



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



In the matter of: )  
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 REDACTED ) ISCR Case No. 11-07447  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Tovah A. Minster, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

01/28/2013

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the Financial Considerations concern. He has satisfied a number of nontax-related debts and has started putting his financial house in order. However, over the course of several years, he failed to file his tax returns on time and then failed to pay his taxes, which resulted in significant federal and state tax liens. He only recently started to address his longstanding tax debts. His recent actions are insufficient to mitigate the security concerns raised by his long history of failing to timely file and pay his taxes. Clearance is denied.

**Procedural History**

On August 10, 2012, the Department of Defense (DoD), in accordance with DoD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations). On September 28, 2012, Applicant answered the SOR and requested a hearing (Answer).

On October 23, 2012, Department Counsel indicated the Government was ready to proceed with a hearing. I was assigned the case on October 31, 2012. After coordinating with the parties, I scheduled the hearing for December 17, 2012.

At hearing, Department Counsel offered Government Exhibits (GE) 1 – 4, which were admitted without objection. Applicant appeared at the hearing with counsel. He testified and called his co-worker and supervisor as witnesses. He also offered Applicant's Exhibits (AE) A – W, which were admitted without objection. I granted Applicant's request to keep the record open to submit additional documents for my consideration. He timely submitted AE X – Z, which were also admitted.<sup>1</sup> The transcript (Tr.) was received on December 28, 2012.

### Findings of Fact

Applicant is in his forties. He received an associate's degree in 1999, a bachelor's degree in 2004, and a master's degree in network security in 2006. He is scheduled to complete his M.B.A. in 2014. He recently married. He has five children, three of whom are eighteen years of age or older. He raised his teenage son on his own, after his son's mother abandoned their child. He financially supports his two minor children and stepson. (Tr. at 33-34, 48-50, GE 1)

Applicant has been working two full-time jobs since 2000. His income has increased by approximately \$100,000 from five years ago. He currently earns approximately \$250,000 a year. He attributes his financial issues to his divorce from his former spouse in 1998, which left him with considerable debt. He also attributes his financial problems to medical issues in 2004 and 2006, which left him unemployed or underemployed for significant periods of time and resulted in a decrease in his household income. Applicant's medical issues motivated him to return to school and led to his current employment in the information technology field. He secured a second well-paying job in April 2012, which allowed him to satisfy almost all of his nontax-related debts (SOR ¶¶ 1.a – 1.d). The only nontax-related debt that is still outstanding is a car loan that he has brought current and is in good standing (SOR ¶ 1.e). (Tr. at 34-42, 50-52, 62-63, 69-72; GE 2; AE S, AE Z)

Applicant failed to file his federal income tax returns on time for tax years 1998 to 2006. His gross income over that eight-year period steadily increased from around \$24,000 to over \$101,000. He failed to deduct enough taxes from his wages and owed federal taxes for each year, except for 2001. In 2009, a federal tax lien was issued against Applicant for unpaid federal taxes for tax years 1998 to 2000 and 2002 to 2006. The total amount owed was over \$21,000 (SOR ¶ 1.g). A state tax lien had previously been entered against Applicant in 2006 for over \$20,000 (SOR ¶1.g). (GE 2 at 291-307, *IRS Account Transcripts*; AE K; AE W, *Personal Financial Statement*; Answer)<sup>2</sup>

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<sup>1</sup> AE O – W were documents attached to the Answer. Applicant's post-hearing documents were remarked with the above exhibit letters.

<sup>2</sup> According to the *IRS Account Transcripts*, Applicant filed his 1998 through 2001 tax returns in April 2003. He filed his 2002 tax return in August 2003; his 2004 return in May 2005; his 2005 return in July 2007; and his 2006 return in May 2007. His returns were due on April 15<sup>th</sup>. He only requested an extension to file his 2005 tax returns late, but filed it nine months after the deadline granted by the IRS. He testified that his returns were filed on time, but did not submit evidence to corroborate his testimony, which is contradicted by the evidence. (Tr. at 54)

During a security clearance background interview, Applicant told an investigator that his federal tax debt was due to an error committed by his tax advisor. He also told the investigator that he received a notice from the IRS regarding his tax delinquency in about 2007 or 2008. He went on to claim that he had been paying \$225 per month since 2007 or 2008 per an agreement he had entered into with the IRS. (GE 2 at 252, *Subject Interview from February 2011*) He did not submit documentation regarding said payments or agreement with the IRS.

At hearing, Applicant testified that he first became aware of his federal tax delinquency in 2010, after the IRS conducted an audit. He contacted the IRS and started to repay his federal tax debt in 2011. (Tr. at 42-45, 53-58) His wages were garnished in 2011 as a result of a tax levy. (GE 2 at 308-313; AE W) He did not address the inconsistency between his statement to the investigator and at hearing as to when he found out about and started to repay his federal tax debt.

In May 2012, Applicant entered into a repayment agreement with the IRS. He agreed to make monthly payments to satisfy the federal taxes he owed for the tax years covered by the 2009 federal tax lien (1998 to 2000 and 2002 to 2006). This repayment agreement also covered tax years 2008 and 2009. (GE 2 at 286, IRS Letter, dated May 22, 2012) Applicant submitted proof of having made the required monthly payments from July to November 2012. (AE U, AE V, AE X) He did not submit evidence of having timely filed and paid his federal taxes for tax years 2010 and 2011.

In September 2012, Applicant entered into a repayment agreement with State A. He is required to pay nearly \$300 a month for 43 months to resolve his outstanding state tax liability. (AE T) He submitted proof of having made the required monthly payments in October and November 2012. (AE X) During his background interview, Applicant stated that after receiving notice of his state tax delinquency he had been paying approximately \$254 per month to State A, and “the account will be satisfied in 2012.” (GE 2 at 252-253) At hearing, he testified that he had been making payments to State A to satisfy the 2006 state tax lien prior to entering into the recent repayment agreement. (Tr. at 47, 58-59) He did not submit evidence of said earlier payments.

