



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 15-02827
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: *Pro se*

08/25/2016

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant mitigated security concerns raised by delinquent debt that he incurred during a two-year period of unstable employment. After being by hired his current employer, Applicant began responsibly addressing his trouble finances. He provided documentation showing a track record of debt repayments spanning a period of over three years, and the record evidence reflects he has not accumulated other delinquent debt since being hired by his current employer. Clearance is granted.

**History of the Case**

On October 30, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) alleging that Applicant's circumstances raised security concerns under the financial considerations guideline.<sup>1</sup> Applicant answered the SOR and requested a determination based on the administrative (written) record.

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<sup>1</sup> This action was taken under Executive Order (E.O.) 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) implemented by the Department of Defense on September 1, 2006.

On November 21, 2016, Department Counsel prepared the Government's written case, a file of relevant material (FORM), and sent it to Applicant. The FORM contains the pleadings, administrative documents, and four documentary exhibits, which were pre-marked Items 1 – 8. Without objection, Items 1 – 8 were admitted into the record.

Applicant filed a response to the FORM (Response). Applicant submitted a number of state and federal tax records with his Response. Applicant's Response and attached documents were collectively marked Exhibit A and, without objection, admitted into the record. On August 11, 2016, I was assigned Applicant's case for decision.<sup>2</sup>

### **Findings of Fact**

Applicant, 46, worked for his brother's construction company from 2001 to August 2012. He was an independent contractor (a 1099 employee). His brother was routinely late in providing the necessary tax documents, which negatively impacted Applicant's ability to timely file his tax returns. Also, in approximately 2011, the business suffered a severe downturn. Applicant found himself without work for weeks at a time and his income decreased significantly. His IRS account transcripts reflect that his adjusted gross income for 2010 was approximately \$69,000, which dropped by \$25,000 in 2011. His income in 2012 was \$11,000 less than it had been in 2010. (Exhibit A)

Applicant and his wife, who have been married for nearly 10 years, had their first child around the same time the construction business started experiencing financial problems. The added child care expenses further deepened Applicant's already troubled financial situation.

Applicant decided to return to school to improve his job prospects. He earned his GED in 2011, and was hired by his current employer in August 2012. He submitted a security clearance application (SCA) in January 2013, in connection with his job as a federal contractor. He voluntarily disclosed his failure to file federal and state tax returns for a number of years. Applicant explained that he could not afford to pay his accountant to prepare and file his returns. He also disclosed a number of debts that had become delinquent. Applicant stated that he had hired a new accountant and was in the process of filing his overdue tax returns and negotiating an installment agreement. (Item 5)

In April 2013, Applicant filed his federal and state tax returns for tax years 2009 through 2012. He also established an installment agreement with the IRS to pay his overdue taxes. His IRS account transcripts for 2009 through 2012 reflect a \$0 balance. Applicant paid his federal tax debt through a combination of consistent monthly installment payments and credits for substantial refunds he was owed. Applicant increased his tax withholdings to more quickly satisfy the federal tax debt. Applicant also submitted documentation showing that he filed his overdue state tax returns and paid his state tax debt. (Exhibit A)

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<sup>2</sup> Administrative documents, including confirmation that Applicant is still being sponsored for a clearance, were collectively marked and attached to the record as Appellant Exhibit I.

The SOR references at 1.a – 1.c Applicant's past tax issues, which have now been resolved. The SOR also lists four delinquent consumer-related debts at 1.d through 1.g. A review of credit reports submitted with the FORM establishes that the accounts listed in SOR 1.d and 1.g are for the same debt. The creditor listed in 1.d is the firm collecting the delinquent debt for the original creditor listed in 1.g. The remaining three SOR debts total about \$8,000. Two of the debts (1.d and 1.e), which constitute the bulk of the outstanding debt load, are credit cards that became delinquent when Applicant suffered a significant reduction in income. He disclosed these debts on his SCA and now that he has resolved his past tax issues he has contacted these creditors to pay these debts. He has not accumulated other delinquent debt since being hired by his current employer in August 2012.

