



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



In the matter of: )  
 )  
----- ) ISCR Case No. 11-09757  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

02/18/2014

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant has not mitigated the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) in an undated document. 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 DOD on September 1, 2006.

In a July 15, 2013, response to the SOR, Applicant admitted responsibility for the sole debt referenced in the SOR, regarding past-due federal taxes amounting to about \$19,060, which he asserts is related to a tax balance owed from a joint marital tax filing from 2003. (Answer to the SOR) He also requested a hearing before an administrative judge. The case was assigned to me on August 27, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 16, 2013, setting

the hearing for November 5, 2013. The hearing was convened as scheduled. The Government moved to amend the SOR with two additional allegations, regarding tax liens entered against Applicant in early 2003. Applicant did not object to the amendment, but denied knowledge of the allegations. The Government then offered Exhibits (GX) 1-11. They were accepted without objection. Applicant offered testimony and Exhibits (AX) A-C. The transcript of the proceeding was received on November 13, 2013. The record was then closed.

### **Findings of Fact**

Applicant is a 57-year-old research administrator who has worked for his current employer for 21 years. He has a bachelor's degree in chemistry and a master's degree in a related field. He has been married for over three decades and has four adult children. Applicant's wife is self-employed. He and his wife divide their monthly expenses, with Applicant primarily responsible for making their mortgage payments. (Tr. 32) They have maintained separate bank accounts since the 1990s. The couple does not discuss Applicant's wife income. (Tr. 50-52) Applicant's wife did not reveal the full extent of their tax debt to Applicant until three days before the hearing. (Tr. 52-53, 73)

Until 2002, Applicant and his wife had always filed their tax returns jointly. (Tr. 21, 24) His wife routinely collects their Internal Revenue Service (IRS) W-2 forms, then compiles their records for their tax preparer. Up to that time, Applicant's only tax issue was a tax debt created at some time around 1998. It appears to have resulted in two tax liens, in January 2003 and April 2003. They are noted in the amended SOR as being for \$28,256 and \$66,322, respectively. (Amendment to the SOR). The actual tax year of their creation is unclear. (Tr. 65) When Applicant later learned that these figures were at issue, he believed them to be erroneous. (Tr. 75-76) It appears some of Applicant's subsequent tax refunds were applied toward these liens. (Tr. 48-50, 62-63, 67) It is unclear whether the liens were ever satisfied in this manner. In 2010 or 2011, Applicant changed his withholding so that he no longer had a refund due that could be applied to any outstanding balances. (Tr. 61, 65-66) Applicant genuinely has little knowledge of the couple's tax situation. (Tr. 66)

In 2002, Applicant and his wife filed their tax returns separately. (Ex. AX C) In 2003, Applicant suspected that his wife had some business-related financial issues. (Tr. 22) Applicant's wife does not discuss her business with Applicant; he makes no inquiries regarding her business. When he suspected there was a tax issue in 2003, he "wanted to clear [himself] from her tax debts and keep that separate..." (Tr. 23) He knew that his employer regularly withheld the appropriate amount for his tax obligations based on his salary, which generally left him with a modest refund. However, he complied when his wife requested that the two file jointly that year. The amount of money withheld by his employer for his personal income was reflected on their tax filing (\$5,271) and noted under the line for the couple's total tax payments made. After that line item, the return showed the couple owed an additional sum of \$11,456 plus a penalty. (Amendment to the SOR, attachment) There is no evidence this sum was timely paid.

Subsequently, after the couple resumed filing separately, Applicant's wife did not timely file his individual tax returns for 2005, 2006, and 2007. This problem was not rectified until 2007. (Tr. 45) Applicant is unaware of what led to this delay. Applicant has filed separately since 2003.

Unbeknownst to Applicant, joining his wife in filing for tax year 2003 eventually led to a tax debt of over \$60,000 being noted on his credit report. He believes his wife was simply too embarrassed at the time to disclose to him her tax and financial situation. (Tr. 24) He believes he first became aware that a debt was existent after he completed a 2006 security clearance application. (Tr. 26, 38) At one point in about 2007, Applicant believed the debt balance was about \$20,000. (Tr. 27) The sum was too great for him to satisfy in order to clear his financial record for purposes of maintaining a security clearance. He tried unsuccessfully to discuss the matter with his wife on multiple occasions. (Tr. 38-39) Applicant consulted a tax counselor, but was informed there was little the counselor could do without input from Applicant's wife regarding what the issues were. Applicant tried to seek help from the IRS by phone in 2007, but it was unproductive for similar reasons. He then started "keeping track of the credit reports and looking at those. And [he] became aware that there was some kind of debt . . . for state and federal. And [his wife] told [him] that she cleared it up. There's no state [debt] now. I didn't know what to believe. And quite frankly, I thought those [2003 lien] entries [on] the credit report were wrong." (Tr. 26)

From 2007 until July 2013, Applicant did nothing to address the debt, preferring to leave "it in [his wife's] hands." (Tr. 55) He did so as a matter of trust. Nearly five years passed before any documented efforts were exerted by the couple to address their delinquent debt. In 2012, Applicant's wife started working with the IRS on their financial issues and in 2013, Applicant applied for, but was denied a loan to cover the debt due to insufficient collateral. (Tr. 35) He concedes this was his "first attempt . . . to try to resolve the delinquent tax obligation." (Tr. 36) He attributed his limited action, in part, to "never really [knowing] what the true tax debt was. And even . . . when [he] tried this summer, [he] did not know." (Tr. 36) He was unaware that the debt had reached up to about \$74,000. A second loan attempt was also said to have been rebuffed. (Tr. 55) Applicant's wife only recently began discussing the tax debt situation with Applicant a few days before the hearing. (Tr. 52-53) Applicant stated: "[U]ntil recently, I didn't know the true . . . amount of debt and how much she had paid on it. I don't know what the balances are that she owes. [What] I do know is that she's told me . . . she's working with some attorney to try to work the tax debt out." (Tr. 25).

