



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



In the matter of: )  
)  
) ISCR Case No. 15-02184  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrea Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

09/22/2016  
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**Decision**  
\_\_\_\_\_

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. The Government did not prove deliberate falsification by Applicant, therefore personal conduct disqualifying conditions were not established. Eligibility for access to classified information is granted.

**Statement of the Case**

On October 8, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The DOD acted 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 answered (Answer) the SOR on December 1, 2015, and requested a hearing. The case was assigned to me on March 2, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 4, 2016, setting the

hearing for March 29, 2016. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. I marked Department Counsel's exhibit list as hearing exhibit (HE) I. Applicant testified and offered exhibit (AE) A, which was admitted into evidence without objection. The record was held open to allow Applicant to submit additional evidence. He submitted AE B through J, which were admitted without objection. DOHA received the hearing transcript (Tr.) on April 7, 2016.

### **Findings of Fact**

Applicant admitted SOR allegations ¶¶ 1.a, 1.e, and 1.f, (with explanations) and denied allegations ¶¶ 1.b – 1.d, and 1.g. He admitted ¶ 2.a, but explained that he did not intend to deceive with his answer. The admissions are incorporated as findings of fact. After a review of the pleadings, transcript, and evidence, I make the following additional findings of fact.

Applicant is 62 years old and has worked for a government contractor since 2004. He has a high school diploma and one year of college. He was married twice and divorced twice. He has two adult sons. He retired from the Army in 1994 after 21 years of honorable service as a master sergeant (pay grade E-8). He also deployed in 2003, 2004, and 2005 to Iraq, and in 2006 to Afghanistan as a contractor. He held a security clearance while in the Army and again beginning in 2004.<sup>1</sup>

The SOR alleges Applicant filed a 2003 Chapter 7 bankruptcy, incurred a federal tax lien, incurred five delinquent debts (excluding a duplicate debt), and deliberately failed to list his federal tax debt on his July 2014 security clearance application (SCA) as required. His debts and bankruptcy were listed on credit reports from July 2014, February 2015, and September 2015, bankruptcy court records, and his personal subject interview (PSI) from September 2014.<sup>2</sup>

Applicant experienced financial difficulties starting in about 2003. Some of these problems came about while he was deployed and his then-wife squandered large sums of money. Additionally, he experienced tax issues because his employer did not withhold taxes from his pay check and he was required to account for this money himself. When he returned from his deployment, he discovered he did not have the funds available to pay his taxes because of his then-wife's spending. After his PSI in September 2014, Applicant retained a tax attorney to address his tax issues. His yearly income is about \$90,000, including his military retirement. The status of the debts is as follows:<sup>3</sup>

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<sup>1</sup> Tr. at 5-6, 17-19; GE 1.

<sup>2</sup> GE 2-6.

<sup>3</sup> Tr. at 23-24; Answer; GE 1; AE A-D.

**SOR ¶ 1.a (Chapter 7 bankruptcy):**

Applicant admitted that he had to file for bankruptcy protection in 2003. The debt discharged was approximately \$120,000.<sup>4</sup>

**SOR ¶ 1.b (unexpired lease debt--\$5,558 (duplicate debt with SOR ¶ 1.g)):**

Applicant presented documentation showing he settled this debt in April 2016 for \$4,000. This debt is resolved.<sup>5</sup>

**SOR ¶ 1.c (federal tax lien for 2013--\$11,287):**

Applicant provided documentation showing that he paid the underlying federal taxes that resulted in the lien filing. The lien release is dated August 2015. The payments were made from a levy placed on his military retirement account beginning in August 2011. This tax issue is resolved. Evidence was adduced that other federal and state income tax issues exist and that Applicant's tax attorney is working these issues.<sup>6</sup>

**SOR ¶ 1.d (consumer debt--\$150):**

Applicant presented documentation showing he paid this debt in April 2016. This debt is resolved.<sup>7</sup>

**SOR ¶¶ 1.e and 1.f (traffic tickets--\$129):**

Applicant presented documentation showing he paid these debts in March 2016. These debts are resolved.<sup>8</sup>

**Security Clearance Application (SCA):**

Applicant testified that he failed to list his federal tax debt on his SCA because he was paying the debt through a levy on his military retirement and because he would explain it to the investigator during his PSI, which he knew from experience would be upcoming. He had no intention to deceive the government with his answer to the question on his SCA. I found Applicant's testimony credible.<sup>9</sup>

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<sup>4</sup> Tr. at 28; GE 5.

<sup>5</sup> AE B, J.

<sup>6</sup> Tr. at 36, 40; Answer; AE F, H. Only the Applicant's 2013 federal tax lien was alleged in the SOR. The evidence concerning the filing of other federal and state tax returns and tax debt owed will only be considered as it might affect his credibility, the whole-person factors, and mitigation.

<sup>7</sup> AE E.

<sup>8</sup> AE D.

<sup>9</sup> Tr. at 44, 62; Answer.

## 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 that are to be used 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, 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." 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable 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 about 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* Executive Order 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 as follows:

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. Two are potentially applicable in this case:

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

Applicant had a prior bankruptcy and five debts that he failed to pay over an extended period of time. The evidence is sufficient to raise the above disqualifying conditions stated in AG ¶¶ 19(a) and 19(c).

Several financial considerations mitigating conditions under AG ¶ 20 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;
- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The bankruptcy is remote. Applicant has paid all the SOR debts and is continuing to resolve his tax situation. Since he has made efforts to repair his financial position, it is

reasonable to conclude that these types of debts will not recur, nor do they cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

The circumstances that led to Applicant's financial problems, his then-wife using funds allocated to pay taxes for other purposes while he was deployed, was a condition beyond his control. He acted responsibly in resolving his debts and seeking the assistance of a tax attorney to resolve his tax issues. AG ¶ 20(b) applies.

Applicant received counseling from his tax attorney. He made a good-faith effort to pay his debts with the resources he had at the time. All the SOR debts have been paid. AG ¶ 20(c) and ¶ 20(d) apply.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect sensitive information. Of special interest is any failure to provide truthful and candid answers during the trustworthiness process or any other failure to cooperate with the trustworthiness process.

AG ¶ 16 describes conditions that could raise a trustworthiness concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire. . . .

Applicant's testimony and his information in his Answer convince me that he did not deliberately provide false information on his SCA when he failed to affirmatively list his federal tax debt. He was paying the debt at the time and he intended to tell the investigator that information during his ensuing PSI. The Government failed to produce sufficient evidence of such intent. AG ¶ 16(a) does not apply.

### **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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's military service, civilian contractor deployments, and the personal circumstances that contributed to his financial problems. I found Applicant to be honest and candid about the circumstances that led to his debts. He took reasonable actions to resolve them. I find it unlikely that Applicant will be in a similar future situation.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the financial considerations security concerns, and the Government failed to establish the concern under Guideline E.

### **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
Subparagraphs 1.a – 1.g:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	FOR Applicant

## **Conclusion**

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

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Robert E. Coacher  
Administrative Judge