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

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. 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

## **Analysis**

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

The security concern under this guideline is explained at 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 financial considerations security concern is not limited to a consideration of whether an individual with financial problems might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent to which an individual's delinquent debts cast doubt upon their judgment, self-control, and other qualities essential to protecting classified information.<sup>3</sup>

Applicant's accumulation of delinquent debt implicates the financial considerations security concern. The record evidence also raises the disqualifying conditions listed at AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

Additionally, Applicant's failure to timely file his 2009 through 2011 tax returns raises the disqualifying condition listed at AG ¶ 19(g), "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same." Due to his past failure to timely file and pay his taxes, Applicant bears a heavy burden in mitigating the financial considerations security concern.<sup>4</sup>

The guideline lists a number of conditions that could mitigate the concern. The following mitigating conditions are most relevant:

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

<sup>4</sup> See *generally*, ISCR Case No. 14-03358 at 3 (App. Bd. Oct. 9, 2015) (Board explained the heightened security concerns raised by tax-related financial issues, as follows: "A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information.").

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; and

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

A security clearance adjudication is not a debt collection process. Instead, an administrative judge examines the way an applicant handles their financial obligations to make a predictive judgment about how they will handle their security obligations.<sup>5</sup> Applicant's eligibility for a security clearance was called into question by the evidence submitted by the Government showing the accumulation of delinquent debt. Furthermore, Applicant's failure to timely file and pay his taxes raises heightened security concerns about his judgment and ability to abide by rules and regulations, requiring a closer examination regarding the circumstances giving rise to the tax issues and his response to it.

Applicant's past financial problems were, in part, due to matters beyond his control, notably, unstable employment when his brother's business suffered a business downturn. He did not sit idly by as his financial situation worsened. Instead, at a relatively advanced age, he returned to school around the time he was unable to attain full-time construction work and earned his GED. Applicant, with his newly-earned GED in hand, was then able to obtain his present job. He then filed his overdue tax returns and paid his tax debt. He did so through a demonstrated track record of debt repayment. He filed his overdue federal tax returns and entered into an installment agreement with the IRS in April 2013, or two and half years before the SOR was issued. He has not accrued other past-due debt since being hired by his current employer four years ago. AG ¶¶ 20(a) through 20(d) apply.

Applicant's past tax issues were not due to procrastination,<sup>6</sup> indifference, or intentional refusal to comply with tax laws.<sup>7</sup> Instead, his past financial problems were

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<sup>5</sup> See also, ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004) ("Security clearance determinations are not an exact science, but rather predicative judgments about a person's security suitability in light of that person's past conduct and present circumstances.") (citing, *Egan*, 484 U.S. at 528-529).

<sup>6</sup> See, e.g., ISCR Case No. 14-00221 (App. Bd. June 29, 2016).

primarily caused by unemployment and underemployment. After obtaining his current job, Applicant hired an accountant, filed his overdue tax returns, negotiated an installment agreement with the IRS, and fully satisfied his tax debt. Although he still has some past-due, consumer-related debt that he incurred during this recent period of financial instability, it is reasonable to surmise based on his track record of over three years of debt repayment that he will continue to address his past financial problems and manage his finances in a responsible manner.

Individuals applying for a security clearance are not required to be debt free, nor are they required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present documentation to refute, explain, or mitigate security concerns raised by their circumstances. Moreover, they bear the burden of showing that they manage their current finances in a manner expected of those granted access to classified information.<sup>8</sup> After considering all the evidence, both favorable and unfavorable, as well as the whole-person factors,<sup>9</sup> I find that Applicant met his heavy burden of proof and persuasion in mitigating security concerns raised by his past financial circumstances and established his present eligibility for access to classified information.

### **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 (Financial Considerations)      FOR APPLICANT

Subparagraphs 1.a – 1.g:      For Applicant

### **Conclusion**

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

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Francisco Mendez  
Administrative Judge

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<sup>7</sup> See, e.g., ISCR Case No. 98-0761 (App. Bd. Dec. 27, 1999).

<sup>8</sup> ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

<sup>9</sup> See, AG ¶ 2(a).