



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



In the matter of: )  
)  
) ISCR Case No. 11-09365  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Philip Katauskas, Esq., Department Counsel  
For Applicant: *Pro se*

02/19/2013

**Decision**

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant failed to mitigate security concerns raised under the guideline for financial considerations. His request for a security clearance is denied.

**Statement of the Case**

On September 25, 2012, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) citing security concerns under Guideline F (financial considerations) of the Adjudicative Guidelines (AG).<sup>1</sup> In his Answer to the SOR, notarized on October 23, 2012, Applicant admitted 15 of the 19 allegations regarding his unpaid debts. He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On January 9, 2013, DOHA issued a Notice of

---

<sup>1</sup> Adjudication of the case is controlled by Executive Order 10865, as amended; DOD Directive 5220.6 (Directive), as amended; and the Adjudicative Guidelines, which supersede the guidelines listed in Enclosure 2 to the Directive. They apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

Hearing, and I convened the hearing on January 29, 2013. I admitted four exhibits offered by the Government (GE 1 - 4), and five exhibits offered by the Applicant (AE A - E). I granted Applicant's request to submit additional documents after the hearing. I timely received a two-page document, which I admitted as AE F. Department Counsel's memorandum, noting no objection, is marked as Hearing Exhibit I. DOHA received the transcript on February 6, 2013.

### **Findings of Fact**

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant is 53 years old. He has been married since 1982 and has two adult children. He has been employed full-time since 1986. He completed a bachelor's degree in business administration in 2005. He is near completion of his master's degree in the same field. He has worked for the federal government either through a contractor or as an employee for the past 26 years. He began his current position as an analyst for a defense contractor in October 2005. Applicant received a confidential security clearance in 1986, and has held a secret security clearance since 2007. (GE 1; Tr. 25, 28, 46, 63-64, 68)

At his security interview in April 2011, Applicant stated he encountered financial difficulties because he did not take appropriate responsibility for his tax obligations. At the hearing, he testified that he did not file state tax returns when they were due, and did not file federal tax returns in the 1990s for several years after they were due. He admitted he showed poor judgment by not filing his income tax returns. His home mortgage was also beyond what he and his wife could afford on their income. He has not received financial counseling. At his security interview, he stated he planned to borrow from his 401(k) account to resolve his debts. (GE 2; Tr. 64-66)

Applicant's personal financial statement (PFS) of September 2012 shows he earns \$5,352 net per month or approximately \$65,000 net annually. At the time, his wife was earning \$1,374 net per month. Together, their total net monthly income was \$6,726. His wife has debilitating medical conditions, including the need for two knee replacements. Therefore, she retired from her position with the federal government, which decreased her income by 70 percent. With monthly expenses of \$1,605, and debt payments of \$5,238, Applicant's monthly net remainder (MNR) was negative \$116. At the hearing, Applicant updated his PFS.<sup>2</sup> The new MNR is negative \$191. (GE 2, Tr. 29, 37, 52-60)

---

<sup>2</sup> Applicant testified he is no longer being charged \$95 per month by one of his creditors. But he has had additional medical expenses from his 2012 heart surgery. The copays and other expenses not covered by insurance amount to approximately \$2,000, which averages \$170 per month for the next year. (Tr. 54-56)

The 14 debts listed in the SOR total more than \$597,000. Most of that figure comprises two mortgage loans totaling \$515,000 on his current home. His lender has approved a short sale of his home, and his student loans are in forbearance. He has paid or resolved four debts; he has been paying on payment plans for three others. Applicant's delinquencies appear in his credit reports of April 2011 and September 2012. (GE 3, 4) The status of the SOR debts follows.

