



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



In the matter of:	)	
	)	
XXXXXXXXXXXXXXXXXXXXX	)	ISCR Case No. 15-01987
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andre M. Gregorian, Esquire, Department Counsel  
For Applicant: *Pro Se*

02/16/2017

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,<sup>1</sup> Applicant's clearance is denied.

On 7 October 2015, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations.<sup>2</sup> Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 3 March 2016 and I convened a hearing 27 April 2016. DOHA received the transcript 10 May 2016.

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-6, hearing exhibit (HE) I, and Applicant exhibits (AE) A-E. AE E was timely received post hearing. The record in this case closed 16 May 2016, when Department Counsel stated no objection to AE E.

<sup>2</sup>DoD acted 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 (AG) effective within the DoD on 1 September 2006.

## Findings of Fact

Applicant admitted the SOR financial allegations, except for 1.d. He is a 61-year-old former employee of a Government contractor where he was employed as a budget analyst from September 2010 to April 2016 (GE 1; AE B).<sup>3</sup> From September 2009 to September 2010, he was employed on a personal services contract with the U.S. Government (Answer). He previously worked as a contracting consultant from January 2008 to August 2009. This is a periodic reinvestigation of clearances he has held since at least August 1987, when he first went to work for the Federal Government.

The SOR alleges, and Government exhibits (GE 1-6) establish, nine delinquent debts totaling nearly \$246,000. Applicant admits eight of the nine debts, although he disputes the amount of delinquent taxes owed to the Internal Revenue Service (IRS) for SOR debts 1.f-1.i. He denied the state tax lien at SOR 1.d because the state withdrew the lien in December 2013 (Answer). He also admitted using his Government-issued credit card for personal expenses, but denied that he had retired from Government service because of it (SOR 1.j).<sup>4</sup>

The alleged debt consists of \$800 in consumer debt (SOR 1.a and 1.e), nearly \$81,000 in state tax liens filed in January 2007, October 2012, and February 2014 (SOR 1.c-1.e), and over \$164,000 in delinquent IRS tax debt for tax years 2008-2011 (SOR 1f-1.i). Applicant provided no evidence to show the current status of his tax accounts.

Applicant's December 2012 clearance application (GE 1) reported that he was on a repayment plan to pay unpaid state and Federal tax returns for tax years 2005-2006 and 2008-2011 totaling over \$195,000. He discussed his tax situation during a February 2013 subject interview with a Government investigator (GE 6), disclosing that he failed to pay his taxes in 2005-2006 and 2008-2011 and discussing SOR debts 1.a, 1.d, and 1.e, as well as some mortgage delinquencies. He stated his intent to pay debts 1.a and 1.e soon, but had not done so when the SOR was issued in October 2015.

In his Answer to the SOR, Applicant submitted a July 2014 Notice of Federal Tax Lien for tax years 2008-2012 totaling nearly \$151,000. AE E documents that Applicant

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<sup>3</sup>AE B establishes the chronology of his termination from employment in April 2016 because of this pending clearance adjudication.

<sup>4</sup>AE A establishes that Applicant began thinking about retirement by May 2006. Applicant retired on 13 December 2007 (Answer). On 19 December 2007, the Government began an investigation into Applicant's misuse of a Government credit card, and the matter was referred for review and adjudication on 26 December 2007 (Answer). On 14 February 2008, the Government informed the Applicant of the results of the investigation, noting that at the time of his retirement, his security clearance was terminated, but that Applicant would have to address the findings of the investigation if he ever applied for a clearance with the agency. Nevertheless, Applicant was awarded a personal services contract with the agency in September 2009, and was employed within the agency as a contractor from September 2010 until his periodic reinvestigation, begun in December 2012 (GE 1), was referred for adjudication and Applicant was denied continued access because his existing background investigation was too old and his current background investigation had not been scheduled for hearing (AE B).

paid approximately \$63,000 in state taxes from June 2010 to January 2016. He did not provide similar documentation of his claimed IRS payments. In April 2016, Applicant hired an enrolled agent to prepare his 2013 and 2014 Federal income tax returns (AE C, E). He also filed an extension for tax year 2015 (AE D). He estimates that he owes the IRS \$30,000 for 2013, \$30,000 for 2014, and \$10,000 (Tr. 54-55).

