



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-06658
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Phillip J. Katauskas, Esquire, Department Counsel  
For Applicant: *Pro se*

July 20, 2011

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant’s financial problems were caused by a six-month period of unemployment between April and September of 2009. Since gaining his current job in October 2009, Applicant has either satisfied his delinquent debts or arranged payment plans for them. Applicant’s omission of information concerning his federal income taxes from his security clearance application was unintentional. Clearance is granted.

**Statement of the Case**

On December 6, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, financial considerations, and G, personal conduct. 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 (AG).

Applicant answered the SOR on December 29, 2010, admitting SOR subparagraphs 1.a and 1.g, and denying the remainder. Applicant also requested a hearing. On February 11, 2011, the case was assigned to me. On February 16, 2011, DOHA issued a notice of hearing scheduling the case for March 15, 2011.

The hearing was conducted as scheduled. I received Applicant's testimony. Applicant moved for me to admit four exhibits, which I marked Applicant's Exhibits (AE) A through D, into evidence. I admitted AE A and B, but reserved on the admissibility of AE C and D, two unsigned recommendation letters objected to by Department Counsel. At Applicant's request, I left the record open at the end of the hearing for him to submit signed copies of AE C and D, in addition to any additional documents. Within the time allotted, Applicant submitted signed copies of the disputed recommendation letters and 14 additional documents. Department Counsel had no objections, therefore, I replaced the unsigned copies of AE C and D with the signed ones and admitted them along with the 14 additional documents marked as AE E through Q. The transcript was received on March 23, 2011.

### **Findings of Fact**

Applicant is a 26-year-old single man. He graduated from high school in 2003, and has earned some college credits and some information technology certifications. (Tr. 23) Over the years, he has worked at various positions in the information technology field. Since October 2009, he has worked for a defense contractor as an information security specialist responsible for managing the network's security certifications and accreditations. (Tr. 23)

Applicant worked for a consulting company from February 2008 through January 2009. (GE 1 at 30) He left this job after his then employer encouraged him to pursue a higher-paying, managerial position at another company owned by the same parent company. (Tr. 53) Applicant applied and was later hired.

Applicant did not like the new job. It was highly stressful, and he frequently clashed with his supervisor over the direction of the business and the amount of his assigned tasks. Consequently, Applicant quit. (Tr. 53-54)

After quitting, Applicant was unable to find another job, and subsequently was unemployed for six months before his current employer hired him. While unemployed, Applicant began struggling to make ends meet. By the time his current employer hired him in October 2009, he had accrued approximately \$48,000 of delinquent debt, including a \$23,000 deficiency on a repossessed car and a \$6,000 student loan. (GE 2 at 8, 40) Also, he did not file his federal or state income tax returns for tax year 2008.

Applicant began satisfying these delinquencies shortly after being hired. By November 2010, he had negotiated a reduced payment amount for the automobile

deficiency and satisfied it. (GE 2 at 16<sup>1</sup>) Also, he had contacted the student loan creditor, arranged another payment plan and “rehabilitated the loan.” (*Id.* at 7) In addition, he satisfied approximately \$2,500 of his remaining delinquencies, including a delinquent fitness club membership, a utility, an overdrawn credit card account, a miscellaneous debt owed to a former landlord, and two credit cards.<sup>2</sup> (*Id.* at 12-19)

The Government listed the remaining debts in the SOR. Subparagraph 1.a alleges Applicant’s failure to file back taxes. Applicant admits that he had not filed either his 2008 or 2009 federal and state income tax returns by the date of the SOR’s issuance. (Tr. 67) He filed them on March 11, 2011. He owes approximately \$1,600 in 2008 federal and state income taxes. (AE G and I; Tr. 72) He does not owe any back taxes for tax year 2009. (AE H at 2; AE I)

Applicant filed his 2010 federal income taxes on time. He owes \$2,660, and has arranged to satisfy this debt in four, \$653 payments between April 2011 and January 2012. (AE O) Applicant did not produce any evidence that he filed his 2010 state income taxes. The SOR does not allege that he failed to file 2010 state income taxes.

Currently, Applicant has satisfied all of the remaining SOR debts except subparagraphs 1.b and 1.g. (Answer at 3-7; see *also*, Tr. 29, 45 - Department Counsel stipulations) Applicant owes the debt listed in SOR subparagraph 1.b to a rental property company. He cosigned a lease on an apartment for his mother. Later, she moved two months before the lease expired, prompting the property management company to assess a fee. (Tr. 26) Applicant’s mother arranged a payment plan, but failed to execute it. (Tr. 27) By November 2010, this debt had accrued to approximately \$9,300. That month, Applicant arranged a payment plan. Consistent with the plan, he has been paying \$790 monthly. (AE K at 5; AE L at 3; AE M at 3; AE N at 3) This debt will be satisfied in ten months.

