



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



In the matter of:

-----

Applicant for Security Clearance

)  
)  
)  
)  
)

ISCR Case No. 14-06781

**Appearances**

For Government: Nicole A. Smith, Esquire, Department Counsel

For Applicant: *Pro se*

September 13, 2016

\_\_\_\_\_  
**DECISION**  
\_\_\_\_\_

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on March 31, 2014. (Item 3.) On June 10, 2015, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on September 9, 2015, and requested a decision by an administrative judge without a hearing. (Item 2.) Department Counsel submitted the Government's written case (FORM) to Applicant on October 30, 2015.<sup>1</sup>

\_\_\_\_\_  
<sup>1</sup>Department Counsel submitted six items in the FORM. Item 4 is inadmissible and will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on May 28, 2014. The summary was never adopted by Applicant as his own statement, or otherwise certified by him to be accurate. Under Directive ¶ E3.1.20,

Applicant acknowledged receipt of the FORM on November 9, 2015. He was given 30 days from receipt of the FORM to submit any additional documentation. Applicant did not submit any additional information within that time. The case was assigned to me on February 19, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

### **Amendment to the Statement Of Reasons**

In the FORM at page 2, Department Counsel made a motion pursuant to ¶ E.3.1.13 of the Directive, to amend the SOR and add the following allegation:

g. You owe past-due taxes to the IRS in the approximate amount of \$21,000 for tax years 2010-2012.

As stated above, Applicant did not respond to the FORM. There being no objection, the motion to amend the SOR is granted. Department Counsel requested in the FORM that Applicant either admit or deny the allegation. In the alternative, Department Counsel requested that I view any non-response by Applicant to be a denial. I view his silence as a denial of allegation 1.g. That allegation will be further discussed below.

### **Findings of Fact**

Applicant is 57, and divorced from his third wife. He is a retired command sergeant major in the Army. Applicant is president of a defense contractor, and seeks to obtain a security clearance in connection with his employment.

### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted allegations 1.b, 1.c, and 1.f. Those admissions are findings of fact. He denied the remaining allegations.

The amended SOR lists seven delinquent debts (SOR 1.a through 1.g). The total of the debts alleged in the SOR is approximately \$223,536. Applicant admits to \$14,940 of the alleged debts. The existence and amount of all the debts is supported by admissions in Item 4, and a credit report dated April 15, 2014. (Item 5.)

1.a. Applicant denied that he was indebted to the IRS for a tax lien in the amount of \$174,744. This lien concerned the 2004, 2005, and 2006 tax years. Applicant

---

this Report of Investigation summary is inadmissible in the absence of an authenticating witness. Given Applicant's admissions, it is also cumulative.

provided with his answer to the SOR a "Certificate of Release of Federal Tax Lien" (Release) dated June 10, 2014. The Release states that "taxpayer [Applicant] has satisfied the taxes listed below and all statutory additions." (Item 2 at Attachment 1.) This debt has been resolved.

1.b. Applicant admitted that he was indebted for a judgment entered against him in 2008 in the amount of \$9,262. He stated in his answer (Item 2) that the debt had been resolved, but provided no evidence to corroborate this assertion. Item 6 in the FORM is a report from the state court system where the judgment was filed indicating that the judgment was still active. Applicant elected not to respond to the FORM. This debt is not resolved.

1.c. Applicant admitted that he was indebted for a past-due credit card debt in the amount of \$5,625. He stated in his Answer (Item 2) that this debt has been disputed. No further information was provided to support this statement. Applicant did not prove that this debt is resolved, or that a valid basis exists to dispute it.

1.d. Applicant denied that he owed a past-due debt to a collection agent in the amount of \$7,802. Item 2 at Attachment 2 shows that this debt was paid on May 8, 2014. This debt is resolved.

