



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-14791
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

05/27/2014

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**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. He failed to file in a timely manner his federal and state income tax returns for tax years 2007 through 2011. He owes more than \$30,000 in unpaid taxes. Additionally, he is responsible for a judgment, charged-off accounts, collection accounts, and a past-due account which remain unpaid. Between 2005 and 2011, he was charged with and convicted of numerous motor-vehicle-related crimes. He has failed to mitigate the financial considerations, criminal conduct, and personal conduct security concerns. Clearance is denied.

**History of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on December 13, 2014, the DoD issued a Statement of Reasons (SOR) detailing security concerns. DoD

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<sup>1</sup> Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*

adjudicators could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On January 8, 2014, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated February 24, 2014. The FORM contained 24 attachments. In March 2014, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. In an undated response received prior to April 29, 2014, Applicant responded to the FORM and submitted five documents. Department Counsel did not object to the documents, which were marked and admitted into the record as Exhibits (Ex.) A – E. On May 15, 2014, I was assigned the case.

### **Findings of Fact**

In Applicant's Answer to the SOR, he neither admitted nor denied the allegations alleged in SOR 3.a. He denied two debts (SOR 1.f, \$722 and SOR 1.g, \$347) and admitted the remaining allegations. The judgment, collection accounts, charged-off accounts, and past-due accounts range from approximately \$250 to more than \$6,500. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 29-year-old contracts representative who has worked for a defense contractor since June 2010 and seeks to obtain a security clearance. He is not married and has no children. In a September 2011 Personal Subject Interview (PSI), he stated he had forgotten to file his taxes in 2008. He also failed to have tax withheld from his wages. He asserted he had arranged a repayment plan with the Internal Revenue Service (IRS) that was to begin in September 2011. He failed to document any agreement or repayment on his delinquent taxes. In April 2013, he stated that payment arrangements had not been made with the IRS. (Item 6) He answered written financial interrogatories in January 2013, April 2013, and July 2013. (Items 5, 6, 7)

In Applicant's SOR response, he admitted failing to file his federal and state taxes for tax years 2007 through 2011. (Item 3) In response to the FORM, Applicant submitted: a copy of his 2009 federal income tax return dated August 8, 2013 (Ex. B); his 2010 federal income tax return dated July 29, 2013 (Ex. C); and his 2011 federal income tax return dated July 29, 2013 (Ex. D). No copies of federal income tax returns for tax years 2007 or 2008 were received. No copies of state income tax returns were received. The copies of the three federal income tax returns submitted are not signed by Applicant and he never asserted those returns were filed. The three returns indicated that \$25,633 in federal tax is owed for those three years. There is no indication how much is owed for penalties and late fees related to these three tax years. The returns indicate that no tax had been withheld by his employer and paid into the IRS for any of

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(January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

those tax years. It is unknown how much federal tax is owed for tax years 2007 and 2008. He owes at least \$5,000 in state income tax.

In response to the FORM, Applicant submitted a copy of a Form 2159, Payroll Deduction Agreement, signed by the payroll supervisor on February 14, 2014. Applicant did not sign the copy of the form submitted. He provided no documentation showing actual deductions from his pay had been made in accord with the form.

In July 2013, Applicant asserted he made an agreement with the IRS to make \$800 monthly payments. (Item 5) Payment was not to start until he filed his tax returns. He has failed to document any payment to the IRS or to the state income tax authority.

Applicant has 17 delinquent debts, including one judgment, which have been delinquent since 2007 and total more than \$43,000. His five student loans, which total more than \$22,000, have been in default since October 2007.

Applicant admits all the criminal conduct alleged in the SOR. He states he completed a 26-week program, his three years of probation have ended, and his driver's license is active. In March 2005, he was charged with driving for driving 86 miles per hour (m.p.h.) in a 65 m.p.h. zone. The reckless driving charge was amended to doing 79 m.p.h. in a 65 m.p.h. zone, a traffic infraction. (Ex. 24)

In February 2006, Applicant was charged with Driving a Motor Vehicle While License Suspended. (Item 21, 22) He received probation after being found guilty of the offense. In January 2008, he was charged with and later convicted of Driving/Attempting to Drive Vehicle While Under the Influence Per Se. (Items 18, 19, and 20) He received probation and was ordered to complete the shock trauma program. In February 2008, he was charged with Driving/Attempting to Drive Motor Vehicle on Highway without Required License and Authorization. (Items 7 and 17) The charge was later *nolle prossed*. In his September 2011 PSI, he asserted he no longer drinks and drives. (Ex. 7)

In December 2008, Applicant was again charged with Driving a Motor Vehicle While License Suspended. (Items 7, 14, 15, and 16) After being convicted of the charge, he was sentenced to one year in jail with 357 days suspended, fined \$1,007, and placed on supervised probation. In July 2009, he was charged with Driving a Motor Vehicle on Highway on Suspended License and Privilege. (Items 7 and 13) Following his conviction on this charge, he was sentenced to 90 days in jail, which was suspended. He was also fined \$1,000 and placed on 18 months supervised probation.

