



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



In the matter of:

REDACTED

Applicant for Security Clearance

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ISCR Case No. 15-04958

**Appearances**

For Government: Allison Marie, Esq., Department Counsel  
For Applicant: Gregory F. Greiner, Esq.

04/04/2017

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant failed to present sufficient evidence to mitigate security concerns raised by his tax-related financial issues and falsification of his security clearance application. Clearance is denied.

**Statement of the Case**

On February 21, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the financial considerations and personal conduct guidelines.<sup>1</sup> Department Counsel, thereafter, amended the SOR to allege pertinent matters under both guidelines under consideration.<sup>2</sup> Applicant answered the initial and amended SOR (hereinafter collectively referred to as the SOR), and requested a hearing to establish his eligibility for continued access to classified information.

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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.

<sup>2</sup> The Government's motion to amend the SOR and Applicant's answers to the new SOR allegations were collectively marked Appellate Exhibit (App. Exh.) I.

Applicant's hearing was initially scheduled for February 14, 2017, but was rescheduled for March 21, 2017, to provide him sufficient time to answer and address the new SOR allegations. The hearing was held on this later date.<sup>3</sup>

Applicant testified at the hearing and the exhibits offered at hearing and post-hearing were admitted into the administrative record without objection. (Government Exhibits 1 – 12 and Applicant's Exhibits A – M)<sup>4</sup> The transcript (Tr.) was received and the record closed on March 29, 2017.

### **Findings of Fact**

Applicant is married with two adult-aged children. He is a high school graduate and has completed some college. He has worked in the information technology field as a contractor for the federal government and held a security clearance for nearly 30 years. (Tr. 12-13, 34-36)

Applicant's current tax-related financial problems date back to 2010. His tax preparer, in the process of preparing and filing Applicant's 2009 tax year income tax return, informed Applicant that he was not withholding a sufficient amount in taxes from his salary. At the time, Applicant was not having any income taxes withheld from his pay. He testified that he attempted to correct his withholdings, but he repeatedly failed to withhold a sufficient amount from his pay and his tax situation swelled. His federal tax debt for tax years 2009-2014 is over \$65,000, which were reduced to lien judgments. He also has over \$15,000 in state tax liens that were filed against him between 2012 and 2014. (Tr. 46-47, 73-74; Exhibits 5-10)

In about March 2016, Applicant entered into an installment agreement with the IRS to resolve his federal tax debt. He only made two to three plan payments before stopping. He is now attempting to negotiate a settlement with the IRS with the assistance of a private tax firm. Applicant's past-due federal taxes, which are referenced at SOR 1.h and 1.i and total over \$65,000, remain unresolved. (Tr. 20-23, 51-54, 68-74; Exhibit E)

In February 2017, with the assistance of the tax firm, Applicant entered into an agreement with the state tax authority to resolve his outstanding state tax debt. He did so, in part, to resolve a state hold on tags needed to drive his car. Post-hearing, he made the first monthly payment of \$343. No evidence was presented that the four state tax liens, which are referenced at SOR 1.d – 1.g and total over \$15,000, were satisfied, released or otherwise resolved. (Tr. 17-22, 45-50, 71-74; Exhibit D, Exhibit I)

Applicant explained that his current tax problem was primarily due to his failure to withhold a sufficient amount in taxes from his salary. He was also working two jobs and

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<sup>3</sup> Prehearing correspondence, the notice of hearings, and case management order were marked and are attached to the record as App. Exh. II – IV.

<sup>4</sup> Department Counsel's discovery letters, dated June 24, 2016 and February 7, 2017, were collectively marked App. Exh. V. Post-hearing correspondence was marked App. Exh. VI.

a lot of overtime, with an increase in income that placed him in a higher tax bracket. He experienced similar tax problems in the past and paid his taxes after liens were filed. Tax liens were filed against Applicant for past-due state taxes in 2002, 2003, 2005, and 2006.<sup>5</sup> (Tr. 17, 20, 46, 49-50, 54-58; Exhibit 11)

In September 2014, Applicant submitted a security clearance application (SCA) as part of a periodic background investigation. He was asked the following question:

**Taxes. In the past seven (7) years** have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?<sup>6</sup>

Applicant answered “no” to this question and to all the questions on the SCA asking if he had any other potentially adverse financial information to report. Specifically, he answered “no” to questions asking him to report tax liens, judgments, and other past-due debts. (Exhibit 1)

At hearing, Applicant explained that when he submitted the SCA he knew he had resolved some tax debts in the past, but was uncertain as to the amount of back taxes he owed. He also stated, in explaining why he had not listed an \$18,500 judgment from 2010 and some minor delinquent debt, that he was unaware of his delinquent accounts because he did not review a credit report before submitting the SCA. (Tr. 24-29, 63-67, 74-75)

Applicant plans to obtain financial counseling. He presented documents showing that, as of December 2016, he had past-due balances on both of his car loans. He also presented a January 2017 bank statement, which in part shows that he was assessed “returned item,” “overdraft fees,” and a “negative account balance fee” for the period of December 2016 to January 2017.<sup>7</sup> He recently started a second job to help pay off his past-due taxes. He submitted documentation showing he had addressed the debts listed in SOR 1.a – 1.c totaling about \$1,000. In 2016, Applicant earned approximately \$130,000. He and his wife’s combined household income for 2016 was about \$200,000. (Tr. 29-33, 37-41, 58-65, 71; Exhibits A-C, Exhibit H)

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<sup>5</sup> These tax liens, which were subsequently resolved by Applicant, were not alleged in the SOR and are not being considered for disqualification purposes. They are only being considered in assessing Applicant’s mitigation case and whole-person factors. *Contrast with* ISCR Case No. 12-11375 (App. Bd. June 17, 2016) (non-alleged tax issues considered in a manner inconsistent with such limited and proper purposes).

<sup>6</sup> Exhibit 1 at 31 (emphasis in original).

<sup>7</sup> Post-hearing, Applicant submitted documentation showing that he scheduled debits from his bank account to pay some of his recurring monthly debts, including his delinquent car loans. These debits from his bank account were scheduled for March 31, 2017.

## 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

Applicant's history of tax-related financial problems, as alleged in the SOR, raise the financial considerations security concern, which is explained at AG ¶ 18:<sup>8</sup>

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.

In assessing Applicant's case, I considered the following pertinent disqualifying and mitigating conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations;

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;

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

AG ¶ 20(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.

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<sup>8</sup> The minor debts referenced in SOR 1.a – 1.c totaling about \$1,000 are immaterial. See ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017) (remanding case, in part, for judge to explain how \$1,000 in delinquent debt raised a security concern under Guideline F).

An applicant who fails to timely file or pay his or her taxes, a basic and fundamental financial obligation of all citizens, bears a heavy burden in mitigating the financial considerations security concern.<sup>9</sup> An administrative judge should closely examine the circumstances giving rise to an applicant's tax-related issues and his or her response to it. Furthermore, an applicant's claim of financial reform must be weighed against the overriding concern about the individual's lack of judgment and history of failing to abide by rules and regulations in failing to timely file or pay their taxes.<sup>10</sup>

Applicant's current financial situation was not caused by matters beyond his control and he took no discernible action to address his tax situation until his clearance was in jeopardy. He has not obtained financial counseling and, as evidenced by his own exhibits, he has yet to take control of his finances. None of the potential mitigating conditions apply.

Over the course of six years, from 2009 to 2014, Applicant repeatedly failed to withhold a sufficient amount from his salary to pay his federal and state income taxes. He was gainfully employed as a federal contractor during this entire period, earning a six-figure salary in 2016. He stopped making payments per the terms of the IRS installment plan after just two or three months and shortly before the hearing entered into an agreement to resolve his longstanding state tax issue. He failed to present evidence of a reliable track record of debt repayment and compliance with his tax obligations. Applicant also failed to show that similar security-significant financial issues are unlikely to recur.<sup>11</sup>

## **Guideline E, Personal Conduct**

The SOR alleges Applicant falsified his SCA by failing to disclose potentially disqualifying information about his financial record. Specifically, he did not disclose: (1) his failure timely pay his taxes, (2) the four state tax liens entered against him between 2012 and 2014, and (3) a 2010 judgment for over \$18,500.<sup>12</sup> A deliberate falsification of

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<sup>9</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.").

<sup>10</sup> ISCR Case No. 14-05794 (App. Bd. July 7, 2016); ISCR Case No. 14-00221 (App. Bd. June 29, 2016); ISCR Case No. 15-01031 (App. Bd. June 15, 2016); ISCR Case No. 12-09545 (App. Bd. Dec. 21, 2015).

<sup>11</sup> See, e.g., ISCR Case No. 14-05794 at 6 (App. Bd. July 7, 2016) (favorable decision reversed because judge did not adequately consider security concerns raised by applicant's failure to withhold a sufficient amount in taxes from his wages over a period of four years and delay in addressing tax debt).

<sup>12</sup> SOR 2.a and 2.b. The SOR also alleges that Applicant deliberately failed to disclose the minor debts referenced in SOR 1.b and 1.c. The deliberate omission of any matter that needs to be reported on an SCA can potentially raise a security concern. ISCR Case No. 08-11944 at 3 (App. Bd. Aug. 15, 2011) ("Applicant appears to argue that the security significance of the falsifications derives from the security significance of the events that were the subject of the falsifications. This argument lacks merit. An act of falsification has security significance independent of any significance of the underlying conduct.") Here, Applicant's explanation for not listing these minor debts on the SCA was both plausible and credible. Thus, SOR 2.b is decided in his favor.

a security clearance application raises the personal conduct security concern, which is set forth at 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.

The security clearance process is contingent upon the honesty of all applicants. It begins with the answers provided in the SCA and continues throughout the security clearance process. An applicant should disclose any potential derogatory information responsive to the questions asked on the SCA. However, the omission of material, adverse information standing alone is not enough to establish that an applicant intentionally falsified his or her SCA. An omission is not deliberate if the person genuinely forgot the information requested, inadvertently overlooked or misunderstood the question, or sincerely thought the information did not need to be reported. An administrative judge must examine the facts and circumstances surrounding the omission to determine an applicant's true intent.<sup>13</sup>

Applicant falsified his SCA when he deliberately omitted the negative financial information about his taxes and the sizeable judgment entered against him in 2010. In reaching this conclusion, I have taken into account Applicant's age, educational background and work experience at the time he submitted the SCA. Additionally, at the time he filled out the SCA, Applicant was clearly aware about the significant 2010 judgment and that he had not timely paid his taxes for several years. He was first made aware of the tax problem by his tax preparer in 2010 and every year thereafter the tax debt continued to grow. (Tr. 46-47, 73) The fact Applicant, through his own financial irresponsibility, was not aware of the scope or magnitude of the tax problem did not relieve him of the responsibility to report this information. Applicant, at a minimum, should have answered the relevant questions in the affirmative, which would have placed the Government on notice as to a potential issue involving his finances. *Contrast with* ISCR Case No. 15-03727 (App. Bd. Sep. 21, 2016) (error to find applicant falsified SCA simply because not aware of "financial status before completing the SCA.")

Accordingly, for the foregoing reasons, the disqualifying condition listed at AG ¶ 16(a) applies.<sup>14</sup> None of the mitigating conditions listed under AG ¶ 17 apply.

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<sup>13</sup> See *generally* ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005).

<sup>14</sup> Deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations . . . determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

## Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the whole-person factors listed at AG ¶ 2(a). I hereby incorporate my above analysis and highlight some additional whole-person factors.

Applicant has held a security clearance for nearly 30 years without apparent issue. He is working two jobs in an attempt to resolve his tax issues. Such evidence raises favorable inferences regarding his security worthiness. However, his tax-related financial problems stretch back at least 15 years. He has repeatedly failed to take corrective action to comply with his tax obligations and recently failed to reveal his tax problems on a security clearance application. Months after submitting his security clearance application, Applicant filed his 2014 tax year tax return and again did not pay his federal income taxes when due. As of the close of the record, his past-due federal tax debt stands at over \$65,000 and he has an additional \$15,000 in state tax liens that remain unresolved. This disqualifying information raises security concerns that are not outweighed by the favorable record evidence. Overall, Applicant failed to meet his burden of proof and persuasion to continue his eligibility for a security clearance.

## 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):      AGAINST APPLICANT

Subparagraphs 1.a - 1.c:	For Applicant
Subparagraphs 1.d - 1.i:	Against Applicant

Paragraph 2, Guideline E (Personal Conduct):      AGAINST APPLICANT

Subparagraphs 2.a and 2.c:	Against Applicant
Subparagraph 2.b:	For Applicant

## Conclusion

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for continued access to classified information. Applicant's request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge