



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 15-01628
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

12/28/2016

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**Decision**

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HOGAN, Erin C., Administrative Judge:

On August 24, 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 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 after September 1, 2006.

On September 18, 2015, and March 27, 2016, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 25, 2016. The case was assigned to me on June 8, 2016. On August 2, 2016, a Notice of Hearing was issued, scheduling the hearing for August 25, 2016. The hearing was held as scheduled. During the hearing, the Government offered five exhibits, which were admitted as Government Exhibits (Gov) 1 – 5. Applicant testified. He offered no exhibits. The transcript (Tr.) was received on September 2, 2016. The record was held open until September 8, 2016, to allow Applicant to submit additional documents. Applicant did not submit documents after the hearing. Based upon a review

of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In his responses to the SOR, Applicant admits all SOR allegations.

Applicant is a 59-year-old employee of a Department of Defense contractor seeking a security clearance. He has worked for his current employer since November 2013. This is his first time applying for a security clearance. He has a high school diploma. He is divorced and lives with his girlfriend. He has no children. (Tr. 17-23; Gov 1)

Applicant's background investigation revealed that he has a history of financial problems. His financial problems include: failing to file federal tax returns for tax year 2012 (SOR ¶ 1.a: Gov 5 at 5); failing to file state income tax returns for tax years 2004 – 2007 and 2012 (SOR ¶ 1.b: Gov 5 at 4-5); a \$5,061 delinquent federal income tax debt for tax year 2012 (SOR ¶ 1.c: Gov 5 at 5); a \$2,848 debt owed as a result of an automobile repossession (SOR ¶ 1.d: Gov 2 at 2; Gov 3 at 4; Gov 4 at 1); a \$1,454 credit card account placed for collection (SOR ¶ 1.e: Gov 4 at 2); a \$801 delinquent cable television account placed for collection (SOR ¶ 1.f: Gov 4 at 2); a \$776 electricity bill placed for collection (SOR ¶ 1.g: Gov 4 at 2; and a \$776 electricity bill placed for collection. (SOR ¶ 1.h: Gov 2 at 2; Gov 4 at 2).

Additional delinquent accounts include: a \$436 delinquent cell phone account placed for collection (SOR ¶ 1.i: Gov 2 at 2; Gov 3 at 6; Gov 4 at 2); a \$218 delinquent cell phone account placed for collection (SOR ¶ 1.j: Gov 3 at 6-7; Gov 4 at 2); a \$1,382 judgment entered against Applicant in 2011 (SOR ¶ 1.k: Gov 2 at 1); a \$1,076 delinquent account placed for collection (SOR ¶ 1.l: Gov 3 at 6); a \$917 delinquent cell phone account placed for collection (SOR ¶ 1.m: Gov 2 at 2; Gov 3 at 6); a \$500 delinquent medical bill (SOR ¶ 1.n: Gov 3 at 6); and a \$219 delinquent cell phone account placed for collection (SOR ¶ 1.o: Gov 3 at 6). The listed debts total \$16,464.

Applicant had not filed state income tax returns for tax years 2004, 2005, 2006, 2007 and 2012. The state income tax returns were not filed at the close of the record. The SOR alleged Applicant did not file federal income tax returns for tax year 2012. During the hearing, it was also discovered that Applicant had not filed federal income tax returns for 2011, 2013, 2014 and 2015. Applicant testified that he had completed his federal tax returns. They were at home waiting to be mailed. The record was kept open to give Applicant the opportunity to provide copies of his tax returns and proof that they were filed. He did not provide any information. He states he did not file his federal or state tax returns because of procrastination. (Tr. 33-38)

Applicant was laid off in 2012. He was unemployed for 12 months before being hired by his current company. At one point, he had to take two to three weeks unpaid

leave for medical purposes. (Tr. 19-20). He testified he is attempting to pay his debts one debt at a time.

Of the debts alleged in the SOR, Applicant believes the debts alleged in SOR ¶¶ 1.g and 1.h are the same debt. He has not made an attempt to contact the companies to inquire whether they are the same debt. He claimed that the delinquent tax debt alleged in SOR ¶ 1.c was paid off through garnishment. (Tr. 31-33) The record was left open to give him the opportunity to provide proof that the debt was paid. He did not submit any documents.

Applicant does not follow a formal budget. He pays the rent and his girlfriend pays the utilities. After expenses, Applicant has approximately \$800 left over each month. He has approximately \$7,000 in a 401(k). (Tr. 43-44)

### **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 must be considered when determining 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.

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 applicant or proven by Department Counsel. . . ." The applicant 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 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.

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.

The guideline notes several disqualifying conditions that could raise security concerns. I find the following disqualifying conditions apply:

AG ¶19(a): an inability or unwillingness to satisfy debts;

AG ¶19(c): a history of not meeting financial obligations; and

AG ¶19(g): failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant had not filed his state tax returns for tax years 2004-2007 and 2012. He had not filed his 2012 federal income tax returns. Although he claims he prepared the federal income tax return, he provided no proof that he filed the return. The state tax returns have not been prepared and filed. In addition to his tax issues, Applicant has 13 delinquent accounts that remain unresolved, a total approximate balance of \$16,464. He has a history of not meeting financial obligations either because of inability or unwillingness to satisfy his debts.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

I find none of the mitigating conditions apply. Applicant provided no proof that he paid any of the alleged debts. While he testified that he paid the federal tax debt alleged

in SOR ¶ 1.c through garnishment, he provided no proof verifying that it was paid. During the hearing, he disclosed he had not filed his federal and state income tax returns for 2011 - 2015. While the 2011, 2013 - 2015 federal tax returns were not alleged in the SOR, they can be considered as matters in mitigation. Applicant testified that he completed his federal income tax returns for tax years 2011 – 2015 and was about to mail the returns to IRS, but provided no proof that they were filed. It is unknown whether Applicant owes any delinquent taxes for those years. He has not filed his state income tax returns. While he was unemployed for a year in 2012, he was not proactive in resolving his delinquent debts after becoming employed full-time in 2013. The federal government expects that a person entrusted with classified information should meet certain standards and responsibilities. Timely paying one's financial obligations and timely filing and paying federal and state income taxes is one of those responsibilities. The security concerns raised under financial considerations are not mitigated.

### **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 considered that Applicant's health issues and a period of unemployment in 2012 contributed to his financial problems. However, questions about Applicant's judgment remain because of his failure to timely file his state and federal income tax returns over a five-year period and his failure to take steps to resolve his delinquent debts. His financial situation remains questionable. Security concerns under financial considerations are not mitigated.

### **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.o: 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.

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ERIN C. HOGAN  
Administrative Judge