



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



In the matter of:

ISCR Case No. 15-03095

Applicant for Security Clearance

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel

For Applicant: *Pro se*

August 19, 2016

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to mitigate his long history of financial difficulties under the guideline for Financial Considerations. His request for a security clearance is denied.

**Statement of the Case**

On January 25, 2016, the Department of Defense issued a Statement of Reasons (SOR) to Applicant 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective September 1, 2006.

Applicant answered the SOR on February 5, 2016 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on April 19, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 20, 2016, scheduling the hearing for May 10, 2016. The hearing was convened as

scheduled. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified. DOHA received the transcript of the hearing (Tr.) on May 19, 2016. The record was left open for Applicant to submit additional exhibits. On July 11, 2016, Applicant presented a 34-page exhibit submission, Applicant Exhibit (AE) A through AE L.<sup>1</sup> Department Counsel had no objections to AE A through AE L and they were admitted. The record then closed.

### **Findings of Fact**

Applicant is a 33-year-old employee of a defense contractor. (GE 1.) He has worked for his employer since October 2011. (Tr. 35.) He is divorced since January 2016, and is engaged to be remarried to another woman. (Tr. 50.) He served in the Marine Corps as a Reservist on active duty orders from approximately January 2003 to December 2012. He achieved the rate of Sergeant. He deployed to a combat zone in 2004 through 2005. He testified he was awarded a Navy and Marine Corps Commendation Medal during his service. (GE 1; Tr. 21-22.)

As stated in the SOR, Applicant was alleged to have failed to file and pay his Federal and state income taxes for tax years 2013 and 2014 (SOR ¶ 1.a). Applicant received a written warning for misuse of his corporate credit card in 2014 (SOR ¶ 1.b). Additionally, he had four other delinquent debts totaling \$8,440 (SOR ¶¶ 1.c through 1.f). In his Answer, Applicant admitted all allegations. His debts are identified in the credit reports entered into evidence. (Answer; GE 2; GE 3; GE 4.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant admitted that he failed to file and pay his Federal and state taxes for the tax years 2013 and 2014, as required by law. At the time of the hearing, Applicant had yet to file them. He testified that in 2013, he filed his state and Federal income taxes for 2012, and found he owed money to both the state and Federal government. He did not have the funds to satisfy his debts. As a result, he elected not to file either his state or Federal income tax returns for tax years 2013 and 2014. He testified that he did not know if he owed money for the 2013 and 2014 tax years. He also noted that his former wife could possibly have filed the tax returns for those years. (Tr. 19-20, 25-28, 46-48.)

After the hearing, Applicant hired a tax attorney to “aid him in the resolution of his tax matters.” As of July 7, 2016, the attorney claimed that all of Applicant’s returns were filed with the state and Federal government. (AE E.) Account transcripts from the IRS reflect that Applicant’s 2013 and 2014 Federal Tax returns were filed on July 11, 2016. (AE I; AE J.) Applicant’s 2015 Federal tax returns were filed in a timely manner. (AE H; Tr. 19.) He owes approximately \$11,657 to the IRS for unpaid taxes for 2012 through 2015. He testified that he contacted the IRS and requested a repayment plan. He plans to pay \$500 a month beginning August 15, 2016, pursuant to an installment agreement in evidence. (AE A; AE H; AE I; AE J; AE K.)

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<sup>1</sup> Applicant submitted a duplicate of the letter from his psychotherapist contained in AE L: once on June 7, 2016; and once on July 10, 2016. Both copies are contained in AE L.

An earnings-withholding order was issued by the state government on May 20, 2016, in order to allow the state to collect \$7,069.87 that Applicant owes for back taxes. His pay is being garnished at the rate of \$230 per month to resolve this debt. (AE A; AE F; AE G.)

From approximately 2012 to 2014, Applicant knowingly misused his corporate credit card for personal expenses in the approximate amount of \$7,500. Applicant testified:

I was using it for almost every meal, gas, and then I was keeping up with it for a while, was paying it off, and it wasn't a (*sic*) notice, and then I was behind like 45 days and they got a flag, and they took a look at it and they're like "Hey, what's going on?" I said, "Well, look, I'm using it to, you know, live paycheck to paycheck because I'm not spending my money responsibly." And that's exactly what I told them, and they were like "Well, that's not good." And I fixed it, but it hasn't come up again. (Tr. 28.)

When asked by Department Counsel if he was aware of company policies prohibiting personal use of corporate cards, Applicant responded: "I couldn't say that I didn't. I'm sure that when I was first issued the card I signed something that said I understand to use this only for use, but, yes, I did, yes." (Tr. 28.) As a result of his misuse of his corporate card, he received a written warning from his supervisor. (Tr. 24.) He testified he has not misused his corporate card since he received the warning. (Tr. 28-29.)

Applicant is indebted on a repossessed vehicle in the amount of \$5,317, as alleged in SOR ¶ 1.c. Applicant financed the purchase of a vehicle through this lender. The loan had a 26% interest rate. He was unable to pay the loan, and the vehicle was repossessed. The debt represents the amount owed on the loan after the vehicle was repossessed. Applicant testified that he was willing to resolve the debt, but had not heard recently from this creditor. His post-hearing submission did not address this creditor. This debt remains unresolved. (Tr. 24, 29-30.)

Applicant is indebted on a credit card delinquency in the amount of \$1,994, as alleged in SOR ¶ 1.d. This debt has been transferred to a collection agent. (Tr. 24, 31-32.) In his post-hearing documentation, Applicant claimed to have paid this debt. He submitted a three-agency credit report in which one agency, Experian, identified this debt as "paid." In the remarks section the Experian report states, "Account has been closed due to inactivity. I (*sic*) Unpaid balance reported as a loss by credit grantor." The Equifax and Transunion entries still reflect this debt as having a current balance of "\$1,994." (AE A; AE B.) Applicant produced no receipt or bank statement to further support his claim this debt is resolved. Applicant did not meet his burden to establish resolution of this debt.

Applicant was indebted on a collection account in the amount of \$739, as alleged in SOR ¶ 1.e. Applicant resolved this debt on June 20, 2016, through a payment of

\$637. He provided a letter from this creditor that indicated this debt was resolved. (AE A; AE B; AE C; Tr. 24-25, 34.)

Applicant was indebted on a collection account in the amount of \$390, as alleged in SOR ¶ 1.f. This debt has been delinquent since 2013. (GE 2.) He testified this debt related to a cable box that had not been properly returned. He first claimed that he paid this debt, but later said it “fell off” his credit report. This debt is unresolved. (Tr. 24-25.)

Applicant attributed his delinquent debts to “self-destructive” tendencies in managing his finances. He explained that he suffered from post-traumatic stress disorder (PTSD) and produced a letter from his psychotherapist, a Ph.D., who has treated him for the past year. The letter explained:

His PTSD symptoms have included shutting down when feeling overwhelmed or threatened, a startled response to a loud noise, a dysfunctional marriage, irritability and panic attacks both during and subsequent to his deployment. . . [Applicant] reports heading to [combat zone] with little real fear, but having become very frightened quickly during a rocket attack soon after his arrival. He remained terrified of missiles falling from the sky from that point forward. In addition, witnessing the death of another Marine with whom he worked closely further intensified his fears. There is no indication of any serious psychiatric disorder nor any indication of sociopathic tendencies.

My understanding of [Applicant] is that he almost always takes his responsibilities very seriously, including his work obligations, his relationships and his commitment to psychotherapy. What has happened with his financial picture (failing to pay taxes and accumulating debt) appears to be an aberration from his overall functioning and seems to reflect his pattern of behavior when overwhelmed – to shut down and avoid the discomfort. . . . (AE L.)

In Applicant’s post-hearing letter he claimed to have resolved “all credit related debts.” He noted that he has satisfied other delinquent debt, including delinquent parking citations owed to his local government. (AE A; AE B; AE D.) He promised to continue to work with his psychotherapist, “specifically on maintaining [his] attention to issues that [he] once avoided due to trauma.” (AE A.)

Applicant sought advice from a security manager about his financial situation prior to the hearing. He testified that he was referred to a financial planner. He signed up for eight sessions with the financial planner. The planner provided him form letters to send to his creditors to negotiate his debts. (Tr. 19, 34.)

## **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 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 AG ¶ 2 describing 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 clearance 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 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.

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* EO 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.

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

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant's alleged delinquencies began in 2013 and largely continue to date, despite recent efforts to resolve a few of them. He has been unable to satisfy his delinquent accounts due to a lack of funds and psychological condition. He admitted consistently spending beyond his means. For example, when he acquired a vehicle at a 26% interest rate. His lack of monies caused him to engage in deceptive financial practices by using his corporate credit card for personal purchases, against company policy. Further, he failed to file his 2013 and 2014 Federal and state income tax returns in a timely manner. His income is being garnished to repay his state income tax debt. He has not made any payments under his repayment plan with the IRS. The evidence raises security concerns under all of these conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's 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 ongoing. Of the four consumer debts identified on the SOR, only two of the debts are resolved (¶¶ 1.d and 1.e). Applicant has no documented history of making his monthly IRS payments; and his state tax debt is being resolved through an involuntary garnishment (¶1.a). He has failed to demonstrate that future financial problems are unlikely. Further, the DOHA Appeal Board recently held:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with these things is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Someone who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).<sup>2</sup>

Applicant's failure to file his Federal and state income tax returns for 2013 and 2014, until after the hearing, suggest his questionable judgment persists. The record

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<sup>2</sup> ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

contains little evidence to show that Applicant's financial problems are behind him and will not return. Mitigation under AG ¶ 20(a) has not been established.

Applicant attributed his financial problems partially to his PTSD. His medical condition is a circumstance beyond his control that affected his ability to resolve his debts, according to the opinion of his psychotherapist. However, despite counseling for PTSD over the past year, Applicant failed to demonstrate responsible behavior for his debts prior to the hearing. Instead, his efforts to repay the delinquencies as documented in his post-hearing submission are minimal, untimely, and do not establish responsible action under the circumstances. Mitigation under AG ¶ 20(b) has not been fully established.

Applicant provided evidence that he has had assistance from his psychotherapist. He also intends to complete financial counseling offered by his employer. However, there is no documentation supporting completion of any formal financial counseling. Further, there are no clear indications that his financial problems are being resolved or are under control. His recent efforts to make payments on his remaining debts do not establish a good-faith effort to repay overdue creditors because the payments are minor and they appear to be an effort to retain his security clearance, rather than a good-faith desire to repay his delinquent financial obligations. Mitigation under AG ¶¶ 20(c) and 20(d) has not been established.

AG ¶ 20(e) requires Applicant to provide documented proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue. Applicant has not provided evidence of any formal dispute or a basis for one. Mitigation under AG ¶ 20(e) has not been established.

### **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 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 honorably served in the Marine Corps for ten years. He served in a war zone and developed PTSD as a result. He is undergoing treatment for PTSD and is beginning to address his financial delinquencies. He filed his delinquent tax returns and appears to be starting on a path to rectify his delinquencies. If he continues to resolve these delinquencies and establishes a documented track record of payments and of filing his Federal and state tax returns in a timely manner, he may be eligible for a security clearance in the future. However, the record evidence does not support granting access at this time.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Jennifer I. Goldstein  
Administrative Judge