



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-00355

**Appearances**

For Government: Philip J. Katauskaus, Esq. Department Counsel  
For Applicant: *Pro se.*

03/01/2017

**Decision**

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline F (Financial Considerations) The SOR was dated July 25, 2015. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on August 11, 2016.<sup>1</sup> A notice of hearing, dated June 14, 2016, was issued, scheduling the hearing for June 28, 2016. The hearing was cancelled for good cause, and it was rescheduled for January 27, 2017. Government Exhibits (GX 1-9) were admitted into the record. Applicant submitted Applicant Exhibits (AX A). I held the record open until February 17, 2017. Applicant

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<sup>1</sup>The case was originally assigned to another judge. The hearing was postponed also and rescheduled.

submitted additional documents, which were marked as AX B and AX C, and admitted into the record without objection. He testified, but did not present witnesses. The transcript was received on February 7, 2017. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted six factual allegations in the SOR amounting to about \$223,859, and denied or disputed the remaining factual allegations under Guideline F (Financial Considerations) and provided detailed explanations for each allegation.

Applicant is a 58-year-old project engineer with a defense contractor. He is married with four children. He obtained his undergraduate degree in 1984. Applicant has worked for his current employer since 2011. He was previously granted a security clearance. He completed his most recent security clearance application in 2012. (GX 1)

### **Financial Considerations**

The SOR alleges 17<sup>2</sup> delinquent debts, including judgments, collection accounts, federal tax liens, and charged-off accounts, which total approximately \$236,157. (GX 4) The SOR also alleges that Applicant did not timely file his federal and state income tax returns for the years 2005, 2006, 2007, 2009, and 2010. (GX 3-5)

Applicant explained that his financial difficulties began when his wife retired from a company and started a limited liability corporation (LLC in 1999 or 2000<sup>3</sup>. (Tr. 26) Applicant and his wife were the two members of the company. It was an internet information network for various clients. (Tr. 26) The business could not sustain itself after the company lost one of its biggest clients, and he acquired delinquent debts. He stated that around 2008 and 2009 the business failed. (Tr. 27) He did not collect any salary at that time. Applicant stated that the failure to timely file the federal and state tax returns was due to poor accounting.

During Applicant's 2012 investigative interview, he stated that in 2006, he filed both the personal tax returns and the corporate returns to the federal government and the state. He does not remember when, but he received a 2010 notice from the IRS to modify the returns. Applicant turned the matter over to an accountant. (GX 2) According to Applicant he gave the 2006, 2007, and 2008 tax returns to the accountant. (GX 2) There is some conflicting information in the record about the late filings due to several poor accountants. (Tr. 31) In his 2012 security clearance application, Applicant noted that he was working with the IRS and an accountant and expected to see some results very soon. (GX 1)

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<sup>2</sup>At the hearing, the Government withdrew SOR allegation 1.p.

<sup>3</sup>)Applicant later stated the business was started in 1995. (Tr. 44)

Applicant mentioned in the 2012 interview that he and two or three others also had a company in Jamaica. The company has terminated. He also purchased some property with his uncle in Jamaica. He believes it was undeveloped land. He could not put an estimated value on it. (GX 2) Applicant made several trips abroad during the time of his financial problems. From 2004 to 2011, he visited his family and went for personal business.

During the 2012 interview, Applicant acknowledged the other collection accounts that are alleged in the SOR. He admitted that he was not paying on them because he did not have the money. (Tr. 30) At the hearing, Applicant explained that he was in negotiations with the IRS and did not have a finalized agreement. He also stated that at one point he was making payments to the IRS, but he failed to provide any information or documentation. He was given the opportunity to provide evidence as part of a post-hearing submission.

At the hearing, Applicant provided one document (AX A), which showed satisfaction of a 2011 state judgment that was entered by the court and satisfied in 2015. The amount of the judgment was \$4,798. (SOR 1.a) He stated that the judgment in 1.h, is a duplicate of 1.a.

As to the other tax-related SOR allegations: 1.b, a 2010 federal tax lien in the amount of \$65,495; 1.c, a federal tax lien in the amount of \$94,443; and 1.r, state delinquent taxes in the amount of \$63,000, they are not paid. As a post-hearing submission, Applicant submitted a service agreement, dated October 28, 2016, which shows that the tax solution company will negotiate with the IRS and the state for the total balance of tax owed for tax periods 2005 through 2015. They will also prepare the personal and business returns. (AX C) There is no information or documentation that shows the plan has been put in place or the status of any negotiations.

