



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



In the matter of:

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) ISCR Case No. 15-04248  
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Applicant for Security Clearance

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

May 12, 2017

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to timely file his Federal and state income tax returns for tax years 2012 and 2013, and is alleged to be delinquent on a medical debt in the amount of \$538. Applicant has not filed his delinquent tax returns or resolved his delinquent account. Concerns about his judgment and trustworthiness remain unmitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 24, 2014, Applicant submitted a signed Electronic Questionnaires for Investigations Processing (e-QIP.) On December 18, 2015, 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.

On February 1, 2015, Applicant answered the SOR (Answer), and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on March 2, 2016. The Government's submission included Government Items 1 through 6. A complete copy of the file of relevant material (FORM) was received by Applicant on March 7, 2016. He was afforded a 30-day opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant did not submit any documentation within the time period of 30 days after receipt of the copy of the file of relevant material, which concluded on April 6, 2016. The case was assigned to me on January 26, 2017.

### **Findings of Fact**

Applicant is 44 years old. He has been employed by his current employer, a defense contractor, since October 2013. He is divorced and identified no children on his e-QIP. (Item 3.)

As alleged in the SOR, Applicant failed to file his Federal and state income tax returns for tax years 2012 and 2013 in a timely manner, and was delinquent on one medical debt. Applicant admitted both of the SOR allegations. His delinquent debt is identified in the credit report entered into evidence. (Answer; Item 6.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant disclosed on his 2014 e-QIP that he failed to file his Federal and state income tax returns for tax years 2012 and 2013. He explained he "didn't have the time to file" in 2012 and "procrastinated" in 2013. He claimed he would file his taxes the following week. However, in his Answer, he admitted that he still had not filed his Federal and state income tax returns for tax years 2012 and 2013, due to extensive hours at work. He claimed to have submitted them to an accountant, but did not provide documentation to support his claim. (Item 3; Answer.)

Applicant is indebted to a medical creditor in the amount of \$538, as alleged in SOR subparagraph 1.b. He indicated in his Answer that he paid this debt in 2011, but failed to present documentation to substantiate his claim. (Item 6; Answer.)

Applicant provided no evidence establishing his current income or household budget. He offered no evidence of financial counseling or of other indicators of financial responsibility. The record lacks any evidence concerning the quality of Applicant's professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

### **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 documented by the credit reports in evidence, which substantiate all of the allegations. He remains indebted to the creditor listed in subparagraph 1,b. He has been unable or unwilling to address this delinquency. Moreover, Applicant failed to file his Federal and state income tax returns for tax years 2012 and 2013, as required by law. 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. Both SOR allegations remain unresolved. He has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20(a) has not been established.

Applicant failed to establish that his delinquency and failure to file his Federal and state tax returns were caused by events that were beyond his control. Further, he failed to establish that he acted responsibly under the circumstances. Mitigation under AG ¶ 20(b) has not been established.

Applicant provided no evidence of financial counseling. There are no clear indications that his financial problems are being resolved or are under control. He failed to demonstrate reasonable or responsible actions with respect to his annual tax filing obligations. As a general rule, "[f]ailure to file tax returns 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>1</sup> Further, Applicant's history of not fulfilling his legal obligation to file income tax returns demonstrates a lack of the judgment and reliability required for access to classified information.<sup>2</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>3</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.

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<sup>1</sup> ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016.)

<sup>2</sup> ISCR Case No. 98-0608 at 4 (App. Bd. Jun. 27, 2000).

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

## **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's financial problems remain largely unresolved. While he was given the opportunity to document the status of his debt and income tax returns, he failed to produce evidence of any responsible action. 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 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

## **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