Correspondence from the IRS to Applicant's wife shows a \$74,307.50 federal tax debt as of February 9, 2012. In March 2012, she entered into a repayment plan under which she would pay the IRS \$700 a month until the balance is satisfied. This balance appears to be for taxes owed between 2002 and 2012. (Tr. 72) That same correspondence shows that she has paid \$1,000 a month from August 28, 2012, through April 28, 2013. (AX B) Additional documentation (AX A) shows those \$1,000 payments continued to at least October 2013. The documentation is addressed solely to Applicant's wife. With regard to the joint 2003 IRS debt, Applicant denies that he owes

taxes for the year at issue, noting that his regular withholding by his long-term employer satisfied his own tax obligation for the year. However, he understands that when he filed jointly, he became jointly responsible for his wife's tax obligation, which he views as a "household debt" for which he is "responsible for . . . at least indirectly." (Tr. 33-34)

Applicant has not received financial counseling because he feels "reasonably confident with [his] own finances . . . ." (Tr. 67) Rather, he believes that his wife is "the one who needs the counseling." (Tr. 67) However, he concedes that he and his wife will jointly need to "take care" of their financial problems if his wife cannot adequately address them. (Tr. 69-70) He concluded by stating:

I wasn't really completely clear on how much tax that there was until Thursday night of last week. I have no documentation to support, nothing to give me an idea. So for me to go after and try to resolve that tax debt, I need more information. . . . I have not been negligent in trying to resolve this tax debt because I have not simply been aware. And yes, I've been ignorant about the amount of it and the extent of it, yes. And you could fault me for not trying to go around and get that information from other sources. . . . But . . . for me to go out and get a loan to resolve her, the debt which we collectively own, but she has an awareness of, and she does not participate with me in getting this . . . . (Tr. 73-74. *Compare* Tr. 52-53, Applicant stated that he learned the amount of taxes at issue three nights before the hearing)

## **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 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, 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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. 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**

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant has significant federal tax debt. This is sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate the finance-related security concerns in this case:

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;

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;

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;

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

AG ¶ 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.

Applicant incurred debts in the 1990s and in 2003 which became delinquent. The circumstances regarding how these tax liabilities were created remain unclear. He seems to attribute them primarily to his wife's business, of which he knows little and regarding which he and his wife do not discuss related financial matters. Despite his lack of knowledge about his wife's business, and his sense in 2003 that it might have financial issues, he filed his federal tax returns jointly with his wife that year. When he discovered they may have incurred a tax liability that was noted on his credit report, his efforts to address the issue were less than diligent. Rather, he continued to rely on his wife and marital trust to rectify the situation. What, if anything, Applicant's wife did to resolve their joint tax issues between 2003 and 2011 is unclear. In 2012, it appears she entered into a tax repayment plan covering tax issues from 2002 to 2012. Related documentary evidence, however, fails to identify whether her efforts subsume Applicant's tax liability, satisfy any tax balance he may have from his 1990s-era debt, or break down the debt owed in such a way to demonstrate that the tax liability reflected in the Government's documents regarding Applicant are being addressed.

Moreover, Applicant has not received financial counseling. This is because he feels competent to handle his own finances. However, he continues to leave much of the control of the family finances to his wife, who he specifically states is in need of such counseling. Finally, although Applicant testified that at one point he thought the amount of debt noted was erroneous, there is no documentary evidence he has attempted to formally dispute any of the balances alleged. Given these considerations, I find that none of the mitigating conditions available apply.

### **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). 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 my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 57-year-old research administrator who has worked for his current employer for 21 years. He has an advanced degree in science. He has been married for over 30 years and raised four adult children. Applicant's wife is self-employed and does not discuss her business or finances with Applicant; she also compiles their respective tax files for professional preparation. He leaves tax issues to his wife. Consequently, Applicant knows little about their financial issues. Three days before the hearing, she told him what their tax situation was and provided him with evidence that she had entered into a debt repayment plan with the IRS in 2012. Given Applicant's own comments, her explanation was less than thorough and left Applicant at a disadvantage at the hearing.

Repeatedly, Applicant stated that he deferred to his wife with regards to their taxes and relied on her to resolve any related issues as a matter of trust. Trust is essential in a marriage. However, candor amongst spouses with regard to issues such as finances is equally essential when one or both of the spouses maintain a security clearance. One's financial situation is a significant issue in these matters, as Applicant surely knew when he received the SOR, if not before.

Here, Applicant presented his case handicapped by his lack of knowledge regarding both his own, and his household's, finances. While Applicant stresses that his lack of knowledge about the debt at issue is based not on negligence, but ignorance, the distinction is moot. Much like his continued reliance on his wife to handle family finances and tax preparation, especially in light of his own testimony that she is in need of financial counseling, it raises a basic question of judgment. Under the AG, evidence indicating a lack of judgment can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Given current dynamics in Applicant's household regarding finances and his less than diligent efforts to address the debt at issue, such questions were legitimately raised and remain unmitigated.

### **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.c:

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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Arthur E. Marshall, Jr.  
Administrative Judge