



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-00931

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel

For Applicant: *Pro se*

01/13/2017

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On December 16, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on January 19, 2016, and elected to have the case decided on the written record in lieu of a hearing. On April 26, 2016, he changed his request to a hearing before an administrative judge. The case was assigned to me on August 9, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 7, 2016, scheduling the hearing for November 15, 2016.

The hearing was convened as scheduled. Government Exhibits (GE) 1 through 8 were admitted in evidence without objection. Applicant testified, but he did not submit documentary evidence. The record was held open for Applicant to submit additional information. He submitted documents that I have marked Applicant's Exhibit (AE) A and admitted without objection. DOHA received the hearing transcript (Tr.) on November 29, 2016.

### **Findings of Fact**

Applicant is a 51-year-old employee of a defense contractor. He served on active duty in the U.S. military from 1987 until he retired with an honorable discharge in 2008. He has worked for his current employer or a predecessor contractor since he retired from the military. He seeks to retain a security clearance, which he has held since he was in the military. He has an associate's degree. He married in 1996 and divorced in 2003. He married again in 2007 and divorced in 2008. He has a 17-year-old child.<sup>1</sup>

Applicant had significant tax issues beginning in the 1990s. His first wife handled the family finances; he was deployed; and he was unaware that the taxes were not being paid. He was unable to catch up on his back taxes, and his taxes for the current years were not always paid. His divorce decree specified that his first wife was supposed to pay half of the taxes, but she did not. The IRS filed a \$33,332 tax lien against him in 2008. He has been consistently paying his back taxes for several years. Through a combination of installment agreements, seizure of refunds, and the IRS's write-off of some of the old taxes, his back taxes have been completely resolved. The IRS seized what would have been his \$4,438 refund for tax year 2014. He received a \$5,404 refund for tax year 2015.<sup>2</sup>

Applicant denied owing the \$1,820 debt to a property-management company for unpaid rent. However, he paid the debt to eliminate it as an issue. His current finances are sound. He credibly testified that his financial problems are behind him and there will be no further tax issues.<sup>3</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 to be used in evaluating an applicant's eligibility for access to classified information.

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<sup>1</sup> Tr. at 19, 26-29, 32; Applicant's response to SOR; GE 1.

<sup>2</sup> Tr. at 20-25, 29-31; Applicant's response to SOR; GE 2-8; AE A.

<sup>3</sup> Tr. at 19-20, 25-26, 30-31; Applicant's response to SOR; GE 5-8.

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."

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.

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 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**

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

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant had financial problems for an extended period, primarily related to unpaid taxes. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(b) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;
- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has been consistently paying his back taxes for several years. Through a combination of installment agreements, seizure of refunds, and the IRS's write-off of some of the old taxes, his back taxes have been completely resolved. He also paid the non-tax debt. I am satisfied that Applicant's finances are in order. AG ¶¶ 20(a), 20(c), and 20(d) are applicable.

### **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(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.

I considered Applicant's honorable military service and his steady employment with a defense contractor. His tax issues are resolved and his current finances are sound.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

### **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:	For Applicant
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Subparagraphs 1.a-1.b:	For Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge