



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



In the matter of: )  
)  
) ISCR Case No. 15-05158  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: *Pro se*

05/25/2017

**Decision**

KILMARTIN, Robert J., 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 March 7, 2016, the Department of Defense (DOD) issued 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant timely answered the SOR, and elected to have his case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM) on June 17, 2016. Applicant received the FORM on July 11, 2016, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence and provided no response to the

FORM. The case was assigned to me on May 24, 2017. The Government's documents, identified as Items 1 through 12 are admitted into evidence without objection.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a and 1.b with explanations. He failed to timely file his federal income tax returns for 2009 and 2010, and he has an outstanding tax lien filed against him by the state. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 56 years old. He retired from United States Air Force (USAF) after 21 years of honorable service in 2001. He obtained his bachelor's degree in 2006. He has been married since 1983, and was previously divorced in 1982 after a one year marriage. He has been employed by a federal contractor since April 2010. Applicant reports that he filed for Chapter 7 bankruptcy protection in November 2009, and had approximately \$90,000 in unsecured-non-priority claims discharged in July 2010.<sup>3</sup>

Applicant did not disclose his failure to file a return or pay his 2009 federal income taxes in his February 2011 Questionnaire for National Security Positions, also known as his security clearance application (SCA).<sup>4</sup> Applicant first disclosed his failure to file federal income tax returns for 2009 and 2010 in response to a question in section 26 of his January 2012 SCA.<sup>5</sup> He stated there that he was in the process of having the returns filed and taxes paid. In his clearance interview in February 2012, Applicant stated he was optimistic that the process would be completed soon.<sup>6</sup> Applicant filed his most recent SCA in 2014 and claimed that he was working to have his 2009 and 2010 federal tax returns "filed and paid now."<sup>7</sup> During a subsequent clearance interview, Applicant claimed he had started a payment plan to address his 2009 taxes. He expected to have that debt, of approximately \$4,500 for tax year 2009, paid off by 2015.<sup>8</sup> He also admitted that he had not yet filed his 2010 federal income tax return or paid the taxes.

In his answer to the SOR, Applicant claimed that he has now filed his 2009 and 2010 federal income tax returns and he was due to begin a payment plan with the IRS to address his tax debt within 60 days.<sup>9</sup> With regard to the state tax lien in the amount of

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<sup>3</sup> Item 12.

<sup>4</sup> Item 10, p. 40.

<sup>5</sup> Item 8.

<sup>6</sup> Item 9, p. 3.

<sup>7</sup> Item 4, pp. 40-41.

<sup>8</sup> Item 7, p. 4.

<sup>9</sup> Item 3.

\$4,366 alleged at SOR ¶ 1.b, Applicant stated that he owes the state taxes for tax year 2014.<sup>10</sup> Applicant suggests that these taxes resulted from a failed business venture. Applicant took out a second mortgage in 2007, and also used credit cards to invest in a business opportunity that apparently turned out to be a pyramid - Ponzi scheme.<sup>11</sup> Applicant has failed to produce any documentary evidence of this supposed pyramid scheme, or any evidence that he filed the delinquent tax returns, entered into a payment plan, or paid either the delinquent federal or state taxes.

## **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 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 avoided drawing 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 as to obtaining 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 grants access to classified information. Decisions include, by necessity, consideration of

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<sup>10</sup> Item 3.

<sup>11</sup> Item 7, pp. 4-5; Item 9, pp. 2-3; and Item 11, pp. 2-3.

the possible risk that an applicant may deliberately or inadvertently fail to 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 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 relating to the guideline 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.

AG ¶ 19 provides conditions that could raise security concerns. The following potentially apply here:

- (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 admitted he did not file his federal income tax returns as required. He provided no documents or evidence to show that he has filed these yet. Neither has he produced a payment plan to the IRS, nor any evidence of progress on payments on the

state tax lien or the federal taxes owed, as alleged in the SOR. There is sufficient evidence to support the application of the above disqualifying conditions.

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 problems were largely beyond the person's control, 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 only disclosed his failure to timely file his 2009 -2010 federal income tax returns in his 2012 SCA, and he claimed to have now filed the federal-income-tax returns in question. Yet, Applicant produced no evidence to show that he has complied with his responsibilities and is up to date on filing his income tax returns. He has produced no evidence that he satisfied the state tax lien or otherwise resolved his tax delinquencies. AG ¶¶ 20(a) - 20(e) do not 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 the 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 F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant honorably served for 21 years in the military. He claims to have been victimized when he invested in a fraudulent company. He sought financial counseling in connection with his bankruptcy filing and he has worked continuously for a federal contractor for the last seven years.

Applicant's finances remain a security concern. There are ample indications that His financial problems are not under control and he failed to establish his financial responsibility. He has not met his burden of persuasion. The record evidence leaves me with questions and doubts as to his suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under Guideline F, financial considerations.

### **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

### **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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert J. Kilmartin  
Administrative Judge