



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



In the matter of: )  
)  
) ISCR Case No. 12-08815  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

07/05/2017

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On May 11, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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. On June 8, 2017, new AGs were implemented and are effective for decisions issued after that date.<sup>1</sup>

---

<sup>1</sup> I considered the previous AGs, effective September 1, 2006, as well as the new AGs, effective June 8, 2017. My decision would be the same if the case was considered under the previous AGs.

Applicant answered the SOR on August 15, 2016, and requested a hearing before an administrative judge. The case was assigned to me on March 22, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 4, 2017. I convened the hearing as scheduled on June 8, 2017. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. Applicant testified and did not offer any documents. The record was held open until June 22, 2017, to allow Applicant to submit documents. Applicant submitted Exhibits (AE) A through C, which were admitted into evidence without objection, and the record closed.<sup>2</sup> DOHA received the hearing transcript on June 16, 2017.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 57 years old. He is married and has two grown children. He graduated from a military service academy and later earned a master's degree in business administration. He retired from the service in June 2001. He is employed by a federal contractor.<sup>3</sup>

Applicant admitted that he failed to file his federal and state income tax returns for tax years 2000 through 2005. He testified that he had no good reason for his failure to file, but he did not think he owed taxes. He stated he made the conscious decision not to file. He admitted he procrastinated for five years, was disorganized, and made an error. He testified that he has filed federal and state tax returns from 2006 through 2016.<sup>4</sup>

Applicant did not contact the Internal Revenue Service (IRS) or the state tax authority and file his delinquent income tax returns. Rather in July 2011, the IRS levied a wage garnishment with his employer for \$209,551. He testified that he believed the amount he initially owed was small; approximately \$2,500 for each delinquent year, and the balance owed included interest and penalties. Applicant testified that through garnishment he has been paying this debt since July 2011. The monthly amount is currently \$1,461. He provided supporting documents. He stated that the current balance owed on the levy is approximately \$24,000. He did not provide an IRS document to show the current balance owed.<sup>5</sup>

Applicant is indebted to his home state for tax liens that were filed against him in June 2005, in the approximate amount of \$931; July 2008, in the approximate amount

---

<sup>2</sup> Hearing exhibit I is Department Counsel's memorandum.

<sup>3</sup> Tr. 16-17.

<sup>4</sup> Tr. 18-19, 27, 29.

<sup>5</sup> Tr. 19-25; AE A, B, C.

of \$872; and June 2011, in the approximate amount of \$11,750. They are all unpaid. Applicant testified that after his federal tax lien is paid, he plans to pay the state tax liens. His home state has not garnished his wages to pay these liens, but he testified that the debts were being transferred to a collection company. He believed the current balance owed was about \$20,000. The collection company has contacted him regarding his state tax liens, but he is unable to pay them at this time.<sup>6</sup>

Applicant testified that when his wages were garnished he had difficulty paying his mortgage. His home was foreclosed. There was no deficiency owed. He stated he has minimized his living expenses. He receives about \$30,000 from his military pension and about \$73,000 from his current employment.<sup>7</sup>

### **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."

---

<sup>6</sup> Tr. 25-27, 31-34.

<sup>7</sup> Tr. 32, 34-35.

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 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**

The security concern for financial considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>8</sup>

---

<sup>8</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following are potentially applicable:

- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant failed to timely file his 2000 through 2005 federal and state income tax returns. Applicant never filed the delinquent tax returns, but rather it was the IRS that contacted him in 2011 and filed a tax lien. Applicant incurred a large federal tax lien and state tax liens. His wages have been garnished since 2011 to satisfy the federal tax lien. The state tax liens remain unresolved. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counselling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is compliance with those arrangements.

Applicant had no explanation for his failure to file his federal and state income tax returns other than he procrastinated. He did not contact the IRS or his state tax authority to resolve the matter. Rather, the IRS contacted him in July 2011 and involuntarily garnished his wages. He provided no information that he has contacted the state tax authority to resolve the state liens, but has received notice from the collection company that now holds the debts. He testified he intended to pay the state liens after his federal lien is resolved. Applicant repeated his behavior for six years and then it was another six years before the IRS levied the lien. Applicant's conduct was frequent and casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

There is no evidence that Applicant's financial problems were beyond his control. Hence, AG ¶ 20(b) does not apply. There is no evidence Applicant received financial counseling. There is evidence that through garnishment, Applicant has been paying his federal tax lien. There is no evidence that Applicant has contacted his state to resolve his state liens, but he stated he intended to do so after he paid the federal lien. AG ¶ 20(c) has some application.

Applicant failed to address his delinquent tax filings and federal tax debt until the IRS garnished his wages. He did not initiate the effort to resolve his tax problems. Garnishment does not constitute a good-faith effort to repay his tax obligations. I find AG ¶ 20(d) does not apply. I find AG ¶ 20(g) has minimal application because the effort to resolve the federal tax lien came from the IRS through an involuntary garnishment of Applicant's wages. There is no evidence he contacted his state tax authority about arranging to pay the state tax liens, but he testified he intends to do so when his federal lien is satisfied.

### **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(d):

- (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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) was addressed under that guideline, but some warrant additional comment.

Applicant is a 57-year-old highly educated military veteran. He chose not to file his federal and state income tax returns for six years and incurred tax liens. He did not voluntarily make an effort to resolve his tax problems, but rather it was through a tax lien imposed by the IRS and the garnishment of his wages that his federal tax lien has been reduced. He has not yet addressed his state tax liens. Applicant's conduct raises questions about his judgment, reliability, and trustworthiness. Overall, the record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude he failed to mitigate the security concerns arising under Guideline F, financial considerations.

### **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.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 a security clearance. Eligibility for access to classified information is denied.

---

Carol G. Ricciardello  
Administrative Judge