



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 11-12335
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

May 23, 2014

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**DECISION**  
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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on June 8, 2011. (Government Exhibit 4.) On December 19, 2013, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. On March 19, 2014, the Government submitted an Amendment to the Statement of Reasons to Applicant detailing additional concerns under Guideline E (Personal Conduct). The actions were 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 Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on February 14, 2014, (Answer) and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 19, 2014. This case was assigned to me on March 24, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 2, 2014. Applicant submitted an Answer to the Amendment to the SOR on April 8, 2014. I convened the hearing as scheduled on April 22, 2014. The Government offered

Government Exhibits 1 through 8, which were admitted without objection. Applicant submitted Applicant Exhibits A and B, which were also admitted without objection, and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on April 30, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant is 43 and single. He is employed by a defense contractor and seeks to retain a security clearance in connection with his employment.

#### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. He admitted the allegations in the SOR under this Paragraph. Those admissions are findings of fact. He also submitted additional information to support his request for a security clearance.

Applicant freely admits that he did not file his Federal income tax returns in a timely manner from 2000 through 2011. He also freely admits that he did not pay his Federal taxes in a timely manner for the tax years 2000 through 2006.<sup>1</sup> As a result of that failure the Government filed tax liens against Applicant in the approximate amount of \$36,636. (Government Exhibit 4.)

Applicant admits that he was seriously delinquent in taking care of his tax liabilities for several years. Most of this was due simply to his procrastination. From 2000 to 2006 he was involved in a work-related accident, which kept him out of work for a year. Afterwards he was attacked by a youth gang, seriously injured, and out of work for another six months. Eventually, he lost his job and had to take a large distribution from his 401K retirement account. He did not have the funds to pay the severe tax liability connected to that distribution. (Answer at 3-4; Government Exhibit 2 at 2; Tr. 32-34.)

He states, "I did not file income tax returns for years 2007 to 2011 because I did not have steady, regular employment, and therefore had no financial means to pay any taxes due." (Government Exhibit 2 at 2.) He moved to another state in 2008 with his brother. After his move in 2008 he worked a series of part-time jobs until May 2011 when he began working for his current employer. (Government Exhibit 1 at Section 13; Tr. 47-48.)

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<sup>1</sup>His failure to file tax returns, and failure to pay his taxes, will also be considered under Paragraph 2, below.

Applicant testified about how he began taking care of his tax liabilities:

Upon securing my job . . . , six months into the start of my current position I contacted the IRS, started to make payments. Then I contacted an out of season tax preparer and he informed me about the offer in compromise. So we went through the process of collecting all the years and after we collected the years then I was able to put together an offer in compromise, submit that package to the IRS and they accepted. (Tr. 28-29.)<sup>2</sup>

Applicant submitted his Offer in Compromise on November 27, 2012. It was in the amount of \$13,200. The offer consisted of a \$1,200 down payment and payment of \$500 a month for 24 months. The offer was accepted on December 4, 2012. (Answer at 6-13; Tr. 29, 41.) Applicant submitted evidence showing that he had paid \$6,700 towards his offer as of the date of the hearing. (Applicant Exhibit B; Tr. 29-30, 43-44.)<sup>3</sup> His debt will be paid in April 2015. (Tr. 31.)

Applicant's current financial situation is stable, as shown by his Personal Financial Statement of December 27, 2012. He is able to pay his normal monthly debts, as well as the tax debts. (Government Exhibit 3 at 5.) The most recent credit report in the record, dated April 21, 2014, indicates that the Federal tax debt is his only indebtedness. (Government Exhibit 8.)<sup>4</sup>

## **Paragraph 2 (Guideline E - Personal Conduct)**

Applicant admits that he used to frequent prostitutes between approximately 2002 and 2005. This conduct resulted in his being detained by the police at least twice for offenses relating to soliciting a sex act. He states that the last time he solicited a prostitute for a sex act was in 2005, and he no longer engages in such conduct. (Government Exhibit 8; Tr. 37-39.)

## **Mitigation**

Applicant Exhibit A is a letter from the person who hired Applicant at his current employer. This person has knowledge of the issues of this case. He states, "Since I have known [Applicant], he has presented to me a very dedicated and honest person, meeting every commitment placed on him." The manager further states that Applicant is

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<sup>2</sup>Applicant has filed all of his past-due Federal tax returns, and is current on his Federal and current state of residence returns. (Tr. 27-28.)

