



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



In the matter of: )  
)  
) ISCR Case No. 11-09584  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

February 13, 2012

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. Applicant has \$174,856 in unresolved delinquent debt, including \$143,000 in unpaid federal obligations and \$18,247 in unpaid state taxes. Furthermore, he willfully failed to file his federal and state income tax returns between 2005 and 2009. Clearance is denied.

**Statement of the Case**

Acting under the relevant Executive Order (EO) and DoD Directive,<sup>1</sup> on September 15, 2011, the Defense Office of Hearings and Appeals (the Agency) issued

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<sup>1</sup> This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this

a Statement of Reasons (SOR) explaining that it was not clearly consistent with the national interest to grant Applicant access to classified information. The SOR detailed the factual basis for the action under the security guideline known as Guideline F (financial considerations).

Applicant answered the SOR and requested a hearing. The case was assigned to me on November 18, 2011. The hearing proceeded as scheduled on December 15, 2011. Department Counsel offered Government's Exhibits (GE) 1 through 5, which were admitted without objection. I received the transcript on December 21, 2011. After the hearing, I left the record open to allow Applicant to submit information about his finances. He timely submitted 11 documents, which were admitted as Applicant's Exhibits (AE) A through L without objection.<sup>2</sup>

## **Procedural Matters**

### **SOR Amendments**

On December 8, 2011, Department Counsel moved to amend the SOR to add the following allegations:

h. You have failed to file federal income tax returns, as required, for tax years 2005 through, at least 2009.

i. You have failed to file state income tax returns, as required, for tax years 2005 through, at least 2009.

On December 9, 2011, Applicant responded to the allegations, admitting both. At hearing, without objection from Applicant, I granted Department Counsel's motion.<sup>3</sup> The motion to amend the SOR and Applicant's answers to the amendments are appended to the record as Hearing Exhibit 1.

## **Findings of Fact**

Applicant is a 61-year-old employee of a federal contractor. He has been in his current position as a senior project manager since June 2010. Twice divorced, he has an adult son from his first marriage. Applicant has experienced financial problems since 2000, which he attributes to three factors: the dissolution of a business partnership in 2000; the property settlements from his two divorces in 2003 and 2008, respectively; and the decline and subsequent failure of his real estate business between 2005 and 2010. Applicant claims that his income fluctuated significantly during the years he

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case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines contained in Enclosure 2 to the Directive.

<sup>2</sup> I have appended to the record as Hearing Exhibit (HE) 2 the Government's post-hearing submission memorandum.

<sup>3</sup> Tr. 10 – 11.

operated his real estate business. He testified that as his real estate business declined, he had to work part time with a national shipping company to have health insurance. When he was laid off from that job after six months, he worked odd jobs to make ends meet. Before accepting the position with his current employer, Applicant could not afford to live on his own and moved in with his sister. As a result of his financial difficulties, he accumulated debt that he could not pay.<sup>4</sup>

The SOR alleges that Applicant is indebted to six creditors for approximately \$181,342. The majority of his outstanding debt is for federal and state obligations. He owes \$123,000 in federal taxes (¶ 1.b.), \$20,631 to the Department of Education for a student loan (¶1.f.), and \$18,247 in unpaid state taxes (¶1.g.). The remaining SOR allegations, totaling \$19,464, relate to delinquent consumer debt accounts. To date he has paid one account, the \$314 delinquent credit card debt alleged in ¶ 1.d.<sup>5</sup>

Applicant admits that he neither filed nor paid his federal and state income taxes between 2005 and 2009. During this period, he was self-employed as a real estate agent/broker associated with a nationally recognized real estate firm. He knew that he was required to file and pay his taxes quarterly. Between 2005 and 2009, he did not, claiming that he did not have the money to pay the taxes owed. However, in 2005, he depleted his savings to place a \$100,000 down payment on a home, which was deeded in his second wife's name alone. In December 2010, he consulted a law firm to help him resolve his tax issues, but did not follow through because he could not afford the fees. In April 2011, the state to which Applicant owed income taxes executed a levy against his bank account, collecting \$2,300 toward his unpaid tax liability. Applicant claims to have made one payment toward his federal tax debt. In January 2012, he claims to have paid a \$334 federal tax bill for outstanding taxes from 2001. As evidence of his claim, Applicant provided a copy of the statement from the IRS, with a handwritten note indicating the bill had been paid.<sup>6</sup>

He also admits that he is delinquent on a student loan account that he obtained to pay for his son's college education. Applicant has not taken any action to resolve the debt. The consumer debts alleged in ¶¶ 1.a. and 1.c. represent the same account.<sup>7</sup> In July 2010, the creditor obtained a judgment against Applicant. Twice in 2011, the creditor executed levies against Applicant's bank account and collected \$3,100 towards the \$6,843 judgment. Applicant has not made any payments towards the delinquent credit card debt alleged in ¶ 1.e.<sup>8</sup>

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<sup>4</sup> Tr. 18-28; GE 1-2.