- **State A income taxes: \$16,556 alleged; \$13,351 currently owed (allegations 1.a, 1.b): PAYMENT PLAN.** As of January 2013, Applicant owes \$13,351 in unpaid income taxes to state A for tax years 1993 and 1994. He provided a letter from state A showing that he has an installment agreement of \$300 per month for six months, from October 2012 to March 2013. The agreement notes that a balloon payment of \$11,000 will then be due. However, Applicant was told the agreement will be re-evaluated at the end of the six-month period. Applicant provided evidence of his payments. (GE 2 at 247; AE F; Tr. 15-1619-20, 38-44, 64-67)
- **State A income taxes (allegation 1.c).** Applicant failed to file his income tax returns for the years 2005 through 2009 in state A. The SOR does not allege that he owes back taxes to state A for 2005 through 2009. Applicant testified that the 2005 through 2009 taxes were paid when the state applied his tax refunds to the debts. Applicant did not file his state tax returns because he knew he would not owe state income tax. He also attributed his failure to file his tax returns to poor judgment. He later filed his returns for those years.
- **State B income taxes (allegation 1.d) PAYMENT PLAN.** Applicant failed to file his income tax returns in state B for tax years 1999 through 2004. In 2009, state B located Applicant in state A, at which time he owed \$14,236 in taxes, interest, and penalties. Applicant agreed to a payment plan. He provided a letter from state B showing that he has been paying toward this debt since April 2010. He expects that past refunds due to him will also be applied to the debt. As of September 2012, he had paid \$3,800. (GE 2 at p. 248, 288; Tr. 14, 16-18)
- **Federal income taxes, 2008 – \$1,839 (allegation 1.e) PAID.** Applicant's 2008 account transcript from the Internal Revenue Service (IRS) website shows that he filed late, in August rather than April 2009. At that time, he owed \$4,374 in tax, plus \$967 in penalties and interest, for a total of \$5,347. An installment agreement was set up in September 2009. Further penalties and interest were added to the balance, and his refund was applied to the debt. On April 4, 2011, the IRS applied two tax refunds of \$3,078 and \$600 to his balance. Applicant then made four payments of \$600 between April and July 2011, and one \$600 payment in September. As of September 2011, Applicant's 2008 federal tax debt was paid. (AE A; Tr. 44-45)

- **Federal income taxes, 2009 – \$4,535 (allegation 1.f) PAID.** Applicant's account transcript from the IRS website shows that he filed late, in June 2010. At that time, he owed \$4,495 in tax, plus \$66 in penalties and interest, for a total of \$4,561. An installment agreement was set up in July 2010. Applicant made six payments of \$600 between October 2011 and February 2012. Further penalties and interest of \$442 were applied to the balance. The IRS applied two refunds totaling \$1,083 to his balance in September 2011 and March 2012. As of March 2012, Applicant's 2009 tax debt was paid. (AE B; Tr. 45-46)
- **Federal tax lien, Tax Years 1991, 1992, and 1993 - \$19,395 (allegation 1.g) RELEASED.** The IRS filed a tax lien in 1995 to recover unpaid federal taxes, interest, and penalties for tax years 1991, 1992, and 1993. In 2002, Applicant agreed to an installment plan of \$600 per month. He testified he made consistent payments. The balance was paid as of January or February 2012 when his refund resolved the remaining balance. Subsequently, he learned that the IRS had failed to issue a lien release. He requested verification of the release, and provided the Certificate of Release of Federal Tax Lien at the hearing. (GE 2 at p. 288-289; AE C; Tr. 20-22, 46)
- **Other, \$668 (allegation 1.h) PAID.** – In 2005, after moving from state B to state A, Applicant was retained on a temporary status by his employer, a federal agency. The agency continued to pay for Applicant's health insurance during this transition period, which cost approximately \$2,000. At the end of the temporary status period, he left the agency. At his 2011 security interview, he stated he had paid part of the debt, reducing it to \$1,281. Since then, he has paid the remainder. Applicant provided an email indicating that his debt is paid in full. (GE 2; AE D; Tr. 22-24, 46)
- **Student loans, \$53,054 (allegations 1.i. through 1.l.) IN FORBEARANCE.** Applicant used student loans to pay for his bachelor's and master's degrees. He needs 12 credits to complete his master's degree. In 2012, his sister passed away, and he was having health problems. In September 2012, the lender agreed to Applicant's request for forbearance. At the time the SOR was issued in September 2012, the loans were in forbearance, and payments were not due from Applicant. The loans were in forbearance until November 2012. However, Applicant had heart bypass surgery in November 2012. He recently requested a continuance of his forbearance status, and it was extended until about April 2013. He intends to re-start his master's program in March 2013, at which time his student loans will return to a deferred status. (GE 2 at p. 257; Tr. 24-28, 46-51)
- **Mortgage loans, \$515,000 (allegations 1.m, 1.n) ATTEMPTING SHORT SALE.** In 2006, Applicant had left state B, and was not yet employed in his profession in state A. He was working part-time as a car salesman and could not qualify for a mortgage loan. His wife was employed. In 2005, a lender approved

a loan of approximately \$540,000, even though his wife's income could not cover the loan. Applicant testified that the broker overstated Applicant's wife's income on some of the mortgage documents. Once Applicant obtained full-time work, he and his wife refinanced the loan and added his name. (Tr. 28-29)

Payments on Applicant's adjustable rate mortgage (ARM) increased significantly over time. He sought a loan modification, and also borrowed from savings and his retirement account, but still could not meet the mortgage payments. He worked with a realtor to sell the house. Several offers he received fell through. With the real estate market crash, the house value declined, and their property was "underwater," because the mortgage exceeded the property's market value. In about November 2011, he contacted the mortgage lender, seeking a short sale. The lender has approved short sales several times, usually granting him about two months to procure an acceptable short-sale offer. When the period expires, the realtor submits a request to continue the offer. On January 9, 2013, the lender granted the most recent permission for short sale under the Home Affordable Foreclosure Alternatives Program, with a sale price of \$219,895. The offer will expire on February 25, 2013. (GE 2; AE E; Tr. 30-34)

### **Policies**

Each security clearance decision must be a fair, commonsense determination based on all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.<sup>3</sup> Decisions must also reflect consideration of the "whole-person" factors listed in ¶ 2(a) of the guidelines. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guideline F.

