



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



In the matter of: )  
)  
) ISCR Case No. 10-08780  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

December 12, 2011

**Decision**

HOGAN, Erin C., Administrative Judge:

On June 21, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations, and Guideline E, 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) effective within the Department of Defense on September 1, 2006.

On August 19, 2011, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 13, 2011. The case was assigned to another administrative judge on October 18, 2011, and transferred to me on October 25, 2011. That same date, a Notice of Hearing was issued, scheduling the hearing for November 16, 2011. The hearing was held on that date. During the hearing, the Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. Applicant testified and offered one exhibit which was admitted as Applicant Exhibit (AE) A. After the hearing, the record was held open until December 7, 2011, to allow Applicant to submit additional documents. No documents

were submitted. The transcript (Tr.) was received on November 27, 2011. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his answer to the SOR, Applicant admits the allegation in SOR ¶ 1.a, and denies the allegations in SOR ¶¶ 1.b, 1.c, and 2.a.

Applicant is a 66-year-old quality engineer employed by a Department of Defense contractor, seeking to maintain his security clearance. He has worked for his current employer from 1978 to 1981, and from 1985 to present. He has a master's degree in computer science. He is married and has no children. (Tr. at 24-27; Gov 1)

Concerns were raised under financial considerations during Applicant's periodic background investigation. A credit report dated August 26, 2010, revealed that Appellant had a federal tax lien entered against him in October 2008 in the amount of \$15,464. (SOR ¶ 1.a: Gov 3 at 3) He also had a \$43 medical account placed for collection in April 2009 (SOR ¶ 1.b: Gov 3 at 11), and an \$86 medical account placed for collection in March 2007. (SOR ¶ 1.c: Gov 3 at 12)

On August 11, 2010, Applicant completed a security clearance questionnaire (e-QIP). In response to question 26c, "Have you failed to pay Federal, state, or other taxes, or to file a tax return, when required by law or ordinance?" Applicant answered, "No." SOR ¶ 2.a alleges that Applicant deliberately falsified material facts in response to this question. It is noted that the SOR alleges an e-QIP application executed by Applicant on December 29, 2009. In accordance with paragraph E3.1.17, I amend the pleading in SOR ¶ 2.a by changing the date of the e-QIP's execution to August 11, 2010, in order to conform with the evidence.

Another lien for \$18,141.92 was recorded by the Internal Revenue Service (IRS) on October 20, 2008. The lien was released on April 20, 2011, after it was paid in full. Applicant testified that he failed to file tax returns and pay taxes for tax years 2000, 2001, and 2002. He had no explanation for why he did not file and pay his tax returns. The IRS prepared the returns for him. He entered into a payment agreement with the IRS and resolved this debt before the SOR was issued. It was not alleged in the SOR, but is discussed here for background purposes. (Tr. 35; Gov 2 at 3, 9)

In 2006, Applicant sold a cabin. He had a gain after the sale. He put the proceeds from the sale of the cabin into a certificate of deposit (CD). In July 2006, he was assessed additional taxes in the amount of \$12,933 related to the sale of the property. Applicant did not pay the tax immediately because his money was in a CD and he was worried about having to pay a penalty if he withdrew the funds. A second tax lien was filed in October 2008. Applicant arranged a payment plan with the IRS. He paid approximately \$550 a month over a period of four years. The lien was paid in full on May 2, 2011. (Tr. 32, 37-44; Gov 2 at 3; AE A)

Applicant disputes the debts alleged in SOR ¶¶ 1.b and 1.c because he does not recognize the creditors. Both debts were transferred to a collection agency. He did not have a number where he could contact the creditors. He requested more information on how to contact these two creditors during his background investigation. While these two debts are listed on the credit report dated August 26, 2010, they are not listed on credit reports dated March 30, 2011, and November 15, 2011. (Tr. 21; Gov 2; Gov 3; Gov 4; Gov 5)

Applicant has no additional delinquent accounts. From 2003 forward, he has filed federal and state income tax returns. He lives within his means. He testified during the hearing that he has \$1,500 left over each month after expenses and has \$13,000 in savings. (Tr. 31, 37; see also Gov 2 at 7)

Applicant denies that he made a false statement on his e-QIP application. At the time he completed the application he was making monthly payments to the IRS. He testified that he was never formally notified of a tax lien. If he has the opportunity to complete a security clearance application in the future, he would do a better job of explaining any issues. He would never do anything to jeopardize national security. (Tr. 20, 48-50; Response to SOR, dated August 19, 2011)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered when determining 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.

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 as to obtaining 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 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.” 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 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.

The guideline notes several disqualifying conditions that could raise security concerns. I find AG ¶19(a) (an inability or unwillingness to satisfy debts); and AG ¶19(c) (a history of not meeting financial obligations) apply to Applicant’s case. Applicant incurred a significant federal tax debt after he sold a property in 2006. He also had two medical collection accounts. AG ¶19(g) (failure to file annual Federal, state, or local income tax returns as required or fraudulent filing of the same) applies with respect to Applicant’s failure to file his annual Federal tax returns for tax years 2000, 2001, and 2002. However, this was not alleged in the SOR. More than likely, because Applicant resolved this tax debt before the SOR was issued.

The Government’s substantial evidence and Applicant’s admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive

¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. AG ¶ 20(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) applies. Although not alleged in the SOR, Applicant also had a tax debt related to his failure to file and pay taxes owed for tax years 2000, 2001 and 2002. He resolved this tax debt as well as the tax debt alleged in the SOR through payment agreements. The remaining two medical debts total \$129 and are not listed on Applicant's more recent credit reports. I find these two accounts are *de minimis* and not relevant to Applicant's overall financial situation. While Applicant's tax problems raised legitimate and serious security concerns, he has taken steps to resolve them. He learned a difficult lesson in the process. His problems are not likely to recur based on his overall financial stability.

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) does not apply because it was within Applicant's control to pay his taxes. He did not really have a good reason for failing to pay his tax debts. He just chose not to pay them.

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 because Applicant has paid his tax debts and his financial situation is under control.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. He resolved the tax debt alleged in SOR ¶ 1.a. He disputes the two remaining debts alleged in SOR ¶¶ 1.b and 1.c. He is willing to pay them if he is able to contact them to verify the debt. These two debts are minimal. I find he attempted to resolve these accounts, but had insufficient information to contact the collection agencies alleged in the SOR. The debts are not listed on his recent credit reports.

Over the past decade, Applicant made some foolish decisions pertaining to his federal income taxes. He eventually understood the consequences of his actions, and resolved his federal tax debts through payment agreements. He has learned a difficult lesson. Aside from the tax debts, his financial situation is stable. Applicant mitigated the concerns raised under financial considerations.

## **Guideline E, Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶15:

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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

There is sufficient evidence to conclude Applicant omitted information about his tax debts in response to section 26c on his e-QIP application. The omission potentially raises 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). For AG ¶16(a) to apply, the omission must be deliberate. Applicant believed that he did not have to answer "yes" to the question because he was making regular payments to the IRS. I found his explanations credible. Guideline E is found for Applicant.

## **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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be 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 the facts and circumstances surrounding this case. I considered Applicant's employment history. I considered that he entered into payment plans with IRS and has resolved his tax debts. His financial situation is stable. He did not intentionally omit his

tax debts in response to 26c on the e-QIP application. He mitigated the concerns raised under financial considerations and personal conduct.

### **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.c:	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.

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ERIN C. HOGAN  
Administrative Judge