<sup>5</sup> Tr. 41, AE D.

<sup>6</sup> Tr. 30-33, 67-70 (Page 67 of the transcript mistakenly attributes Applicant's testimony to Department Counsel.); GE 2; AE C, I-J.

<sup>7</sup> When the same conduct is alleged more than once under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice).

<sup>8</sup> Tr. 34-40, 42-49; GE 3-5; AE G, I.

Applicant earns \$93,000 annually. Since starting his position in June 2010, his annual salary has increased approximately \$23,000. At hearing, Applicant did not appear to have a handle on his finances. He discussed delinquent debts not alleged in the SOR, but could not provide specifics on those accounts. He claims, for example, to have been making \$555 payments toward a delinquent debt for several months, but he could not identify the creditor or what the debt was for. In his post-hearing submissions, he submitted a settlement offer from a creditor, agreeing to accept 12 payments of \$555 to settle a \$25,000 debt, but no proof of payment. He also provided documentation showing three current credit card accounts. He does not use a budget, nor has he obtained any financial counseling.<sup>9</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.

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

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<sup>9</sup> Tr. 33, 50-57, 66; AE B, E – F, H.

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:

- (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 fraudulent filing of the same.

All three disqualifying conditions apply. Applicant experienced financial problems during the 2000s that caused him to incur debt that he could not pay, including over \$161,000 in federal and state government obligations. Furthermore, Applicant willfully failed to file his federal or state income taxes between 2005 and 2009.

None of the mitigating conditions available under AG ¶ 20<sup>10</sup> apply. Applicant’s financial problems are not entirely the result of events beyond his control. While his two

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<sup>10</sup> 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;

divorces and two failed businesses may have caused some financial difficulty, his poor financial decisions compounded the problem. His decision to deplete his sizable savings to purchase a house proved to be the most damaging. This decision was not reasonable or responsible given his circumstances. He spent his \$100,000 savings without regard for his upcoming tax obligations or his financial security in an industry where he was experiencing fluctuating income. Moreover, despite being gainfully employed since June 2010 and experiencing a significant increase in income over the past one and one-half years, he has voluntarily paid only one debt alleged in the SOR, the \$314.00 debt alleged in ¶ 1.d. He does not receive credit for the monies collected toward the judgment in ¶ 1.a. or the state tax debt alleged in ¶ 1.g. Payments of a debt through the involuntary enforcement of a creditor's levy is not the same as, or similar to, a good-faith initiation of repayment by the debtor as contemplated under AG ¶ 20(d).<sup>11</sup>

Applicant has not received financial counseling and there is no indication that his finances are under control. Evidence of his current credit card accounts does not negate or diminish record evidence that Applicant is unable to satisfy his current delinquent accounts.<sup>12</sup> Applicant's financial problems are recent, ongoing, and continue to cast doubt on his current reliability, trustworthiness, and good judgment.

I have reservations or doubts about Applicant's current reliability, trustworthiness, and ability to protect classified information. In reaching this conclusion, I have considered the whole-person concept described in AG ¶ 2(a). The majority of Applicant's delinquent debts remain unresolved. He has not taken any appreciable steps towards their resolution. Nor has he explained his inaction since securing a steady and stable income in June 2010. Applicant's willful failure to file or pay his income taxes is of concern. An applicant who refuses to comply with federal and state laws or otherwise refuses to honor his basic obligations towards the Government does

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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;

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;

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

20(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; and

20(f) The affluence resulted from a legal source of income.

<sup>11</sup> See ISCR Case No. 08-06058 at 6 (involuntary establishment of a creditor's garnishment is not considered a good-faith effort initiation of repayment under AG ¶ 20(d))

<sup>12</sup> See ISCR Case No. 99-0296 (App. Bd. April 18, 2000.)

not possess the strong character required of individuals granted access to classified information.<sup>13</sup> As such, this case is decided against Applicant.

### **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:

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|----------------------------|-------------------|
| Paragraph 1, Guideline F:  | AGAINST APPLICANT |
| Subparagraph 1.a – 1.b.:   | Against Applicant |
| Subparagraphs 1.c. – 1.d.: | For Applicant     |
| Subparagraphs 1.e – 1.i.:  | 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 a security clearance. Eligibility for access to classified information is denied.

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Nichole L. Noel  
Administrative Judge

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<sup>13</sup> See ISCR Case No. 98-0810 (App. Bd. June 8, 2000) (It is untenable for an applicant to refuse to accept his legal obligation to comply with federal laws and then insist that the government must grant him access to classified information.)