Applicant testified that his tax delinquency was caused by his ex-wife claiming their children on her tax return every year instead of every other year, as required by their agreement. (Tr. at 53-58, 66-69) Applicant submitted his divorce decree, which is silent on the issue as to which parent will be allowed to deduct the children on their tax returns. The decree notes that Applicant’s ex-wife was granted custody of the children. (AE Y)

Applicant has taken a number of financial counseling courses and engaged the services of a credit counseling service. (AE L – N; Tr. at 46-47, 59-60) Applicant’s personal financial statement from May 2012 indicates that, after paying his monthly expenses and debts, he had a monthly net remainder of over \$4,800. (GE 2 at 242-243) The budget Applicant submitted in September 2012 shows that his monthly net remainder had increased to over \$5,000. (AE W) At hearing, Applicant testified that he

was saving this entire monthly remainder for the purchase of a home. He estimated that he had saved about \$10,000. He opened a savings account about two weeks prior to the hearing, but had not deposited any money into the account. (Tr. at 60-62)

Applicant has held a security clearance since 1997. He has never mishandled or otherwise compromised classified information. He is considered a trusted and reliable employee, whose work performance is outstanding. (Tr. at 19-30, 45; AE A – J)

### **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 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 Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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." Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to obtain a favorable security decision. In resolving this ultimate question, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b).

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.

## Analysis

### Guideline F, Financial Considerations

The security concern relating to financial problems is articulated 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.

"This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts."<sup>3</sup> The concern also encompasses financial irresponsibility, which may indicate that an applicant would also be irresponsible, unconcerned, negligent, or careless in handling and safeguarding classified information.

Applicant's long history of not meeting his financial obligations, most notably his failure to timely file and pay his taxes over the course of several years that led to the imposition of federal and state liens, directly implicates the above concern. It also establishes 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.

However, an applicant's past or current indebtedness is not the end of the analysis, because "[a] security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness."<sup>4</sup> Accordingly, Applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed under AG ¶ 20. The relevant mitigating conditions are:

- (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

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<sup>3</sup> ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012). See also ISCR Case No. 10-00925 at 2 (App. Bd. June 26, 2012).

<sup>4</sup> ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). See also ISCR Case No. 09-07916 at 3 (App. Bd. May 9, 2011).

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 nontax-related debts were, in part, attributable to matters outside his control. He has resolved these debts and has not accumulated any additional nontax-related bad debt. AG ¶¶ 20(b), 20(c), and 20(d) apply to the nontax-related debts listed in the SOR.

On the other hand, Applicant's recent efforts to resolve his longstanding tax debts are insufficient to mitigate the significant concerns raised by his persistent failure over the course of several years to timely file and pay his taxes. His divorce and medical issues did not prevent him from meeting the obligation of all citizens to file and pay their taxes. Even if his tax liability was a result of confusion regarding who was entitled to deduct the children on their tax returns, Applicant was alerted to his substantial tax debts years ago and made no effort to resolve them until recently. His federal tax debt, some which dates back to 1998, and state tax lien from 2006 have still not been resolved. AG ¶¶ 20(a) and 20(b) do not apply to Applicant's tax-related debts.

Furthermore, Applicant submitted no evidence that he *voluntarily* started to repay his substantial tax debts prior to entering into his recent repayment agreements with federal and state taxing authorities. His recent repayment agreements were entered into *after* federal and state tax authorities secured liens against him and his wages were garnished. Under such circumstances, Applicant's belated efforts to resolve his tax debts were not initiated in good-faith. Moreover, Applicant's failure to submit evidence that he timely filed his recent tax returns and has paid his taxes on time, as well as his inconsistent statements regarding when he became aware of his tax debts and their status, leaves me to question the extent to which his current finances are under control.<sup>5</sup> AG ¶¶ 20(c) and 20(d) also do not apply to Applicant's tax-related debts.

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<sup>5</sup> ISCR Case No. 10-08650 at 3 (App. Bd. Dec. 5, 2011) (An administrative judge may consider an individual's prior statements regarding his or her debts in assessing the individual's credibility and whether they met their burden of persuasion as to mitigation).

Consequently, although Applicant has recently made some headway in resolving his longstanding tax debts and has resolved his nontax-related debts, his financial issues remain a concern.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).<sup>6</sup> I have considered all the favorable and extenuating factors in this case. Applicant has held a security clearance without issue for over 15 years, raised his teenage son on his own, and is a good worker who is thought of highly by his co-workers and employer. These favorable whole-person factors are significant mitigating factors. However, an individual who has a history of failing to meet his financial obligations, especially the obligation of all citizens to file and pay their taxes, may similarly fail to discharge his security obligations. The significant security concerns raised by Applicant's history of financial irresponsibility and malfeasance must be resolved in favor of national security.<sup>7</sup> Overall, the record evidence leaves me with questions and doubts about Applicant's continued eligibility and suitability for access to classified information.

### **Formal Findings**

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations):	AGAINST APPLICANT
Subparagraphs 1.a – 1.e:	For Applicant
Subparagraphs 1.f – 1.g:	Against Applicant

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<sup>6</sup> The non-exhaustive list of adjudicative factors are: (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.

<sup>7</sup> AG ¶ 2(b). See also *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) ("security-clearance determinations should err, if they must, on the side of denials"); ISCR Case No. 11-02087 at 3 (App. Bd. Mar. 20, 2012) ("Even years of safeguarding national security information may not be sufficient to mitigate a history of ongoing, significant delinquent debt").

## **Conclusion**

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge