



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-06046

**Appearances**

For Government: Bryan J. Olmos, Esq., Department Counsel

For Applicant: *Pro se*

11/03/2016

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 16, 2016, the Department of Defense (DOD) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on May 12, 2016, and requested a hearing before an administrative judge. The case was assigned to me on July 28, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 10, 2016, scheduling the hearing for September 21, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without

objection. Applicant testified, but he did not submit any documentary evidence. DOHA received the hearing transcript (Tr.) on September 30, 2016.

### **Findings of Fact**

Applicant is a 47-year-old employee of a defense contractor. He has worked for his current employer since December 2013. He is applying for a security clearance for the first time. He has an associate's degree that was awarded in 2013. He is single after two marriages ended in annulment and divorce. He has two minor children.<sup>1</sup>

Applicant owned a business in the 1990s and another business from about 1999 to 2008. Both businesses ultimately failed, but Applicant extended them by failing to pay the IRS and the state payroll taxes that he withheld from his employees' paychecks. The IRS filed tax liens against him in 2005 (\$146,108); June 2008 (\$92,493); February 2008 (\$12,401);<sup>2</sup> July 2008 (\$92,529); and 2009 (\$101,542). The state filed tax liens against him in 2008 (\$79,461); and 2009 (\$8,910).<sup>3</sup>

Applicant has not paid any of the taxes. He estimated that he owes the IRS about \$340,000 and the state about \$150,000 for the payroll taxes from his second business. He stated that the IRS placed his taxes in currently-not-collectible status.<sup>4</sup> He indicated that the state also told him that it was not pursuing him about his unpaid taxes. He has not had any contact with the IRS or the state in about five years. He is happy at his current job and does not plan to open any other businesses.<sup>5</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 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 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

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<sup>1</sup> Tr. at 27, 31-33; GE 1, 2.

<sup>2</sup> SOR ¶ 1.f identified this lien as a state tax lien. The two credit reports list it as a federal tax lien.

<sup>3</sup> Tr. at 19-31; Applicant's response to SOR; GE 1-4.

<sup>4</sup> See <https://taxpayeradvocate.irs.gov/get-help/currently-not-collectible>.

<sup>5</sup> Tr. at 19-31.

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.”

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 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 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 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:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

The IRS and Applicant's state filed tax liens against him after he failed to pay the taxes he withheld from his employees' paychecks. AG ¶¶ 19(a) and 19(c) are established as disqualifying conditions.

SOR ¶ 1.f alleges an unpaid state tax lien. The evidence shows the tax lien in question is a federal tax lien. SOR ¶ 1.f is concluded for Applicant.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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 has not paid any of his taxes. Any determination by the IRS that his taxes are currently-not-collectible does not mitigate Applicant's egregious conduct.<sup>6</sup> The Appeal Board has stated that "[f]ailure to comply with Federal and/or state tax laws suggests that an applicant has a problem with abiding by well-established Government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information." See e.g. ISCR Case No. 14-06686 at 2 (App. Bd. Apr. 27, 2016). There are no applicable mitigating conditions.

### **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

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<sup>6</sup> See <https://www.irs.gov/uac/employer-and-employee-responsibilities-employment-tax-enforcement>: "Employers who do not comply with the employment tax laws may be subject to criminal and civil sanctions for willfully failing to pay employment taxes."

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.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	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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Edward W. Loughran  
Administrative Judge