



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02498

**Appearances**

For Government: Benjamin R. Dorsey, Esq., Department Counsel

For Applicant: *Pro se*

04/25/2017

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 5, 2015, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on December 17, 2015, and elected to have his case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on April 8, 2016. Applicant was afforded an opportunity to file objections and

submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not respond to the FORM. Therefore, the Government's evidence identified as Items 2 through 9 were admitted into evidence without objection. The case was assigned to me on February 10, 2017.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.c, 1.d, and 1.e. He denied SOR ¶¶ 1.b and 1.f. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 66 years old. He earned a bachelor's degree in 1975. He has been married since 1978. He has one adult child. He has been employed regularly since 1998 and with his present employer, a government contractor, since 2008.

SOR ¶ 1.c (\$33,840) alleged a delinquent federal tax lien entered in 2012. Applicant disclosed during a March 2013 background interview with a government investigator that he has had difficulties paying his federal taxes since about 2002, because he did not have enough money withheld during the tax year, and then did not have sufficient money to pay taxes. He told the investigator that each year he established a repayment plan with the Internal Revenue Service (IRS), but that plan would be invalidated the following year because he did not pay the total amount he owed for the current tax year. Applicant told the investigator that this pattern was ongoing.<sup>1</sup>

Applicant was late filing his 2011 federal income tax return, so he filed an extension, and then forgot to file the return until the IRS notified him in 2013. He told the investigator that after the IRS notified him of his failure to file his return, he filed the 2011 federal tax return in January 2013. He intended to set up a payment plan with the IRS. In Applicant's answer to the SOR regarding the tax lien, he stated, "I admit, I'm paying them in monthly installments of \$600 each month."<sup>2</sup> A letter from December 2012, showed that Applicant's employer was notified of the IRS tax lien and subsequently indicated that it "will deduct and send to the [IRS] sufficient amounts until total liability is paid."<sup>3</sup> It is presumed that this levy was implemented, but Applicant did not provide supporting documents to substantiate the payments or the current balance on this debt.

Applicant admitted the debt in SOR ¶ 1.a (\$3,045) and stated in his answer to the SOR that he would contact the creditor. This debt became delinquent after Applicant's

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<sup>1</sup> I have not considered for disqualifying purposes any negative information about Applicant's failure to timely file or pay federal income taxes for tax years that were not alleged. I will consider information as it relates to Applicant's credibility, in analyzing mitigating conditions, and in the whole-person analysis.

<sup>2</sup> GE 2, 4.

<sup>3</sup> GE 4, 5, 6, 7, 9.

2013 background interview. He did not provide supporting documents to show he has contacted the creditor or resolved the debt.<sup>4</sup>

The account for the debt in SOR ¶ 1.b (\$1,492) was opened and became delinquent after Applicant's 2013 background interview. In Applicant's answer to the SOR he stated he never heard of the creditor. The account was transferred to a collection company.<sup>5</sup> Applicant has not provided supporting documents to show he has attempted to contact the creditor or resolve this debt.

Applicant indicated in his answer to the SOR that he was making monthly payments on the debt alleged in SOR ¶ 1.d (\$10,821), for a repossessed vehicle. He admitted the charged-off debt in SOR ¶ 1.e (\$491), but stated he "believed this account was paid off."<sup>6</sup> He referenced that he thought this debt was related to the debt in SOR ¶ 1.d, and it was paid. He did not provide supporting documents to substantiate any payments made regarding the debts.<sup>7</sup> The debt is not resolved.

Applicant denied the debt in SOR ¶ 1.f (\$1,399), stating he did not remember the account. During Applicant's 2013 background interview, he was confronted with information about this debt, and acknowledged the account was a gas credit card. He was aware he was late on some payments, but believed he paid the account. He indicated he would contact the creditor, validate the account, and pay it, if it was legitimate. Applicant did not provide documentation on any action he took to contact the creditor or resolve the debt. It is unresolved.<sup>8</sup>

The debts alleged in the SOR are supported by credit reports from February 2013, March 2015, and October 2015.<sup>9</sup>

Applicant attributed his financial problems to helping his daughter with her expenses in 2011. He indicated that in 2013 he was going to change the amount that was withheld from his income for his federal income taxes, so that he would not have future problems. He told the government investigator that he used various computer financial programs to help him organize his finances and alert him when bills were due to be paid. At that time, he explained that he did not anticipate any future financial problems.<sup>10</sup>

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<sup>4</sup> GE 2, 6, 7.

<sup>5</sup> GE 2, 6, 7.

<sup>6</sup> GE 2.

<sup>7</sup> GE 2, 4, 5, 6, 7.

<sup>8</sup> GE 2, 4, 5, 6, 7.

<sup>9</sup> GE 5, 6, 7.

<sup>10</sup> GE 4.

## 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 are 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 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. 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to 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 EO 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.

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>11</sup>

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has a history of unresolved delinquent debts, including a tax lien, which he has been unwilling to satisfy. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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

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

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 failed to provide evidence that he is paying or resolving his delinquent debts. There is some evidence that his employer is garnishing his wages to pay the tax lien, but no additional evidence was provided. Applicant indicated he has paid or resolved some debts, but did not provide supporting documents. He also indicated he was going to contact a creditor to resolve a debt, but did not substantiate actions he may have taken. He denied owing a debt that he had previously acknowledged during a background interview. Two debts became delinquent after his background interview. I cannot find his behavior is unlikely to recur. His conduct is recent, ongoing, and casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply

Applicant attributed his financial problems to helping his daughter with her expenses in 2011. He admitted that for many years he did not have sufficient money withheld from his salary for taxes, and was also unable to pay them when due. For the application of AG ¶ 20(b), Applicant must show that the behavior that caused his financial problems were beyond his control. Helping his daughter was somewhat beyond his control, in that as a father he is expected to help her when necessary. However, his repeated failure to have an adequate amount of money withheld from his income, and then repeatedly having tax issues, was within his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. It has been six years since he helped his daughter and experienced financial problems. He did not provide evidence whether he continues to help his daughter or the circumstances surrounding the situation. He did not provide evidence regarding the current status of his tax lien or the resolution of his debts. Based on the limited evidence, presumably his tax debt is being paid through garnishment of his wages. This does not constitute acting responsibly. I find AG ¶ 20(b) has minimal application.

There is no evidence Applicant participated in financial counseling. Two of the debts alleged became delinquent after Applicant's 2013 background interview and he was on notice that his finances were a security concern. His employer is levying his

wages to pay the tax debt. He did not provide documents to support his assertions that he is paying or has resolved delinquent debts. There is insufficient evidence to conclude his financial problems are under control or being resolved. His employer's levy on his income does not constitute a good-faith effort to pay his tax lien. AG ¶¶ 20(c) and 20(d) do not apply. Applicant denied owing some debts or being aware of them, but failed to provide evidence of actions he may have taken to substantiate the basis of claim. 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 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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 66 years old. He admitted to having tax problems because he failed to have a sufficient amount of money withheld from his income and then was unable to pay his taxes when they became due. He indicated he paid certain debts and was unaware of others. He admitted he owed another debt and was going to contact the creditor. Applicant failed to provide documentary evidence to substantiate any of his claims. His failure to comply with rules and regulations concerning his legal obligation to timely pay his taxes is a security concern. He has failed to meet his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

### **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.f:                      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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge