



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-05072  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Gina Marine Esq., Department Counsel  
For Applicant: *Pro se*

08/04/2016  
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**Decision**  
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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On December 16, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 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) effective within the DOD on September 1, 2006.

Applicant answered the SOR on January 14, 2016, and requested a hearing before an administrative judge. The case was assigned to me on May 27, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 2, 2016. I convened the hearing as scheduled on June 23, 2016. The Government offered

exhibits (GE) 1 through 3. They were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through N, which were admitted into evidence without objection. The record was held open until July 7, 2016 to permit Applicant to submit additional documents, which he did. They were marked AE O through AE BB, admitted into evidence without objection, and the record closed.<sup>1</sup> DOHA received the hearing transcript (Tr.) on July 6, 2016.

### **Procedural Issues**

Department Counsel moved to amend SOR ¶ 1.a by adding “2014” to the paragraph. There was no objection and the motion was granted.<sup>2</sup>

### **Findings of Fact**

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 52 years old. He earned an associate’s degree in 1984. He married in 2012 and divorced in 2015. He has no children. He has been employed with his present employer, a federal contractor since July 2012.<sup>3</sup>

Applicant attributes his financial difficulties to his wife’s overspending and a period of unemployment in August 2011 for approximately six months. He found employment in January 2012, but his salary was insufficient to pay their bills. Sometime in 2012, Applicant’s wife’s grown unemployed son moved in with them and their expenses increased. Applicant’s wife is unable to work. Applicant testified that when he moved to a different state to obtain employment he charged his moving expenses to his credit card. He then defaulted on the card. He admitted that some of the purchases made by his wife were for the benefit of their family. His wife had been handling the finances and when they separated in January 2014, he took over the responsibility. He believes he was a victim of his wife’s spending habits and she accumulated many of the debts.<sup>4</sup>

Applicant was aware of his duty to timely file his federal income tax returns, and consciously chose not to do so for tax years 2011, 2012, 2013, and 2014. He stated: “It was under my impression that if I filed then they would know that I owed and would be after me to pay and I didn’t have the money.”<sup>5</sup> He was concerned his wages would be

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<sup>1</sup> Hearing Exhibit I is a copy of Department Counsel’s discovery letter sent to Applicant. Hearing Exhibit II is Department Counsel’s email memorandum indicating she did not object to Applicant’s exhibits.

<sup>2</sup> Tr. 35-36.

<sup>3</sup> Tr. 15-17.

<sup>4</sup> Tr. 24-25, 57-62, 73, 76-77, 84.

<sup>5</sup> Tr. 25-26.

garnished, but hoped that he would be able to pay the taxes later in the year. He was aware for tax year 2011, that he would owe federal income taxes because he did not have money withheld from his salary for the year. He received a letter from the Internal Revenue Service (IRS) in 2013 advising him that he had not filed his past year's tax returns. He testified he did not take action as a result of the letter from the IRS at that time. On May 26, 2016, Applicant filed his delinquent federal income tax returns and paid the amount that was calculated as owed. It is unknown if the IRS accepted Applicant's calculations. His calculations did not include penalties and interests on the delinquent amounts. It is unknown if there is a balance owed to the IRS. Applicant testified that from 2011 to 2014, he repeatedly withdrew money from his 401k retirement account and was accessed taxes and penalties, which he paid. He used this money to supplement his financial situation. He timely filed and paid his 2015 federal income tax return.<sup>6</sup>

Applicant did not timely file his 2011 and 2012 state income tax returns because he believed he had to file the previous year's tax return before he could file the current year's return. He provided proof he filed and paid his 2012 state income tax return in May 2016. He indicated that he filed his 2011 state income tax return in May 2016, but did not provide documentation. In his post-hearing submission, he indicated that due to an oversight, a check was never written to pay the taxes owed to the state for 2011 (\$1,639). He intended to correct the oversight. No additional proof was provided.<sup>7</sup>

Applicant settled the delinquent loan owed in SOR ¶ 1.c (\$10,136) in June 2016 for \$1,014. He obtained this loan in 2009 and then loaned the money to a girlfriend at the time. The original balance was about \$15,000. His girlfriend made loan payments for a period and then stopped paying the loan. He settled the credit card debt owed in SOR ¶ 1.d (\$9,544) in June 2016 for \$955. He settled the cell phone debt in SOR ¶ 1.m (\$547) for \$167 in June 2016. He provided supporting documentation. He has a detailed budget listing all of his delinquent debts and those that have been paid or settled.<sup>8</sup>

