



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-14262
	)	
Applicant for Security Clearance	)	

**Appearances**

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

11/27/2013

**Decision**

WHITE, David M., Administrative Judge:

Applicant has more than \$93,600 in unresolved delinquent debts, accrued over the past seven years, including more than \$92,000 in federal and state tax debt. He demonstrated no payments toward addressing the debts, and offered no evidence of an effective plan to resolve them or of changes in the way he manages his finances to prevent continued financial irresponsibility. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SF 86) on July 28, 2011.<sup>1</sup> On April 17, 2013, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial

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<sup>1</sup>Item 5.

Considerations).<sup>2</sup> 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 effective in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on May 22, 2013, and requested that his case be decided by an administrative judge on the written record without a hearing.<sup>3</sup> Department Counsel submitted the Government's written case on September 9, 2013. A complete copy of the File of Relevant Material (FORM)<sup>4</sup> was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on September 24, 2013. He submitted no material in refutation, extenuation, or mitigation within the 30-day period thereafter, made no objection to consideration of any contents of the FORM, and did not request additional time to respond. I received the case assignment on November 21, 2013.

### **Findings of Fact**

Applicant is 64 years old, and has held a security clearance since 2001 when he was a DoD civilian employee. He left that job to join his present employer in 2006, and his SF 86 reflects continuous employment since 1988. He enlisted in the Air Force in 1969, and was honorably discharged from active duty in 1976. He married for the second time in 2009, and has two adult children.<sup>5</sup>

In his response to the SOR, Applicant denied the allegations in SOR ¶¶ 1.a and 1.b, and admitted the truth of the allegations concerning his tax debts set forth in SOR ¶¶ 1.c through 1.e, with some explanations.<sup>6</sup> Applicant's admissions, including those made in response to DOHA interrogatories,<sup>7</sup> are incorporated into the following findings of fact.

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<sup>2</sup>Item 1.

<sup>3</sup>Item 4.

<sup>4</sup>The Government submitted nine Items in support of the SOR allegations.

<sup>5</sup>Items 5 and 9.

<sup>6</sup>Item 4.

<sup>7</sup>Item 6.

SOR ¶ 1.a: Applicant's two record credit bureau reports (CBRs) reflect an unsatisfied judgment in the amount of \$1,599 that was entered against him in his county's district court during February 2006. The plaintiff was his landlord, and the amount represents a little more than two months of his rent at the time. He submitted no documentation concerning this judgment, but provided an account record covering the period he rented the apartment in question that shows a zero balance due. The record also reflects numerous late payment charges, return check fees, legal/attorney charges and court costs. The judgment debt remains unresolved.<sup>8</sup>

SOR ¶ 1.b: Applicant's record CBRs list a \$50 medical debt that was placed for collection in 2007. Applicant claimed no knowledge of the debt, but documented no effort to investigate or resolve it since it was brought to his attention during his security interview on August 19, 2011. The debt remains unresolved.<sup>9</sup>

SOR ¶ 1.c: Applicant deliberately failed to file federal income tax returns for tax years 2006 through at least 2011. During his August 2011 security interview, he said that he did not file state or federal returns during that period because he felt those governments had taken enough of his income from his biweekly earnings. In his interrogatory response he provided documentation showing delinquent balances owed to the Internal Revenue Service (IRS) of \$8,428 for 2007; \$7,850 for 2008; \$8,427 for 2009; \$16,828 for 2010; and \$12,322 for 2011. The total federal tax debt is \$53,854. Applicant claimed, without documentation, that this debt is being resolved through an IRS repayment installation agreement in his wife's name. He provided a copy of the February 20, 2013 IRS Notice to her, reflecting an \$11,792 balance due for unpaid 2007 taxes and an agreed monthly payment of \$1,115 due on February 28, 2013, with his interrogatory response. With his response to the SOR, he included a copy of the May 15, 2013 IRS Notice to her acknowledging receipt of an \$850 payment on April 28, 2013, toward her 2007 taxes and showing a balance due of \$11,077. Applicant and his wife were not married until 2009. Applicant provided no other documentation indicating any resolution of his outstanding federal income tax debt. Although not alleged in the SOR, his CBRs show several other tax liens filed against him during the 1990s.<sup>10</sup>

SOR ¶¶ 1.d and 1.e: As noted, Applicant also failed to file his state income tax returns after 2005. On January 2, 2013, he entered a payment plan agreement with the state to repay \$31,952 of delinquent taxes at the rate of \$1,209 per month. (SOR ¶ 1.d.) He and his wife also entered a payment plan agreement with the state on that date to repay \$6,225 in delinquent taxes at the rate of \$209 per month. (SOR ¶ 1.e.)<sup>11</sup> In his response to the SOR, Applicant claimed that they had renegotiated the monthly

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<sup>8</sup>Items 4, 6, 7, and 8.

