On June 17, 2009, Applicant executed an Electronic Questionnaire for Investigations Processing (e-QIP) for a secret-level security clearance. (Items 6, 7.) Applicant responded affirmatively to question 26.c, “Have you failed to pay Federal, state, or other taxes, or to file a return, when required by law or ordinance?” He also answered “Yes” to 26.g concerning any debts turned over for collection; 26.h about any accounts or credit cards suspended, charged off, or cancelled for failing to pay as agreed; 26.j regarding any delinquent child support payments; 26.k concerning wage garnishments; and 26.p about whether he was currently delinquent on any Federal debt. Applicant indicated that his child support arrearage and state tax debts had been satisfied, but he was making payments to the IRS. He disclosed that he was making no payments on a \$3,337 credit card debt (not alleged in the SOR), that two other credit card debts of \$593 and \$243 (also not alleged) had been written off, and that he owed a past-due debt of \$255 to an electric power company (SOR 1.b). (Item 6.)

As of July 14, 2009, the credit bureaus were reporting that the previously disclosed delinquent credit card debts of \$593 and \$200 (\$243 on e-QIP) had been paid. However, Applicant still owed the \$3,337 credit card and \$255 utility debts, which had been in

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<sup>1</sup> It is unclear whether Applicant filed his state income tax returns on time for those years, although there is also no evidence of any state tax delinquency.

<sup>2</sup> While Applicant indicated that the tax debt was for tax years 2004, 2005, and 2006 (Item 7), IRS records show he owed back taxes for 2003 and 2004. (Item 4.)

<sup>3</sup> Applicant told the OPM investigator that he contacted the IRS in about 2009. It is unclear whether the lien prompted him to contact the IRS.

collection since February 2007 and April 2008, respectively. Two other debts were also listed in collection: a \$50 medical debt placed in June 2007 and a \$377 insurance balance from February 2009 (SOR 1.d). In addition, Applicant was 30 days past-due in the amount of \$549 on a truck loan balance of \$8,608. Since taking out the loan of \$20,489 in July 2005, Applicant had been late 30 days six times or more. (Item 8.)

On June 24, 2010, Applicant told the OPM investigator that he was repaying the IRS at \$100 twice a month through automatic deduction from his pay. He admitted that he had not yet filed his federal income tax returns for tax years 2007, 2008, and 2009, but he was working with a tax preparer to file those returns. He indicated that his state taxes were current. Applicant did not dispute the credit card delinquencies reported on his credit record or the past-due utility debt. However, he averred that his insurance account was current. After paying his child support and federal taxes, he estimated a net monthly income of \$920 and expenses of \$1,539. He covered the shortfall with savings accumulated between June 2009 and January 2010, when he earned an extra \$1,000 per month per diem plus overtime while working abroad for his employer. If granted a security clearance, Applicant anticipated another overseas assignment where he could earn the funds needed to pay off his delinquent debts within one year. (Item 7.)

In September 2010, a \$525 medical debt from February 2010 was placed for collection. As of December 2010, the unpaid balance was \$420 (SOR 1.a). (Item 9.) Around February 3, 2011, Applicant paid \$1,580.40 on his truck loan. The lender accepted the amount in settlement of the debt as "paid charge-off" or "settled charge-off," and Applicant was released from any further liability. On June 3, 2011, Applicant paid the \$50 medical debt owed since June 2007. (Item 7.) On June 13, 2011, Applicant paid \$269.95 to satisfy the delinquent power bill (SOR 1.b). (Items 4, 7.) As of June 24, 2011, his \$3,337 credit card balance was settled for less than its full balance on terms accepted by the lender. He had arranged to make five payments of \$75.46 to repay the \$377 insurance debt (SOR 1.d), and six payments of \$91.33 to repay the \$420 medical debt from 2010 (SOR 1.a). As of June 12, 2011, \$1,300 had been garnished from his pay in 2011 for his federal tax debt.<sup>4</sup> (Item 7.)

As of June 2011, Applicant was no longer required to pay child support, although he planned to give his daughter a monthly allowance of \$250 for college expenses starting in August 2011. Applicant estimated that he had net monthly discretionary income of \$1,539.21, although \$1,288 of the amount was per diem pay from working on the road. He reported no rent expenses. (Item 7.)

On August 11, 2011, Applicant paid \$75.46 toward the insurance debt (SOR 1.d) and \$91.33 toward the medical debt (SOR 1.a). On August 25, 2011, he made his second payments on those debts. (Item 4.)

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<sup>4</sup>Applicant's paystub for the pay period ending June 12, 2011, shows the \$100 deduction from his pay as a garnishment. (Item 7.) It may well be a voluntary garnishment, as there is no evidence of a court order directing his employer to deduct the payments.

Applicant filed his federal income tax return for 2010 on September 19, 2011, showing a tax liability of \$1,985 on withholdings of \$2,140. He reported adjusted gross income of \$25,376. On September 26, 2011, he filed his delinquent federal returns for tax years 2008 and 2009. On adjusted gross income of \$26,520 for 2008, his tax liability was \$2,635 on withholdings of \$2,797. On adjusted gross income of \$41,282 for 2009, he reported a tax liability of \$4,371 on withholdings of \$5,215. The IRS determined that he had overpaid his taxes in the amount of \$1,244. The IRS intercepted this refund and applied \$547.85 to his tax debt for 2003 and \$696.15 to his tax debt for 2004, leaving him with a balance due of \$2,293.80 for 2004. On October 24, 2011, Applicant filed his delinquent federal return for 2007. He reported adjusted gross income of \$41,905 and a tax liability of \$4,718. Taxes of \$5,504 had been withheld from his pay, so he was entitled to a refund of \$786 on his account.<sup>5</sup> (Item 4.)

## Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to 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 overall 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 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

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<sup>5</sup>Assuming the IRS intercepted his refund and applied it to his debt balance for 2004 (\$2,293.80 as of September 26, 2011), and Applicant made two additional payments of \$100 each, his IRS debt would have been reduced further to \$1,307.80 as of late October 2011.

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 that the applicant may deliberately or inadvertently fail to 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 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.

Guideline F notes several conditions that could raise security concerns. 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,” are established. Applicant did not file his federal income tax returns when they were due for tax years 2004 through 2009, and the IRS filed a \$10,791 tax lien against him in October 2008. The failure by Applicant to file timely tax returns raises doubts about whether he can be counted on to comply with well-established government rules, including the regulations for protecting classified information. See ISCR Case No. 97-0744 (App. Bd. Nov. 6, 1998); ISCR Case No. 01-05340 (App. Bd. Dec. 20, 2002). Applicant also raised doubts about his financial judgment by defaulting on several accounts. In addition to the \$420 medical debt, the \$255 electric utility debt, and the \$377 insurance debt alleged in the SOR, the evidence shows Applicant fell seriously behind on three credit card debts (\$593, \$243, and \$3,337) that were not included in the SOR.<sup>6</sup> A \$50 medical debt was also referred for collection. Applicant had a history of late payments on his truck loan before he settled his account with the lender as a “paid charge-off” after a payment of \$1,580.40 in February 2011.

Concerning potentially mitigating conditions, AG ¶ 20(a), “the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to

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<sup>6</sup> Presumably, the \$593 and \$243 credit card debts were not alleged because they were reportedly paid after charge-off in 2007, well before Applicant applied for a security clearance. However, the \$3,337 credit card debt was not settled until June 23, 2011.

recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," cannot reasonably apply, given his recent and repeated failure to comply with his income tax filing obligations, his recent default on the \$420 medical debt, and his apparent problems paying his truck loan on time.

Mitigating condition AG ¶ 20(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," has only limited applicability. The credit card debt was incurred in the operation of his lawn care business, and he was unable to cover the debt during his subsequent unemployment from July 2007 to December 2007. The financial burden of child support at \$460 per month since 2007 is somewhat mitigating of his failure to timely address his past-due debts. Yet, AG ¶ 20(b) does not mitigate Applicant's known disregard of his obligation to file timely tax returns. While he may have been overwhelmed by the complexity of filing taxes as a self-employed businessman, he could have sought professional tax assistance for those two years. Fear of the possible consequences for his earlier noncompliance is not mitigating or extenuating of his disregard of his tax filing obligation for 2006 through 2009, when he was no longer working for himself and had taxes withheld from his pay by his employer.

Whether in response to the IRS tax lien or on his own initiative, Applicant contacted the IRS and entered into an agreement to repay his tax debt at \$100 every two weeks. By late September 2011, his tax debt had been reduced to \$2,293.80, albeit in part due to application of tax refunds. In June 2011, Applicant paid the \$50 medical debt and his past-due power bill (SOR 1.b). He settled his \$3,337 credit card balance for less than its full balance. He arranged to make five payments of \$75.46 to repay the \$377 insurance debt (SOR 1.d), and six payments of \$91.33 to repay the \$420 medical debt from 2010 (SOR 1.a). He made two payments on each debt in August 2011. Applicant's efforts to resolve his delinquencies establish AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Also, with the filing of his delinquent income tax returns for tax years 2007 through 2009 during the September to October 2011 timeframe, and no evidence of any outstanding past-due returns, his tax return problem has been resolved. AG ¶ 20(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," applies. Applicant's intent to continue to resolve his debts is credible in light of his demonstrated payments. The Financial Considerations concerns are sufficiently mitigated.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).<sup>7</sup>

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<sup>7</sup> The factors under AG ¶ 2(a) are as follows:

(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

Applicant raised serious doubts about his security eligibility by not filing federal income tax returns for several years. Poor recordkeeping initially and then fear of possible adverse consequences do not excuse his noncompliance. That being said, he had no intent to evade taxes. The IRS records show that he was entitled to tax refunds for tax years 2007 through 2010. As of October 2011, he owed less than \$3,000 in delinquent debt and had plans in place to resolve it. An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant is likely to continue to resolve his delinquent debts, and provided he has adequate income, he can meet his day-to-day financial obligations.

### **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:           FOR APPLICANT

Subparagraph 1.a-1.e:       For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Elizabeth M. Matchinski  
Administrative Judge

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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.