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest<sup>4</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the decision to deny or revoke a security clearance for an applicant. Additionally, the Government must prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of

---

<sup>3</sup> Directive. 6.3.

<sup>4</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

persuasion.<sup>5</sup> A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness to protect the national interest as her or his own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.<sup>6</sup>

## **Analysis**

### **Guideline F (Financial Considerations)**

AG ¶18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds.

Over the past 20 years, Applicant accrued numerous delinquent debts. He also failed to file his tax returns for several years. As a result, he has had numerous federal and state tax delinquencies. The record supports application of 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. . . .

The financial considerations guideline also contains factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 20, especially the following:

- (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;

---

<sup>5</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>6</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

(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; and

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

Applicant's numerous delinquencies over the past 20 years, and his failure to file his income tax returns and meet his tax obligations, cast doubt on his trustworthiness and reliability. AG ¶ 20(a) does not apply.

AG ¶ 20(b) applies where an individual experiences events over which he had no control, and which affected his finances. As to Applicant's mortgage loan, it appears that the real estate broker inflated Applicant's wife income so that they would qualify for a substantial loan that their actual income could not support. In addition, the loan was an ARM, on which the interest rate and payments continued to increase over time. When the housing market crashed, their house lost significant value. In about January 2012, Applicant experienced another financial blow when his wife could not continue to work because of medical problems. Applicant acted reasonably by using savings and other sources to meet his mortgage payments, by seeking a loan modification and pursuing a short sale. AG 20(b) applies only in part, however, because a portion of Applicant's debts are tax-related, and they arose from his deliberate choice to avoid satisfying his legitimate tax obligations.

Since about 2010, Applicant has made significant efforts to resolve his debts. A substantial portion of the debts—student loans totaling \$53,000—were not due when the SOR was issued. Applicant was granted forbearance of his student loans in 2012 when he was experiencing health and family issues. They will be in a deferred status when he returns to complete his master's degree in March 2013. He paid his debt to a federal agency for health insurance. He has been working steadily with the lender to sell his house and resolve his mortgage loan. He has been making payments on his plan for his 1993 and 1994 state A taxes and has reduced the balance by about \$3,000. He has been paying on his state B tax debt since about April 2010. He paid his federal back taxes for 2008 and 2009. He made payments regularly to the IRS for unpaid taxes from the early 1990s, and the IRS has released its tax lien. The debts in the SOR are either in forbearance, being paid through a payment plan, or have been paid.

However, Applicant's ability to maintain his payment plans is unclear. His 2012 PFS does not include payments to state A or state B. Even without those payments, Applicant has a deficit each month of almost \$200. At his 2011 security interview, he said he planned to use his retirement funds to pay his debts. But his 2012 PFS does not list assets in a retirement fund. It is unclear if he depleted the account by paying his

debts, or has remaining funds in that account, or plans to use any such funds to resolve his remaining debts. Applicant receives only partial mitigation under AG ¶ 20(d).

### **Whole Person Analysis**

Under the whole person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the circumstances. An 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) 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant has made commendable efforts for almost three years to resolve his financial obligations. He no longer owes back taxes to the federal government. He has been paying on the remaining tax debts owed to states A and B. His student loans are not a financial issue at this time. It appears he was the victim of unfair lending practices when he received his current mortgage loan, and he has been working consistently with his lender to short-sell his house and resolve his mortgage loans.

However, Applicant failed to file both federal and state tax returns and pay his taxes for many years. He accrued significant interest and penalties. He did not start a payment plan with state B until the tax authorities were able to locate him in state A. The federal government issued a tax lien in 1995, and Applicant did not begin a payment plan until 2002. A significant portion of Applicant's federal and state tax obligations were paid only through seizure of his refunds. Applicant is currently operating at a deficit each month, and it is unclear how he will be able to maintain his payments to state A and state B. Serious doubts remain about Applicant's reliability and good judgment based on his failure for many years to fulfill his legitimate tax obligations to two states and the federal government.



Overall, the evidence fails to satisfy the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns raised by the financial considerations guideline.

**Formal Findings**

Paragraph 1, Guideline F	AGAINST APPLICANT
Subparagraphs 1.a – 1.g:	Against Applicant
Subparagraph 1.h – 1.n	For Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

---

RITA C. O'BRIEN  
Administrative Judge