SOR subparagraph 1.g is a security system Applicant purchased for his apartment shortly before he lost his job in 2009. While unemployed, this account became delinquent, accruing to approximately \$4,500 by December 2010. Three weeks after the hearing, before the record closed, Applicant successfully negotiated a payment agreement with this creditor. (AE R) Under the plan, he will pay \$200 monthly until the delinquency is satisfied. (*Id.*)

Applicant’s employer, with whom he worked through March 2009, paid him a salary of approximately \$30,000 per year. (Tr. 53) Currently, Applicant earns approximately \$68,000. (Tr. 75) This salary increase has helped him satisfy his debts. Moreover, some time after the issuance of the SOR, Applicant borrowed \$8,000 from

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<sup>1</sup>The supporting documentation does not list the amount of the reduced payoff. However, it is a letter from the creditor stating that the debt was settled “in full.”

<sup>2</sup>None of these debts are listed on the SOR.

his aunt. (Tr. 34) He used this money to pay his creditors, and is repaying his aunt through \$200 monthly payments. (AE Q)

Applicant is no longer incurring rental or utility expenses because he recently moved into a home with his mother. Before the move, he was paying approximately \$1,700 monthly on these expenses. (Tr. 76)

Applicant maintains a budget. (AE Q) He has approximately \$2,100 of after-expense income. Neither Applicant's payment plans with the Internal Revenue Service nor the security company (SOR subparagraph 1.g) had begun when he created his budget. These prospective expenses are not included in his budget.

Applicant completed a security clearance application in January 2010. He failed to disclose that he had not filed his 2008 income tax returns, as required in response to Section 26c<sup>3</sup> when he completed the application. Applicant attributes this omission to carelessness. (Tr. 66) Elsewhere on the application, Applicant answered "yes" to questions regarding whether he ever had any property repossessed, whether he was currently delinquent on a federal debt, whether he ever had any debts turned over to collection agencies, whether he ever had any credit cards charged off, and whether he had ever been more than 180 days delinquent on any bill. (AE 1 at 46) He also listed the names and the account numbers of 23 creditors whose accounts were delinquent when he completed the security clearance application. (*Id.* at 47-65)

Applicant is a well-respected individual who is active in the community and his church where he serves as a worship leader. (AE A) According to his pastor, "his character always stands out as upright and honest." (AE C)

## **Policies**

The adjudicative guidelines are applied in conjunction with the factors listed in the adjudicative process to evaluate an applicant's eligibility for access to classified information. 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."

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,

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<sup>3</sup>Have you failed to pay Federal, state, or other taxes, or to file a tax return, when required by law or ordinance?

or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

## **Analysis**

### **Guideline F, Financial Considerations**

Under this guideline, the “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.” (AG ¶ 18) Applicant’s history of financial problems and his failure to file his 2008 federal and state income tax returns on time trigger the following disqualifying conditions under AG ¶ 19:

- (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.

The following mitigating conditions, as set forth in AG ¶ 20, 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Although Applicant’s economic hardship was triggered by a six-month unemployment in 2009, it does not constitute a circumstance beyond his control because he voluntarily left his job. Nevertheless, he could not have anticipated the length of time it took to find another job. Since obtaining his current job, he has either satisfied some of his debts entirely, been paying others through payment plans, or arranged to begin paying them. He was already making steady progress toward debt

satisfaction when the SOR was issued. Currently, he earns more than twice the salary he earned on his previous job and his expenses are significantly less because he is living with his mother rent-free.

Applicant has yet to implement a payment plan for his delinquent federal and state income taxes from tax year 2008. Income tax delinquencies are a major indicia of financial instability or irresponsibility. Conversely, since regaining employment in October 2009, Applicant has reduced his indebtedness from \$48,000 to approximately \$17,000. Approximately \$2,600 of this \$17,000 remainder constitutes his 2010 income tax bill, which was never in delinquent status. These factors outweigh the negative inference generated by his outstanding income tax debts. I conclude that all of the above mitigating conditions apply.

### **Personal Conduct**

Under this guideline, “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.” (AG ¶ 15) Also, “of special interest is any failure to provide truthful and candid answers during the security clearance process. . . .” (*Id.*)

Applicant’s failure to disclose that he had not filed his 2008 federal and state income tax returns when he completed his security clearance application raises the issue of whether AG ¶ 16(a), “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities,” applies. Applicant was thoroughly responsive to other questions regarding his financial debts in response to other questions on the security clearance application, including one question that requested he disclose whether he had any delinquent debts owed to the federal government. Under these circumstances, Applicant explanation for failing to answer Question 26c correctly was credible. I conclude there are no personal conduct security concerns.

### **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.

Applicant's financial problems did not occur because of excessive or irresponsible spending. Rather, they were triggered by his lengthy unemployment in 2009. As soon as his financial situation improved, he began satisfying his delinquencies, and has been steadily reducing his indebtedness since then. Moreover, Applicant makes more than twice the salary he earned on his previous job. Under these circumstances, I am confident Applicant will adhere to his payment plans. Applicant has mitigated the security concern.

### **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
Subparagraphs 1.a - 1.h:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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.

MARC E. CURRY  
Administrative Judge