Applicant cites a variety of factors for his tax troubles. He stated that except for 2013 and 2014, he always filed his income tax returns on time (with or without an extension), he was just unable to pay what he owed. He was unable to pay his 2005 taxes when his sister died, and he took a retirement plan withdrawal to pay her funeral expenses and to redeem the family home that she had been living in.<sup>5</sup> The early retirement account withdrawal had its own tax consequences for Applicant. In 2006, he was unable to pay his taxes because he was paying for his son's college tuition. In 2008, it was college tuition for both his son and his daughter. For 2009-2011, it was his children's college tuition and helping his ex-wife with her living expenses when she lost her job, despite the fact that nothing in their divorce decree required that support.

However, Applicant also acknowledges that from September 2010 until January 2016, when his access was revoked, he was a Form 1099 employee for his company, meaning that he was essentially an independent contractor who was required to make quarterly tax payments, because his employer did not withhold taxes. Initially, he failed to pay enough taxes to cover his annual liability, until he eventually stopped paying altogether (Tr. 67-71). As a result of his conduct, while Applicant would not incur failure-to-file penalties, he would incur failure-to-pay penalties as well as interest. However, his untimely 2013-2014 taxes would be subject to failure-to-file penalties.

Applicant's current income is \$3,400 monthly retired pay. He provided no budget or evidence of credit or financial counseling. He acknowledged not being completely responsible in addressing his tax issue (Tr. 26), and that he really did not have a good reason for stopping his installment plan payments (Tr. 52, 56). He provided no work or character references, of any evidence of civic or community involvement.

### **Policies**

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

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<sup>5</sup>Apparently, the house had been encumbered to help pay her medical expenses (Tr. 74).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.<sup>6</sup>

### Analysis

The Government established a case for disqualification under Guideline F, and Applicant failed to mitigate the security concerns. According to the most recent evidence in the case file, Applicant has over \$69,000 in outstanding state tax liens, and nearly \$151,000 in Federal tax liens for 2008-2012, plus \$800 in unpaid consumer debt. Most of the debt has been pending for several years.<sup>7</sup> And the outstanding tax debt does not include his as-yet-undetermined tax liabilities for 2013-2015. Applicant's tax debt for 2013-2014 will include failure-to-file penalties, failure-to-pay penalties, and interest on an estimated \$70,000.

None of the mitigating conditions for financial considerations apply. His tax issues are both recent and multiple, and he has not demonstrated that they are unlikely to recur as he has been failing to pay enough in estimated quarterly tax payments to cover his expected annual liability since September 2010.<sup>8</sup> Furthermore, his tax problems are both due to circumstances beyond his control (family deaths and responsibilities) and not (tuition expenses, ex-wife's unemployment). In addition, Applicant was not fully responsible in addressing his debt. His \$800 commercial debt has been unaddressed for more than three years since he first committed to paying it in February 2013. While he appears to have entered into repayment plans for his state and Federal taxes, he did not document that he had made the IRS payments and he did not show the impact of his state tax payments on his debt. Moreover, he did not act to adjust his quarterly tax

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<sup>6</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>7</sup>¶19(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations; (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

<sup>8</sup>¶20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

payments once it was clear that they were insufficient to cover his liability.<sup>9</sup>

Applicant has not received any credit or financial counseling, and although his state taxes have been partially resolved to date, he has not shown the current status of either his state or Federal tax accounts.<sup>10</sup> Applicant has stated what his enrolled agent thinks his tax situation is for 2013-2014, but there is no evidence of the IRS's view of his taxes. Better documentation of his contacts with the state and IRS could be considered a good-faith effort to address his taxes,<sup>11</sup> But while it is understandable, if not entirely excusable, that his installment payments stopped when his access was revoked in January 2016, he is not without significant monthly income regardless, and he has not documented any effort to establish a new repayment plan within his current income beyond finally acting to file his delinquent 2013-2014 income tax returns. Applicant is in a sort of limbo until he can either obtain employment that does not require a clearance or to establish a repayment within his current, lower income. Nevertheless, it is clear that he is unable to establish a track record sufficient to conclude that his security-significant conduct is behind him. I conclude Guideline F against Applicant.

### **Formal Findings**

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs a-j: Against Applicant

### **Conclusion**

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

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JOHN GRATTAN METZ, JR  
Administrative Judge

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<sup>9</sup>¶20(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

<sup>10</sup>¶20(c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

<sup>11</sup>¶20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.