Allegations in the SOR 1.d (\$494) collection account; 1.e (\$167) collection account; 1.f (\$425) medical account; 1.g (\$400) collection account; 1.i (\$785) charged-off account; 1.j (\$53) collection account; 1.k, (\$88) collection account; 1.l (\$90) collection account; 1.m (\$72) collection account; 1.n, (\$701) collection account; and 1.o, (\$55) collection account are still unpaid. He provided no documentation to show that any were paid or that he had a plan in place to repay the debts. In his 2012 interview, he gave various explanations about the delinquent debts. Some he did not know about or he tried to contact some creditors but had no phone number or information. Many years have passed and the delinquent accounts are still unpaid. He stated during his interview that his intent is to pay his delinquent debts. (GX 2)

Applicant's annual salary was about \$75,000 and his wife earned about \$95,000 when the LLC began. His wife quit her job to start the business. It is not clear when Applicant left his full time job. He now earns about \$100,000 a year. He did not seek financial counseling for this situation.

Applicant in 2004 signed an affidavit confirming various delinquent accounts on his credit bureau report. (GX 7) The personal financial statement that he completed

showed real estate assets of \$350,000, bank savings and stocks. He was also paying on three delinquent debts. It would appear from the record that Applicant has had financial difficulties in the past as well.

Applicant submitted two letters of reference which attest to his character and reliability. One who has known him for almost two years stated that Applicant is a family man and attends church regularly. (AX B) Another colleague, who has known him for five years, recommends Applicant as a honest, dependable, trustworthy team member of the company.(AX B)

## **Policies**

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ."<sup>4</sup> The burden of proof is something less than a preponderance of evidence.<sup>5</sup> The ultimate burden of persuasion is on the applicant.<sup>6</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government

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<sup>4</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>5</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>6</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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 protect 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.”<sup>7</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>8</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>9</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## **Analysis**

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

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

(a) inability or unwillingness to satisfy debts;

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<sup>7</sup> See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>8</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>9</sup> *Id.*

(b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;

(c) a history of not meeting financial obligations;

(d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;

(e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

(f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

(h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

The Government produced sufficient evidence to show that Applicant accrued delinquent debts and failed to timely file federal and state income tax returns for certain years. He also has tax liens and tax debts. The Government produced credible evidence to establish the debts and tax lien. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a), 19(c) and 19(g).

AG ¶ 20 provides conditions that could mitigate the security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's current financial difficulties began in 2008-2009 due to a failing business. He acquired debt and was not able to pay the debts. He also had problems with his accountant and learned that he had to modify some tax returns. He started with another accountant, but was still not able to resolve the problem. He has known about the tax situation for many years. However, he only signed an agreement in 2016 for a company to handle all the tax filings and the tax issues.

In 2004, Applicant also had delinquent debts despite a substantial income and real estate holdings. He promised to pay the delinquent debts and clear up the tax issues since 2012, However he has not submitted documentation to show the status of his recent plan for the state and federal taxes or the delinquent debts. Although it was beyond his control with the failing business and the problem with the accountants, I do not believe he acted responsibly under the circumstances. Also, he has promised to pay his delinquent debts, but provided no documentation to show that he has. He provided no information concerning any debts that he disputed. Since the October 2016 service agreement was signed concerning the resolution of the tax filings and the tax lien and any taxes owed, there is no documentation concerning the status of his filings and tax lien. Applicant has not presented sufficient information for mitigation to predict resolution of the financial issues. AG ¶ 20 (b) partially applies in this case.

### **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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors.

Applicant is 58 years old and. He has held a security clearance for many years. He has good job recommendations. He tried to start a new venture with his wife, which shows ambition. He has four children.

Applicant has not established that he has taken sufficient actions to reasonably and responsibly resolve his tax issues in a timely way despite the fact that the accountants made mistakes. Applicant has not shown that he can responsibly manage his financial obligations in a more timely manner. He intends to pay his debts, but a promise to pay in the future is not sufficient. He was not proactive with the other delinquent debts. He is now working with a company to resolve the tax issues but there is no evidence that any negotiations have occurred or actions taken. Overall, the record evidence leaves me with questions and doubts as to his judgment, trustworthiness, reliability, and eligibility for his security clearance. I conclude that Applicant has not presented sufficient evidence of mitigation of his financial considerations security concern.

### **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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i-1.o:	Against Applicant
Subparagraph 1.p:	Withdrawn
Subparagraphs 1.q-s:	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. Clearance is denied.

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NOREEN A. LYNCH  
Administrative Judge