In February 2010, Applicant was charged with, and later found guilty of, Violation of Probation. He was sentenced to nine months in jail with seven months and thirteen days suspended. He was placed on three years of supervised probation. In May 2011, he was charged with Driving on a Suspended License. After being found guilty, he was fined \$560. Following his 2010 conviction, he went to jail for 45 days. He never contacted his DoD contractor employer to tell them he was in jail and was terminated

from his job for job abandonment. He had been employed by the DoD contractor as a contracts administrator from June 2004 until March 2010. (Item 7) From April 2010 to June 2010, he was unemployed. In June 2010, he started his current employment.

## **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 must be considered 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 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 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 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 Executive Order (EO) 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. He failed to file and to pay his state and federal income tax for tax years 2007 through 2011, in a timely manner. He has an unpaid judgment, numerous charged-off and collection accounts, and is past due on another account. He owes more than \$25,000 in federal income tax for tax years 2009 through 2011 and owes the state more than \$5,000. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” and ¶ 19(g), “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same,” apply.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

(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 meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple. He produced no evidence of circumstances beyond his control other than his two months of unemployment in 2010. He has not paid any of his debts, even the debt of less than \$250. He has not acted responsibly in addressing his debts. He provided no evidence he has received credit or financial counseling. He has not demonstrated that his financial problems are under control or that he has a plan to bring them under control. He has not made a good-faith effort to satisfy his debts.

Applicant provided unsigned copies of his 2009, 2010, and 2011 federal income tax returns. He provided no copies of tax returns for tax years 2007 and 2008, which he admitted he had not filed. Nor did he provide copies of any state income tax filings. He said he did not file his tax returns because he forgot. His tax returns also show he had no taxes withheld from his wages when working for a DoD contractor. He provided a copy of a payroll deduction agreement. I place little mitigating weight on this unsigned agreement. He failed to show that any money had been paid to the IRS. In 2011, he stated he had an agreement to repay the IRS \$800 monthly, but provided no documentation that payment was ever made to the IRS. In 2013, he stated there was no repayment agreement with the IRS. Applicant did not sign the copy of the payroll deduction agreement he presented. I conclude Guideline F against Applicant.

### **Guideline J, Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to criminal conduct, "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations." AG ¶ 31(a) "a single serious crime or multiple lesser offenses" applies.

Starting in 2005, Applicant was charged with criminal conduct related to numerous motor vehicle incidents. In 2008, he was charged and convicted twice for driving or attempting to drive while under the influence of alcohol. He was charged and found guilty four times of driving while his license was suspended or driving without a driver's license. He was also charged with and found guilty of probation violation. Having been found guilty of numerous crimes, he was placed on probation three times. His most recent probation included three years of supervised probation following an earlier probation violation. He was also sentenced on three occasions to incarceration. He was sentenced to two years in jail with all but 51 days suspended. He also paid numerous fines and court costs.

Security concerns raised by criminal conduct may be mitigated under AG ¶ 32(c), if "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." Between 2005 and 2011, Applicant was charged and convicted eight times with various motor-vehicle-related offenses. The criminal conduct was not minor or infrequent. There is nothing in the record showing the charges resulted from unique circumstances that are unlikely to recur.

The passage of time since his last charge and conviction is a factor to be considered. However, the passage of time, in and of itself, is not the controlling factor. The nature and relevant circumstances surrounding the conduct must also be considered. In addition to the two convictions for driving under the influence of alcohol there was the probation violation, and four charges of driving without a driver's license or with a suspended driver's license. This repeated conduct of driving when he knew he should not be driving shows a severe lack of judgment.

There are no bright line rules for determining when conduct has been mitigated by the passage of time. The determination must be based on a careful evaluation of the totality of the evidence. See ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation." *Id.* There is nothing in the record showing reform or rehabilitation. I conclude the mitigating conditions listed in AG ¶ 32(a) and (d), nor any other of the other criminal conduct mitigations, apply.

### **Guideline E, Personal Conduct**

The criminal conduct has been cross alleged under personal conduct. The concern under this guideline is set out in AG ¶ 15 as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and 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.

Applicant repeatedly drove his vehicle when he knew his driver's license had been expired. The personal conduct disqualifying conditions under AG ¶ 16(c) applies. When the conduct is considered as a whole, it supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. There was a pattern of rule violations. None of the personal conduct mitigating conditions 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):

(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 the facts and circumstances surrounding this case. In responding to the FORM, Applicant submitted copies of three unsigned federal tax returns and an unsigned payroll deduction agreement. Applicant has been aware of the Government's concern of his delinquent debts since his September 2011 PSI and in the written interrogatories sent to him in January 2013, April 2013, and July 2013. Even the unpaid medical account of less than \$250 has yet to be paid. Since receiving the SOR in December 2013, the only documented action related to his delinquent accounts is a February 2014 unsigned payroll deduction agreement.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his



circumstances and facts which would mitigate the financial considerations security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. He failed to provide such information, and by relying solely on the four unsigned documents, he failed to mitigate the financial considerations security concerns.

Applicant provided no evidence or documentation that a favorable result should be granted related to his criminal or personal conduct. There is nothing under the whole-person factors that would mitigate this conduct.

Overall, the record evidence leaves me with substantial doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial considerations, criminal conduct, and personal conduct.

### **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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.r: Against Applicant

Paragraph 2, Criminal Conduct: AGAINST APPLICANT

Subparagraphs 2.a – 2.g: Against Applicant

Paragraph 3, Personal Conduct: AGAINST APPLICANT

Subparagraph 3.a: 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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CLAUDE R. HEINY II  
Administrative Judge