



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



In the matter of: )  
)  
) ISCR Case No. 15-02947  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

11/21/2016  
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**Decision**  
\_\_\_\_\_

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On October 10, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. 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 the SOR on November 13, 2015, and requested a hearing. The case was assigned to me on May 24, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 25, 2016, setting the hearing for June 13, 2016. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 4 which were admitted into evidence without objection. The

Government's discovery letter, which contained an exhibit list, was marked as a hearing exhibit (HE) I. Applicant testified and offered exhibits (AE) A through P, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on June 27, 2016.

### **Findings of Fact**

Applicant is 44 years old and has worked for his current government contractor-employer for approximately two years. He has an associate's degree and is currently pursuing a bachelor's degree. He is married and has two children. He has no military service.<sup>1</sup>

In his answer, Applicant admitted all the SOR allegations with explanations. The SOR alleged Applicant owed federal income taxes in the amounts of \$5,643 for 2012 and \$1,964 for tax year 2011. He also failed to pay his state tax debts for 2014 and 2015, which resulted in the filing of four state tax liens. The SOR alleged that he failed to file his 2013 federal and state tax returns. The SOR also alleged a delinquent consumer debt placed in collection status in the amount of \$1,226; four delinquent medical accounts placed in collection status in the amounts of \$240; \$137; \$72; and \$1,273. Finally, the SOR alleged he owed \$2,784 on a credit card account placed in collection status.<sup>2</sup>

Applicant explained that his poor financial situation arose in approximately 2008. He was then self-employed, but was not earning sufficient funds to meet all his obligations. He pursued other employment, but was unsuccessful for a time. Once he obtained a job he was laid off shortly thereafter. Also, during this time, his significant other lost their child and experienced medical expenses. In 2012, he experienced an unforeseen medical situation that incurred more expenses and took him off the job for an extended period. Despite these setbacks, Applicant decided against filing for bankruptcy protection and worked out payment arrangements for his debts and delinquent taxes. The status of the debts and unfiled tax returns is as follows:<sup>3</sup>

#### **SOR ¶ 1.a (consumer debt \$1,226):**

Applicant provided documentation showing this debt was paid in full in January 2015, before the issuance of the SOR. This debt is resolved.<sup>4</sup>

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<sup>1</sup> Tr. at 6, 39-40; GE 1.

<sup>2</sup> Answer.

<sup>3</sup> Tr. at 31; GE 2.

<sup>4</sup> AE A, O.

**SOR ¶¶ 1.b – 1.d, 1.j (medical debts \$240; \$137; \$72; \$1,273):**

Applicant provided documentation showing these debts were paid in full in 2013 and 2014, before the issuance of the SOR. These debts are resolved.<sup>5</sup>

**SOR ¶ 1.e (credit card debt \$2,784):**

Applicant provided documentation showing this debt was paid in full in November 2014, before the issuance of the SOR. This debt is resolved.<sup>6</sup>

**SOR ¶¶ 1.f – 1.g (federal tax debt for 2011 (\$1,964) and 2012 (\$5,643)):**

Applicant provided documentation showing that he entered into a payment plan with the IRS to pay his delinquent taxes. In September 2014 he began making monthly payments of \$105, which continued until August 2015. He then entered a subsequent agreement whereby he makes monthly payments of \$180. He has made those payments through May 2016. Applicant's 2015 tax return shows that he is due a refund of \$4,644, which will be applied to his existing tax debt. These debts are being resolved.<sup>7</sup>

**SOR ¶¶ 1.h – 1.i (unfiled federal and state tax returns for 2013):**

Applicant provided documentary evidence showing that he filed his 2013 federal and state tax returns in July 2015, before the SOR was issued. He has filed all his federal and state tax returns since 2013, including 2015. This tax filing issue is resolved.<sup>8</sup>

**SOR ¶¶ 1.k – 1.n (state tax liens \$358; \$ 1,270; \$342; \$2,583):**

Applicant provided documentation showing that the liens listed in SOR ¶¶ 1.k – 1.m were released because the underlying tax debts were paid in December 2014 (SOR¶¶ 1.k – 1.l) and March 2016 (SOR ¶ 1.m). He is making monthly payments of \$70 on the remaining tax debt. The payments are automatically withdrawn from his bank account and began in October 2015. These tax issues are resolved or being resolved.<sup>9</sup>

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<sup>5</sup> AE B, C, H.

<sup>6</sup> AE E.

<sup>7</sup> AE F, M, P.

<sup>8</sup> AE G.

<sup>9</sup> Tr. at 33; AE I, J, N.

Applicant presented a job appraisal from a former position he held, which showed he performed at the “fully meets requirements” level. He also presented numerous training and educational certificates.<sup>10</sup>

## **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

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<sup>10</sup> AE K, L.

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. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant owed federal taxes and state taxes for which liens were filed, and he was responsible for several other delinquent debts. He also failed to file his 2013 federal and state income tax returns. AG ¶¶ 19(a), (c), and (g) apply.

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;
- (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.

Applicant resolved all of his non-tax debt before the issuance of the SOR. He filed both his federal and state tax returns for 2013 and has filed all other required returns, including for tax year 2015. He has made monthly payments on his federal tax debt since September 2014 and his 2015 federal tax refund of over \$4,000 is being applied to the debt. He has paid his state tax debts, resulting in the release of three tax liens and he is making monthly payments on the fourth tax debt. He is resolving his tax debt, made good-faith efforts to resolve his remaining debts, and has filed all his required federal and state tax returns. His responsible, good-faith efforts to resolve his financial issues are sufficient to no longer cast doubt on his current trustworthiness, reliability, and judgment. AG ¶¶ 20(a), 20(c), and 20(d) 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 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.

I considered Applicant's past work performance record and his training and educational certificates. I found Applicant to be honest and candid about the circumstances that led to his tax and debt issues. He took action to file his tax returns, pay his tax debt, and pay his other debts. I find it unlikely that Applicant will find himself 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.

### **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.n: 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