



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



In the matter of: )  
 )  
 ) ISCR Case No. 14-05611  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

09/20/2016  
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**Decision**  
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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 March 18, 2015, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on April 30, 2015, and elected to have his case decided on the written record. On November 23, 2015, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on December 7, 2015. Applicant was afforded an opportunity to file

objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government evidence. The Government's documents identified as Items 2 through 6 are admitted into evidence. Applicant provided a document that was marked as AE A, which was admitted into evidence without objection.<sup>1</sup> The case was assigned to me on August 26, 2016.

### **Findings of Fact**

Applicant denied the allegations in SOR ¶¶ 1.a through 1.g, except the allegation in 1.f, which he admitted. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 52 years old. He earned an associate's degree in 2000. He retired honorably from the military in 2007. He married in 1987 and divorced in 1994. He remarried in 1997 and divorced in 2012. He has an adult child. He has worked for his current employer since 2010. He has had periods of unemployment from June 2010 to October 2010 and from April 2008 to July 2008.

Applicant disclosed on his January 2014 security clearance application (SCA) that he failed to pay his 2007 Federal income taxes, and he failed to file his 2008, 2009, 2010, 2011, and 2012 Federal income tax returns. He later disclosed that he also did not file his 2007 Federal income tax return. He disclosed that his failure to file was due to his spouse being unavailable due to her departure to a foreign country. While out of the country, she did not respond to his attempts to contact her about their taxes. He disclosed that the Internal Revenue Service (IRS) initiated a garnishment action, which caused him financial hardship.<sup>2</sup>

In April 2013, March 2014, and May 2014, Applicant was interviewed by a government investigator as part of his background investigation. When questioned as to why he failed to file tax returns, Applicant could not provide a reason, except that they were joint returns, and he was unable to obtain his wife's signature. He also admitted that he was irresponsible. In 2013, he stated he was told by the IRS that he owed about \$16,000. He indicated that he had approximately \$2,000 to \$5,000 garnished from his wages. Sometime in 2013, he reached an agreement with the IRS to pay his delinquent taxes by an installment agreement, which provided that he pay \$250 monthly. He indicated at the time of his interview in March 2014 that he had not yet begun payments. He disclosed in his 2014 SCA that his pay was being garnished for \$1,005 per month. It is unknown for how many months the IRS garnished his wages. During his May 2014

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<sup>1</sup> The document is the Applicant's Chapter 13 bankruptcy pleadings and includes numerous pages and schedules.

<sup>2</sup> Items 2, 6. I will not consider Applicant's failure to file and pay his Federal income taxes for disqualifying purposes because it was not alleged in the SOR. I will consider it when analyzing credibility, in mitigation, and the whole person. There is insufficient evidence to support that Applicant is indebted to the Federal Government for delinquent taxes owed for tax year 2013. However, there is substantial evidence that he has a delinquent federal tax debt in the amount of \$9,000. Applicant was on notice of the Government's concerns about his delinquent tax debt.

interview, he indicated that he was making installment payments. It is unknown when those payments started. Applicant did not provide any additional information about whether he continued making payments to the IRS for his delinquent taxes.<sup>3</sup>

Applicant attributed his financial problems to the IRS garnishment and his separation and divorce from his second wife. The debts alleged in the SOR are supported by credit reports from February 2014 and September 2014. It is noted that the debt in SOR ¶ 1.e (\$47,500) was a foreclosure and the credit reports list a zero balance past due.<sup>4</sup>

In response to the FORM, Applicant provided a copy of his March 11, 2016, Chapter 13 bankruptcy filing, which includes the debts alleged in the SOR. It also lists a \$9,000 tax debt owed to the IRS. Applicant did not provide any amplifying information. The documents include verification that Applicant participated in the mandatory credit counseling for filing bankruptcy. The proposed Chapter 13 bankruptcy plan indicated Applicant would make 60 monthly payments of \$1,135. The deadline for filing claims by creditors was August 2016.<sup>5</sup> No other information was provided.

## **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 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 avoided drawing inferences grounded on mere speculation or conjecture.

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

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

<sup>5</sup> AE A.

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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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.

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 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.

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>6</sup>

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<sup>6</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has numerous delinquent debts that are unresolved, including a delinquent Federal income tax debt. There is sufficient evidence to support the application of the above disqualifying conditions.

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, 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 has numerous debts that are unpaid and unresolved. He indicated he had an installment agreement with the IRS to pay his delinquent Federal income taxes, but he did not provide evidence that he made consistent monthly payments. He filed Chapter 13 bankruptcy. There is no evidence the plan has been approved. Even if it is approved Applicant would have to establish a track record of payments into the plan. There is insufficient evidence to conclude that his financial problems are unlikely to recur. His failure to timely address the delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to his separation and divorce. This is a condition beyond his control. He also attributed it to his failure to timely file his Federal income tax returns and pay taxes owed, which resulted in his wages being garnished. He admitted he acted irresponsibly. This was within his control. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. He indicated he wanted to file his Federal income tax returns jointly and could not obtain his wife's signature. He did not act responsibly by failing to file the returns for six consecutive years. He did not reach an agreement with the IRS for an installment agreement until after his wages were garnished. There is insufficient evidence to conclude Applicant acted responsibly under the circumstances. AG ¶ 20(b) does not apply.

Applicant completed the mandatory credit counseling required for filing bankruptcy. At this juncture, there is no evidence he has made consistent payments to the IRS, or that the bankruptcy plan was approved, and he is making payments into it. Without additional evidence, there are not clear indications that Applicant's financial problems are under control. The first part of AG ¶¶ 20(c) applies, but the second part does not.

There is evidence that Applicant is anticipating resolving his debts through a Chapter 13 bankruptcy payment plan. The plan calls for 60 months of payments. Even if the plan was recently approved in August or September 2016, there still would be an insufficient track record of consistent payments into the plan to show Applicant is resolving his delinquent debts. AG ¶ 20(d) does not apply.

Applicant did not provide evidence to show he disputed any of the debts alleged. AG ¶ 20(e) does not 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 the 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 52 years old. He retired honorably from the military. He has been steadily employed by a federal contractor since 2010. He failed to file his Federal income taxes from 2007 through 2012, and his wages were garnished, causing him financial problems. He did not provide evidence that he was complying with the installment agreement he reached with the IRS to repay his tax debt. He did not provide evidence that he has paid the debts alleged in the SOR. He filed Chapter 13 bankruptcy in March 2016. Presumably he is waiting for the plan to be approved. Applicant has not established a reliable financial track record of managing his delinquent debts at this time. His finances remain a security concern. He has failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.g:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge