



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



In the matter of:

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) ISCR Case No. 15-04015  
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Applicant for Security Clearance

**Appearances**

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

For Applicant: Ryan C. Nerney, Esq.

April 20, 2017

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to timely file his state income tax returns for tax years 2010 and 2011. He filed Chapter 13 bankruptcy in 2008, which was dismissed in 2009. He is alleged to be delinquent on two consumer debts totaling \$457, and Federal and state tax debts exceeding \$15,128. Applicant recently filed his delinquent state tax returns and has resolved one delinquent account. He failed to disclose his debts, bankruptcy, and failure to file state taxes on his Electronic Questionnaires for Investigations Processing (e-QIP.) Concerns about his judgment and trustworthiness remain unmitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On August 26, 2014, Applicant submitted a signed e-QIP. On January 31, 2016, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, Financial Considerations, and E, Personal Conduct. 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.

On August 1, 2016, Applicant answered the SOR (Answer),<sup>1</sup> and requested a hearing before an administrative judge. The case was assigned to me on September 19, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 13, 2016, scheduling the hearing for December 19, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 5, which were admitted without objection. Applicant offered Exhibits (AE) A through M, which were admitted without objection. Applicant testified on his own behalf. The record was left open for Applicant to submit additional documents, and on January 9, 2017, he submitted AE N and AE O. Department Counsel had no objections for AE N and AE O, and they were admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on December 28, 2016.

### **Findings of Fact**

Applicant is 55 years old. He has been employed by his current employer, a defense contractor, since 2014. Applicant is married and he has three adult children. (GE 1; AE F; Tr. 21-22.)

As alleged in the SOR under Guideline F, Applicant filed Chapter 13 bankruptcy in 2008, and this proceeding was dismissed in 2009, which means the debts were not discharged (SOR ¶ 1.a). He is alleged to be delinquent on two consumer debts totaling \$457 (SOR ¶¶ 1.c and 1.d). He also owes his state taxation authority \$3,128 (SOR ¶ 1.b), and the Federal government a tax debt of \$12,000 (SOR ¶ 1.e). Additionally, Applicant failed to timely file his state income tax returns for tax years 2010 and 2011 (SOR ¶ 1.f). Under Guideline E, Applicant was alleged to have deliberately falsified his e-QIP by not disclosing his failure to file his state tax returns and having undisclosed delinquent debts (SOR ¶ 2.a). Applicant admitted SOR ¶¶ 1.a, 1.b, 1.e, and 1.f. He denied SOR ¶¶ 1.c, 1.e, and 2.a. His delinquent debts are documented in the credit reports entered into evidence. (Answer; GE 3; GE 4; GE 5.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant attributes his financial delinquencies to underemployment in 2007, due to a decline in the housing market. Prior to the economic decline, he worked 50 hours a week and made approximately \$3,000 per month. In 2007, he only worked 15 to 20 hours per week, significantly reducing his income. He found another job that provided full-time hours in 2007, but he did not make as much as he did the previous year. As a result of his declining income, Applicant filed Chapter 13 bankruptcy in 2008. On the advice of his bankruptcy attorney, he stopped making his plan payments in 2009, and the Chapter 13 proceeding was dismissed by the court in May 2009. (GE 2; AE F; Tr. 22-27, 47, 53.)

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<sup>1</sup> Applicant's Answer was submitted by his Attorney on August 1, 2016. A prior submission is contained in AE M.

A tax lien was entered against Applicant in 2013, for unpaid state taxes in the amount of \$3,128. The tax lien stemmed from his failure to file state income tax returns in 2010 and 2011. He testified that he thought he filed them electronically but, through a technical glitch, the filing did not go through for either year. Applicant claimed he learned of his state tax debt for tax years 2010 and 2011 in 2013, when the lien was filed against him. He testified he reached an installment agreement with the state taxation authority in 2014. (GE 2; AE B; AE F; AE H; Tr. 30-35.) A computation for tax year 2010 shows that the debt for that tax year has been resolved. (AE F.) The evidence excludes a computation for tax year 2011. In a 2016 installment agreement with the state taxation authority, Applicant agreed to pay \$25 per month until his 2011 state tax debt is resolved. He testified he still owes the state approximately \$2,000. Applicant's credit report dated March 15, 2016, reflects that the state tax lien has been released, but does not give a release date. (AE D.) Applicant filed his 2010 and 2011 state income tax returns on January 6, 2017. (AE N; AE O; Tr. 30-35, 47-49, 54.)

Applicant was indebted on a vehicle loan in the approximate amount of \$401. Applicant fell behind on his vehicle payments in 2007 when his hours at work were reduced. In February 2012, Applicant paid this debt in full. He presented a letter from this creditor and a copy of the vehicle title as proof this debt is resolved. (GE 2; AE F; AE G; AE M; Tr. 27-28.)

Applicant was indebted to a collection agent for a cable company in the amount of \$56. This debt has been delinquent since at least 2013. (GE 3.) Applicant testified that he contacted this creditor to arrange repayment, but the creditor was unable to locate the account. This debt is unresolved. (Tr. 29-30.)

Applicant is indebted to the Internal Revenue Service (IRS) for unpaid Federal taxes, interest, and penalties totaling approximately \$12,000. An account statement from the IRS shows that he owed: \$3,883 for 2008; \$3,264 for 2009; \$1,048 for 2010; \$1,630 for 2012; and \$2,563 for 2013. He established an installment agreement with the IRS in 2014 to resolve each of those tax years. From July 7, 2014, to July 13, 2015, he paid the IRS a total of \$630 toward the resolution of these debts, as follows: \$30 on December 30, 2014; \$150 on January 29, 2015; \$150 on February 27, 2015; \$150 on April 12, 2015; and \$150 on June 1, 2015. He produced no other documentation to show he is current with his installment agreement payments to the IRS. (GE 2; AE C; AE F; AE I; AE M; Tr. 36, 50-52.)

On Applicant's e-QIP, signed on August 26, 2014, he indicated "no" to all of the questions in section 26 pertaining to his financial status. The questions include: "In the last seven (7) years have you filed a petition under any chapter of the bankruptcy code?;" "In the past seven (7) years have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?;" "In the past seven (7) years have you had a lien placed against your property for failing to pay taxes or other debts?;" "You are currently delinquent on any Federal debt?;" and "You are currently over 120 days delinquent on any debt?;" Applicant testified that he did not intentionally provide false answers, but that he thought that because he was making payments on his state and Federal tax debts, that they were not delinquent. He also indicated he did not get a

credit report, so he was not aware of his consumer delinquencies. His explanations are not credible. At the very least, he knew he had filed Chapter 13 bankruptcy in 2008; and he did not give a credible explanation as to why he was not aware in 2014 that he had not filed his 2010 and 2011 state tax returns. He should have disclosed that information on his e-QIP. His omissions were intentional. (GE 1; Tr. 44, 55.)

Applicant testified that he has approximately \$1,000 left over at the end of each month after meeting his monthly financial obligations, including his state and Federal tax payments. (Tr. 37-42.) He signed a statement of intent promising to timely file his Federal and state taxes in the future. (AE A; Tr. 46.) He documented that he attended financial counseling in 2016. (AE L.) His landlord indicated he has never been late on his rent (AE K.)

Applicant's lead wrote a letter in support of Applicant's security clearance application. It indicated Applicant has never had any behavior problems and is well liked by his peers. He finds Applicant "extremely trustworthy." (AE K.) Applicant received a spot award from his employer in 2015 for excellent work performance. (AE J.)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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 three 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; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant has a history of financial indebtedness. His 2008 Chapter 13 bankruptcy filing and current unresolved debts establish a nine-year history of financial problems, as documented by the credit reports in evidence. Applicant has resolved the debt identified in subparagraph 1.c. He has made some payments toward the tax debts in subparagraphs 1.b and 1.e, but failed to provide documentation to show he is current on his payment arrangements with, or the current balances owed to, the state and Federal governments. He has been unable or unwilling to address the debt in

subparagraph 1.d. Moreover, Applicant failed to file his state income tax returns for tax years 2010 and 2011, as required by law, until after the hearing in January 2017. The evidence raises security concerns under the above disqualifying 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. Applicant failed to produce sufficient evidence to show his tax debts are being resolved. He has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20(a) has not been established.

Applicant established that his delinquencies and failure to file his state tax returns were caused, in part, by events that were beyond his control including his under employment and a software glitch. However, he failed to establish that he has acted responsibly under these circumstances. He has been fully employed since 2007. He did not address his debts in a timely manner. Further, despite his awareness of his outstanding 2010 and 2011 state income tax returns after 2013, he failed to file them until January 6, 2017, three days before the record closed. Mitigation under AG ¶ 20(b) has not been established.

Applicant provided evidence of financial counseling. However, there are no clear indications that his financial problems are being resolved or are under control, despite that counseling. Additionally, Applicant's "[f]ailure to file tax returns [until three days prior to the close of the record] suggests that an applicant has a problem with complying with

well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information.”<sup>2</sup> Further, Applicant’s history of not fulfilling his legal obligation to file state income tax returns demonstrates a lack of the judgment and reliability required for access to classified information.<sup>3</sup> The Appeal Board has noted: “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 as reflected in the Guideline F concerns that were alleged.”<sup>4</sup> Mitigation under AG ¶¶ 20(c) and 20(d) was not established.

AG ¶ 20(e) requires Applicant to provide documented proof to substantiate the basis of any 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.

### **Guideline E, Personal Conduct**

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant deliberately failed to disclose his 2008 Chapter 13 bankruptcy; his delinquent debts; his failure to file and pay his outstanding state tax obligations; and his failure to pay his Federal tax obligation. Security concerns under AG ¶ 16(a) were established.

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<sup>2</sup> ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016.)

<sup>3</sup> ISCR Case No. 98-0608 at 4 (App. Bd. Jun. 27, 2000).

<sup>4</sup> ISCR Case No. 14-03358 at 3 (App. Bd. Oct. 9, 2015).

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

After considering the mitigating conditions outlined above in AG ¶ 17, it is apparent that none of them were established in this case. Applicant did not make prompt or good-faith efforts to correct his falsification or concealment. He waited until he was interviewed and confronted by an OPM investigator to disclose his bankruptcy filing, his Federal and state tax debts, and his unfiled taxes. He provided no information that indicates he was ill-advised in completing his e-QIP. Falsifying material information is a serious offense and Applicant has done nothing to show that similar lapses in judgment are unlikely to recur. Further, he failed to take responsibility for his actions. He has not provided sufficient evidence to meet his burden of proof concerning his personal conduct.

### **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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant's lead finds him trustworthy. He received a performance-based award in 2015. He has completed some financial counseling and has no new debts. These are factors that weigh in Applicant's favor. However, Applicant's financial problems remain largely unresolved. While he was given the opportunity to document the status of his Federal and state debts, he failed to produce evidence of any recent payments or evidence of current balances owed on his delinquent taxes. The evidence he presented documenting payments under an offer and compromise in 2015, show that he missed at least two payments. He failed to establish a track record of repaying his IRS or state tax debts. Further, he provided false information on his e-QIP.

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 failed to mitigate the Financial Considerations and Personal Conduct 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:         | For Applicant     |
| Subparagraph 1.d:         | Against Applicant |
| Subparagraph 1.e:         | Against Applicant |
| Subparagraph 1.f:         | Against Applicant |
| Paragraph 2, Guideline E: | AGAINST APPLICANT |
| Subparagraph 2.a:         | 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