



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



In the matter of: )  
)  
) ISCR Case No. 11-01270  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

12/21/2011

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 26, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on July 11, 2011, and requested a hearing before an administrative judge. The case was assigned to me on August 30, 2011. DOHA issued a notice of hearing on November 2, 2011, scheduling the hearing for November

28, 2011, by video teleconference (VTC). The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on December 1, 2011.

### **Procedural and Evidentiary Rulings**

#### **Evidence**

The Government offered Exhibits (GE) 1 through 4, which were received without objection. Applicant testified, but he did not submit any documentary evidence.

#### **Motion to Amend SOR**

Upon motion by Department Counsel, I amended the SOR by adding an allegation under Guideline F, as follows:

1.I. You have failed to file your federal and state income tax returns, as required, since tax year 2005.

Applicant did not object to the amendment and declined the opportunity to reappear to address the amended allegation or to submit documents after the hearing.

### **Findings of Fact**

Applicant is a 47-year-old truck driver for a defense contractor. He is applying for a security clearance for the first time. He has an associate's degree. He was married from 1990 until his divorce in 2006. He married his current wife in 2007. He has two adult children and an adult stepchild.<sup>1</sup>

The SOR alleges ten delinquent debts with balances totaling about \$15,500 and a \$978 federal tax lien that was filed in 1992. Applicant admitted owing the ten delinquent debts. He admitted that a tax lien was filed in 1992, but he stated the tax lien was paid in the 1990s.<sup>2</sup>

The largest debt in the SOR is \$9,704 for the deficiency owed on a loan after Applicant's truck was repossessed. Applicant stated that he sold the truck to a former employer with the understanding that the employer would maintain the payments on the truck. The employer did not maintain the payments, and the truck was repossessed. He stated that several other debts were also related to business expenses with the same employer.<sup>3</sup>

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<sup>1</sup> Tr. at 33-34; GE 1, 2.

<sup>2</sup> Tr. at 16-17; Applicant's response to SOR; GE 1, 2.

<sup>3</sup> Tr. at 25-32; GE 2.

Applicant attributed his remaining financial problems to his first marriage and divorce. He stated that he spent much of his time away from home, and his first wife was not a good money manager. She neglected to pay the bills while he was gone.<sup>4</sup>

Applicant was interviewed for his background investigation in October 2010. He discussed his delinquent debts with the investigator. He admitted that he had made no effort to pay the delinquent debts accrued during his first marriage. He stated that he and his current wife were living within their means and not accruing new delinquent debt. He stated that he planned to make a list of his old debts and pay the debts as he is able to do so.<sup>5</sup>

Applicant credibly testified that he paid the 1992 tax lien in the 1990s. He stated that he received income tax refunds when he filed his federal income tax returns after he paid the lien. He admitted that he has not filed his federal and state income tax returns since tax year 2005. He does not believe that he owes any taxes as the amount of withholding was sufficient to cover the taxes owed. He did not have a good reason for his failure to file the tax returns. He has not made any payments toward the remaining debts alleged in the SOR. He has not received financial counseling.<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 decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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<sup>4</sup> Tr. at 16-17; GE 2.

<sup>5</sup> Tr. at 17; GE 2.

<sup>6</sup> Tr. at 18-21, 24-25, 32.

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. The following are potentially applicable 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 tax returns as required or the fraudulent filing of the same.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. He did not file his state and federal tax returns as required. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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;

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

(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.

Applicant stated that he sold his truck to his former employer with the agreement that the employer take over the loan payments. He stated that his former wife did not pay the family debts while he was on the road. These events may qualify as conditions that were beyond his control. AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. With the exception of the 1992 tax lien, which Applicant stated was paid in the 1990s, he has not made any payments on any of his delinquent debts. He has not filed his tax returns since tax year 2005. He gave no indication of any plans to file them in the foreseeable future.

I find that Applicant has not acted responsibly under the circumstances. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶ 20(b) is partially applicable. There are no other applicable mitigating conditions.

## 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):

- (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 have incorporated my comments under Guideline F in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant's delinquent debts were incurred some time ago. He is paying his current debts, but he has made no effort to address his older debts. Furthermore, he has not filed his federal and state income tax returns since tax year 2005.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated financial considerations security concerns.

## 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.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.l:	Against 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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Edward W. Loughran  
Administrative Judge