The debt in SOR ¶ 1.g (\$6,651) is for furniture Applicant and his ex-wife purchased together. He retained the furniture. The debt in SOR ¶ 1.i (\$2,352) is a credit card debt Applicant used to pay household expenses. The debt in SOR ¶ 1.j (\$1,973) is for a credit card Applicant used to purchase tires for both his car and his ex-wife's car. The debt in SOR ¶ 1.l (\$1,274) is for an account used to finance a water softener in 2012. He paid on the account for a year and then stopped. The accounts in SOR ¶¶ 1.e (\$9,467), 1.f (\$6843), 1.h (\$5,827), and 1.k (\$1,397) are credit card or store cards that were used for family purchases. Applicant has not yet contacted any of these creditors because he wanted to resolve his delinquent federal and state income taxes before addressing his other delinquent debts. Some of the creditors holding these accounts

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<sup>6</sup> Tr. 25- 34, 64-65, 74-75, 84-87; AE C, D, E, F, G, O, P.

<sup>7</sup> Tr. 30-31, 37-39, 80-82; AE B, O.

<sup>8</sup> Tr. 40-57, 66-67; AE J, K, M, N, R, S, BB. Applicant also testified that he cosigned on a car loan for his wife and she took the car when she left. He testified that he paid this debt and it is not listed on the SOR.

had made settlement offers to Applicant. The offers have expired, and he has not paid or resolved the debts.<sup>9</sup>

Applicant plans to resolve all of his delinquent debts by 2017 and be debt-free. He has taken a nine-week formal financial counseling class that helped him prepare a budget and plan a course of action. He is presently contributing to his retirement account. He testified he is living frugally. He is hopeful that he will resolve all of his delinquent debts.<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, which are 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, these guidelines are applied 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security 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

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<sup>9</sup> Tr. 58, 68-73; AE T, U, V, W, X, Y, Z, AA.

<sup>10</sup> Tr. 57, 65-66, 77-78, 89, 91-92.

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 of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>11</sup>

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

- (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.

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<sup>11</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

Applicant failed to timely file his 2011 through 2014 federal income tax returns and his 2011 and 2012 state income tax returns. He also accumulated numerous credit card and consumer delinquent debts totaling approximately \$56,000. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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;
- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant was aware of his responsibility to file and pay his federal and state income tax returns, but failed to do so. It was not until May 2016, after receiving the SOR that he filed the delinquent federal returns and made the calculated payments. He did not provide proof his 2011 state income tax return has been filed. He indicated he owed taxes, but due to an oversight he had not paid them. It is unknown if he has a current tax liability for penalties and interest owed to the IRS or the state. His repeated conduct casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

For the application of AG ¶ 20(b), there must be conditions that were beyond Applicant's control that resulted in the financial hardship. Applicant attributed his financial problems to unemployment and his wife's overspending. His six-month period of unemployment in 2011-2012 was beyond his control. Although, Applicant attributed the excessiveness of the debts to his wife, after further questioning, he admitted that some of the debts were for purchases that benefitted the family or merchandise he retained, such as furniture and tires for his car. Applicant's failure to timely file his federal and state income taxes for several years was a conscious decision on his part and within his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant provided some evidence that he has settled some of his debts. He also provided proof that he has filed his delinquent federal

income tax returns. He provided proof that he filed his 2012 delinquent state tax returns. It is unknown if he still has a balance owed to the IRS. He indicated he was aware he still owed money to the state for taxes. AG ¶ 20(b) partially applies.

Applicant has participated in financial counseling, has a budget, and has settled some of his delinquent debts. He still has many delinquent debts that he has not yet addressed, but intends to in the future. There are some indications that his financial problems are being resolved and coming under control. AG ¶¶ 20(c) and 20(d) partially 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 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 is 52 years old. Applicant deliberately failed to timely file his federal income tax returns because he did not want the government to garnish his wages for the amount he owed. He did not take action to file his delinquent tax returns until after he received the SOR. Applicant indicated his wife's overspending was a major factor regarding his financial problems, but he clearly was also using credit cards to pay for his moving expenses, furniture, tires, and other expenses and then defaulted on his obligations. It appears Applicant is now committed to settling his delinquent debts, but his repeated deliberate and irresponsible attitude toward filing his tax returns and accumulation of consumer debts is not negated by his recent motivation. Applicant still has numerous delinquent debts that he hopes to resolve in the future. Applicant's conduct raises questions about his judgment, reliability, and trustworthiness. Overall,

the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the financial considerations guidelines.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.d:	For Applicant
Subparagraphs 1.e-1.l:	Against Applicant
Subparagraph 1.m:	For 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 a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge