



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



In the matter of:

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) ISCR Case No. 15-02200  
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Applicant for Security Clearance

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

April 6, 2017

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has a lengthy history of failure to fully pay his Federal income taxes. Resulting security concerns were not mitigated. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on May 30, 2014. On August 5, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (Answer) on September 16, 2016, and requested a hearing before an administrative judge. The case was assigned to me on October 25, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on November 2, 2016, setting the hearing date for December 6, 2016, and I convened the hearing as scheduled. The Government offered Exhibits (GE) 1 through 8, which were admitted without objection. Applicant offered Exhibits (AE) A and B, which were admitted without objection, and testified on his own behalf. The record was left open for receipt of additional documents until March 1, 2017. On February 28, 2017, Applicant submitted AE C through AE Q. Department Counsel had no objections to AE C through AE Q, and they were admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on December 19, 2016.

### **Findings of Fact**

Applicant is a 36-year-old employee of a defense contractor, where he has worked since August 1999. He has held a security clearance since 2002, without violation. He is a high school graduate. He is not married, but has one child, age 11. (GE 1; Tr. 22-26.)

In his Answer, Applicant admitted the allegations in SOR ¶¶ 1.a and 1.b, with clarifications. Applicant's admissions and explanations are incorporated into the following findings.

Applicant is indebted to the Internal Revenue Service (IRS) in the amount of approximately \$11,085 for tax year 2010, and \$11,565 for tax year 2012. He filed his tax returns, as required by law, but was unable to afford to pay his tax obligations for 2010 and 2012 due to his high child support payments and his mortgage payments at that time. He testified that he owed on his state taxes too, but has paid off that debt. (GE 2; Tr. 28-30.)

In 2011, Applicant had a payment agreement with the IRS to withdraw monthly payments from his credit card to resolve his 2010 Federal tax debt. However, in September 2013, Applicant's credit card expired, and payments were no longer automatically charged to his account. Applicant claimed he had no idea that his monthly payments to the IRS were not being made until receiving notification from the DoD during his security investigation. He is now pending an installment agreement with the IRS to resolve his 2010 and 2012 Federal tax obligations. Applicant's Federal tax refunds were used to offset his Federal tax debt in 2013, 2014, and 2015. However, he owes a total of approximately \$23,520 on his Federal tax debts for 2010 and 2012. He submitted a payment of an undisclosed amount on September 20, 2016, along with an offer in compromise. That offer was rejected by the IRS because the monthly payment amount was too low. He resubmitted a second offer in compromise in November 2016, with a payment of \$454, which was the monthly payment amount requested by the IRS. He plans on continuing to make monthly payments of \$454 until this debt is resolved. (AE A; AE F; AE H; Tr. 31-36.)

Applicant's salary was approximately \$122,000 in 2016. (AE Q.) His October 2016 credit report reflected a resolved state tax lien and two paid collections accounts. Applicant's state tax obligation was resolved, in part, through a withholding order from the state court. (GE 3.) All other accounts were in good standing. (GE 8.)

### **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 (DCs) and mitigating conditions (MCs), which 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

## **Analysis**

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

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>1</sup>

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant has a history of financial irresponsibility dating back at least to 2010, and continuing to date with respect to his substantial delinquent Federal tax debt. Despite working full-time for his current employer since 1999, he remains without means to repay his substantial delinquent tax debt. His financial history and ongoing pattern of inability or unwillingness to pay his debts raise security concerns under the above disqualifying conditions, and shift the burden to Applicant to rebut, extenuate, or mitigate those concerns.

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<sup>1</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's ongoing financial difficulties:

- (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; and
- (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.

Applicant's financial problems are extensive, ongoing, and arose from voluntary choices on his part. They continue to reflect irresponsibility, unreliability, and poor judgment. AG ¶¶ 20(a) and (b) do not provide mitigation of the security concerns. There is insufficient evidence that he participated in effective financial counseling or that his financial problems are under control. While he made regular payments on his tax debts from 2011 to 2013, he stopped, and has only recently begun to make monthly payments again. He did not demonstrate a good-faith effort to repay the IRS. Applicant did not dispute the legitimacy of his delinquent debts, so AG ¶ 20(e) 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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who is responsible for his choices and conduct that underlie the security concerns expressed in the SOR, including failure to pay required income taxes. The alleged incidents of financial concern started in 2010 and remain ongoing. He did not establish a track record of recent payments to resolve his Federal tax debt. The likelihood that similar problems will recur remains a security issue, such that the potential for pressure, coercion, or duress is undiminished. He has a lengthy history of financial irresponsibility. Overall, the record evidence creates significant doubt as to Applicant's present eligibility and suitability for a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:                      AGAINST APPLICANT

Subparagraphs 1.a and 1.b:                      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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein  
Administrative Judge