<sup>3</sup>Applicant has been late on two payments to the IRS, but is working to resolve that issue. (Answer at 14-15; Tr. 30-31, 42-44.)

<sup>4</sup>Applicant may owe back taxes in his original state of residence for the years 2000 through 2008. He does not know what he may, or may not, owe. Applicant stated that once he completes paying his Federal back taxes he will work with his original state to determine and resolve any tax indebtedness. (Tr. 26-27.) The SOR contains no allegation concerning any possible state tax debt, nor does the record contain any evidence of such a debt.

a “valued asset to my team.” The letter writer is a retired military officer, who takes seriously the responsibility of holding a security clearance. He completes his letter by saying, “I completely trust and believe that [Applicant] has the correct character and honesty to hold a security clearance. I wholly endorse his being granted a clearance.”

## **Policies**

Security clearance decisions are not made in a vacuum. 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 as appropriate 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 AG ¶ 2 describing the adjudicative process. The administrative judge’s over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any 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 avoided drawing 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, “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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a

certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination 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**

### **Paragraph 1 (Guideline F, Financial Considerations)**

The security concern relating to the guideline 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), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Finally, AG ¶ 19(g) states a “failure to file Federal, state, or local income tax returns as required or fraudulent filing of the same” also may raise security concerns. Applicant, by his own admission, and supported by the documentary evidence, failed to file Federal tax returns for a substantial period of time and has a large Federal tax debt. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions may be mitigated where “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.”

The above mitigating condition applies to Applicant. It is obvious that Applicant intentionally failed to file his Federal tax returns for about ten years. While several incidents happened along the way, which affected his ability to file his taxes to some extent, in general the fault was simply procrastination that became a habit. However, to his credit, once Applicant was gainfully employed full-time with his current employer he went to the IRS voluntarily and worked with a tax professional to resolve his tax debts. His Offer in Compromise was accepted more than a year ago, and he has paid a

substantial portion of the agreed figure. Based on the particular facts of this case, I find that he has also “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d).

Applicant has not received financial counselling. However, as found above, his current financial situation is stable. I find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

This is not a case where Applicant attempted to resolve his tax debt on the eve of the hearing, asking DOHA to trust that he will fulfill his responsibilities. Rather, a year before the SOR was issued Applicant was working with the IRS to resolve his tax debt, and as of the date of the hearing had a sixteen-month track record of successful payments.

The DOHA Appeal Board has stated, “A security clearance adjudication is not a proceeding aimed at collecting an applicant’s personal debts. Rather, it is a proceeding aimed at evaluating an applicant’s judgment, reliability, and trustworthiness.”<sup>5</sup> As the DOHA Appeal Board has also said, “An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has taken significant actions to implement that plan.”<sup>6</sup> The stated mitigating conditions apply to the facts of this case. Paragraph 1 is found for Applicant.

## **Paragraph 2 (Guideline E - Personal Conduct)**

The security concern related to the guideline for Personal Conduct is set forth in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following disqualifying conditions may apply to Applicant’s conduct under AG ¶ 16:

(e) personal conduct, or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person’s personal, professional, or community standing; and

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<sup>5</sup>ISCR Case No. 07-09966 at 3 (App. Bd. June 27, 2008).

<sup>6</sup>ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

(g) association with persons involved in criminal activity.

I have considered the mitigating conditions under AG ¶ 17 and find the following to be applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress, and:

(g) association with persons involved in criminal activity has ceased.

Applicant freely admits that his conduct with prostitutes was extremely foolish and showed exceptionally poor judgment. The last time he engaged in such conduct was nine years ago. He credibly stated that he no longer frequents prostitutes and has no interest in doing so in the future.

The discussion under Paragraph 1, above, applies here as well. Paragraph 2 is also found for Applicant.

### **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 the relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guidelines F, and E, above, applies here as well. While Applicant had financial problems in the past, they are being resolved. He evinces a credible intent not to allow his taxes to reach this point again. He has completely resolved the Guideline E concern.

Under AG ¶ 2(a)(2), I have considered the facts of Applicant's tax history, as well as his conduct regarding prostitutes. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a low likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial situation. Accordingly, the evidence supports granting his request for a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 1.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a through 2.c:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS  
Administrative Judge