<sup>9</sup>Items 4, 6, 7, and 8.

<sup>10</sup>Items 4, 6, 7, and 8.

<sup>11</sup>Note that the SOR incorrectly alleged the Case No. in SOR ¶ 1.e. I modified the SOR to show the correct Case No., rather than the number that was apparently mistakenly copied from SOR ¶ 1.d.

payment amounts and were paying \$933 and \$202 per month to the state, but provided no evidence to corroborate that any payments had been made under either agreement. These debts remain unresolved.<sup>12</sup>

Applicant submitted a personal financial statement reflecting a \$160 monthly surplus after his and his wife's incomes are used to pay \$4,719 in monthly living expenses and \$2,533 toward the tax repayment agreements discussed above. He said that they have no assets, savings, or other net worth.<sup>13</sup> He submitted no evidence of financial counseling or other efforts to establish financial responsibility. He provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references describing his judgment, trustworthiness, integrity, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

## **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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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.

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<sup>12</sup>Items 4 and 6.

<sup>13</sup>Item 6.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[a]ny 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.”

A person applying for access to classified information seeks to enter 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 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.

## Analysis

### Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.<sup>14</sup>

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<sup>14</sup>Department Counsel also correctly asserted that the evidence supported concerns under AG ¶ 19(g) that covers failure to file required income tax returns. However, the SOR did not allege Applicant’s failure to file income tax returns as an issue separate from his resulting indebtedness for state and federal taxes.

Applicant's SOR-listed delinquent debts arose over the past seven years, and remain substantially unresolved. His financial problems were not shown to have arisen from incidents beyond his control, but rather resulted from his choices to ignore debts and ignore his state and federal income tax obligations. He provided insufficient evidence of available income, or other assets, from which to satisfy these debts or avoid incurring additional delinquencies in the next several years while paying taxes as they come due. This evidence raises substantial security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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's SOR-listed delinquent debts arose over the past seven years, and more than \$93,600 in such debt remains unresolved to date. These financial problems are recent, ongoing, and arose under circumstances that involved Applicant's voluntary choices. He demonstrated neither the capacity, nor a plan, to avoid incurring additional delinquent debt while meeting his tax obligations. The ongoing nature of these debts precludes a finding of unlikely recurrence. Applicant failed to show that his reliability, trustworthiness, and judgment have improved, and failed to take action to resolve several of these debts until very recently, even though their security implications were apparent to him since at least August 2011. The evidence does not establish mitigation under MC 20(a).

Applicant offered insufficient evidence to support mitigation under MC 20(b). He has been fully employed throughout the period in question, and deliberately failed to file returns or pay income taxes for at least six years resulting in more than \$92,000 of his admitted delinquent debt. He offered no evidence of payments under his state tax repayment agreements, and documented only one \$850 payment toward his wife's 2007 federal income tax delinquency that arose before their marriage. Even if being made as claimed, these payments have not yet established a pattern of responsibility or achieved sufficient debt reduction to mitigate security concerns.

Applicant offered no evidence of financial counseling, and did not establish clear indications that the problem is being resolved or is under control. He provided insufficient evidence to establish that his current financial situation has stabilized, or that he has accumulated any net worth to be able to pay future taxes or to cushion possible unanticipated setbacks in the future. MC 20(c) and 20(d) are therefore inapplicable.

Applicant failed to provide proof to substantiate a basis to dispute the legitimacy of any of the debts alleged in the SOR, for which the record evidence provides substantial evidence. Accordingly, he failed to mitigate those allegations under MC 20(e).

### **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):

- (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.

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 pertinent facts and circumstances surrounding this case. Applicant is an accountable adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His financial irresponsibility spans many years, and continues at present. It involves delinquent debts totaling more than \$93,600, most of which stems from six years during which he deliberately chose not to file required

income tax returns or pay the associated taxes. He did not demonstrate that these debts arose under circumstances that were beyond his control, or that he initiated any budgetary changes to prevent additional financial difficulties if he fully pays the taxes he owes in subsequent years. He offered no evidence of financial counseling, rehabilitation, or responsible conduct in other areas of his life. The potential for pressure, coercion, and duress remains undiminished.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial considerations.

### **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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE  
Administrative Judge