



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-00421
	)	
Applicant for Security Clearance	)	

**Appearances**

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

02/26/2014

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance. Applicant owes over \$185,000 in unpaid federal and state taxes. Clearance is denied.

**Statement of the Case**

Acting under the relevant Executive Order DOD Directive,<sup>1</sup> on July 23, 2013, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline. DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance

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<sup>1</sup> This case is adjudicated under Executive Order (EO) 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 DOD on September 1, 2006, apply to this 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 in Enclosure 2 to the Directive.

and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant answered the SOR and requested a decision without a hearing. Department Counsel submitted its written case on November 5, 2013. The items appended to the Government's brief are admitted as Government's Exhibits (GE) 1 through 8. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on November 25, 2013. He timely submitted a response, which is admitted as Applicant's Exhibit (AE) 1. All of the documents were admitted without objection. The case was assigned to me on January 15, 2014.

### **Findings of Fact**

Applicant, 55, works as an information technology consultant for a federal contractor. He has held a security clearance since approximately 1977 without incident.<sup>2</sup>

The SOR alleges and Applicant admits that he owes \$185,000 in outstanding federal and state income taxes for the years 2008 through 2011 and 2009 to 2011, respectively. Applicant blames his tax problems on his divorce from his second wife. According to Applicant, the court ordered him to make monthly alimony and child support payments, totaling \$5,500, from May 2008 until his divorce was finalized in November 2011. In addition to the monthly support payments, the court also ordered Applicant to pay his estranged wife a \$26,000 lump sum. During the course of the divorce proceedings, the court also ordered Applicant to pay \$38,000 of his wife's attorney's fees. Applicant, who is an independent contractor, claims that complying with the support orders made it impossible for him to pay his taxes.<sup>3</sup>

Between March 2010 and March 2011, Applicant paid \$11,200 in taxes and penalties to resolve a 2008 state tax lien that was not alleged in the SOR. In addition to the \$113 garnished from his military retirement pay, Applicant paid \$5,500 toward his federal tax debt between December 2010 and March 2011. He did not make any federal tax payments for the next 23 months. In February 2013, Applicant retained an attorney to negotiate a settlement with the Internal Revenue Service (IRS). In July 2013, Applicant's counsel offered to settle Applicant's federal tax liability for \$49,000, or 30% of the amount due. As a show of good faith, Applicant claims to have made six payments between July and December 2013, totaling \$12,300. Although he provided copies of certified mail receipts to the IRS, he did not provide proof of actual payment. The IRS has not responded to Applicant's offer. Applicant has not made any payments toward his state tax liability since March 2011.<sup>4</sup>

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<sup>2</sup> Item 3; AE A.

<sup>3</sup> Items 2-3, 6-8.

<sup>4</sup> Items 4 and 5.

Applicant did not provide any financial records to support his claim that he could not comply with the court order and honor his obligation to pay his state and federal taxes between 2008 and 2011. According to his 2011 federal income tax return, Applicant claimed approximately \$202,000 in gross income, which includes his \$183,000 annual salary and \$18,000 in military retirement. In the financial statement Applicant submitted to DOHA in April 2013, he reported having no cash or retirement savings. The statement also shows Applicant has \$3,500 in disposable income; \$2,200 of which he claims is now paid to the IRS each month.<sup>5</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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.

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.

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**

### **Financial Considerations**

Unresolved delinquent debt is a serious security concern because failure to "satisfy debts [or] meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise

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<sup>5</sup> Item 5; AE A.

questions about an individual's reliability, trustworthiness and ability to protect classified information."<sup>6</sup> Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information within the defense industry.

Applicant admits he owes over \$185,000 in combined federal and state taxes. The allegations are supported by the record.<sup>7</sup> Applicant has demonstrated an inability to pay his debts as well as a history of not doing so.<sup>8</sup> Applicant has not presented sufficient evidence to warrant the application of any of the financial considerations mitigating conditions. While Applicant's divorce may have contributed to his difficulty, it does not entirely explain his tax problems or his sporadic efforts to resolve them.

As an independent contractor, Applicant bears sole responsibility for setting aside sufficient funds to pay his federal and state income tax obligations. Applicant did not establish that his recent tax problems are an isolated incident stemming from his separation and subsequent divorce. Nor is there any evidence to show that Applicant took measures to challenge or seek modification of what he considered an onerous support order. Applicant, in an understandably difficult position, chose to do nothing in the face of an immediate and compounding problem. Even now, his efforts to address his tax issues are insufficient to support a finding of financial rehabilitation. Applicant's tax problems are recent, ongoing, and likely to recur given that he has not provided any evidence to the contrary. His unresolved federal and state tax liabilities continue to cast doubt on his current reliability, trustworthiness, and good judgment.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Applicant has held a security clearance for over 35 years without incident. The Government does not have to prove that an applicant poses a clear and present danger to national security,<sup>9</sup> or that an applicant poses an imminent threat of engaging in criminal acts. Instead, it is sufficient to show that an applicant has a history of unresolved financial difficulties that may make him more vulnerable to financial pressures.<sup>10</sup> Furthermore, Applicant has failed to fulfill a basic obligation to the government; as such, it is not appropriate to continue his access to classified information at this time. This conclusion, however, does not preclude Applicant from demonstrating the requisite financial rehabilitation and reform in the future. Following *Egan*<sup>11</sup> and the clearly-consistent standard, I resolve these doubts in favor of protecting national security.

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<sup>6</sup> AG ¶ 18.

<sup>7</sup> GE 6-8; Answer.

<sup>8</sup> AG ¶¶ 19(a) and (c).

<sup>9</sup> See *Smith v. Schlesinger*, 513 F.2d 463, 476 n. 48 (D.C. Cir. 1975).

<sup>10</sup> See ISCR Case No. 87-1800 (App. Bd. Feb. 14, 1989).

<sup>11</sup> *Navy v. Egan*, 484 U.S. 518 (1988).

### **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.f:	Against Applicant

### **Conclusion**

Based on the record, it is not clearly consistent with the national interest to continue Applicant's access to classified information. Clearance is denied.

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Nichole L. Noel  
Administrative Judge