1.e. Applicant denied that he owed a creditor \$5,050 for a judgment entered against him in 2007. He stated in Item 2 that this is the same debt as 1.d, above. No documentation was provided by Applicant showing that this judgment had been released, or that this is the same debt as 1.d. This debt is not resolved.

1.f. Applicant admitted that he was indebted to a creditor for a past-due account in the amount of \$53. He stated in Item 2 that he had resolved this debt. No further information was provided to support this statement. Applicant did not prove that this debt is resolved.

1.g. As stated above, I view Applicant's silence concerning allegation 1.g as a denial. In his e-QIP (Item 3) at Section 26, Applicant stated in March 2014 that he owed back taxes to the IRS for tax years 2010, 2011, and 2012. The Release discussed above under 1.a was only for tax years 2004, 2005, and 2006. Applicant elected not to respond to the FORM. I accept as true his statements that he still owes back taxes in the amount of \$21,000 for tax years 2010 through 2012. Accordingly, this debt is not resolved.

Applicant has been gainfully employed since November 2010. He began working for his own company in March 2013. (Item 3, Section 13A.) He states that there were two primary reasons for his financial difficulties. First, from January to October 2010 Applicant was not employed while taking care of his dying mother. (Item 2.) Second, with regard to the back taxes and some of the other debts Applicant maintains that his most recent ex-wife was responsible, in that she did not file the tax returns when he was overseas on assignment and entered into debts without his consent. (Item 3 at Section 26.) However, he did not show that he had acted in any way to mitigate these financial

issues for several years. In addition, he did not submit a budget, or any other information concerning his income and expenses. Applicant submitted no evidence that he has received any financial counseling. His failure to provide any documentation supporting his assertions that some of these delinquencies had been or were being resolved was pointed out by Department Counsel in the FORM, but Applicant elected not to submit anything in response.

## **Policies**

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Paragraph 1 (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 sensitive information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be negligent, unconcerned, or irresponsible in handling and safeguarding sensitive information.<sup>2</sup>

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant had over \$220,000 in past-due debts and back taxes, which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying conditions may be mitigated where “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.”

---

<sup>2</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

This condition does not apply as Applicant's financial difficulties have been in existence for several years and continue relatively undiminished to date.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where "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." According to Applicant, his ex-wife failed to file some of their tax returns in a timely manner and ran up some bills without his consent when he was overseas. In addition, he elected to take care of his mother during her final illness for ten months in 2010. However, he submitted little evidence to show how he tried to responsibly adjust his spending or resolve his debts over the following years.

AG ¶ 20(d) states it can be mitigating where, "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant did resolve some his back taxes as set forth in SOR 1.a., and another debt (1.c). However, despite being informed of his right and responsibility to submit a documentary response to the FORM, Applicant elected not to submit any documentary evidence to support the statements in his Answer concerning other debts. In addition, he elected not to show that he had paid additional back taxes that he admits owing in his e-QIP. (Item 3.)

Applicant admitted allegation 1.c, but stated that he was disputing it. AG ¶ 20(e) requires "documented proof to substantiate the basis of the dispute or . . . evidence of actions to resolve the issue." Neither exists in this case. This mitigating condition was not established.

The record shows that Applicant may owe up to \$40,990 in past-due debts and back taxes, with no sign of resolution in the near future. In conclusion, looking at Applicant's entire financial situation at the present time, I cannot find that "there are clear indications that the problem is being resolved or is under control," as is required by AG ¶ 20(c). Paragraph 1 is found against Applicant.

### **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 relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. Applicant has had financial problems for several years, which he has not yet completely resolved. If he is able to successfully resolve his debts, Applicant may be eligible for a security clearance in the future. However, at the present time, Applicant's conduct with regard to his finances was not mitigated.

Under AG ¶ 2(a)(3), his conduct is recent and continuing. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

Overall, 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 has not mitigated the security concerns arising from his financial situation. Accordingly, the evidence supports denying his request for a security clearance.

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

WILFORD H. ROSS  
Administrative Judge