



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-06655  
 )  
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Applicant for Security Clearance )

**Appearances**

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

05/31/2017

**Decision**

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RIVERA, Juan J., Administrative Judge:

Applicant failed to file his federal tax returns for tax years 2011 and 2012. He owes federal and state taxes and has delinquent debts he has ignored for many years. His evidence is insufficient to show that he has good judgment and is willing to abide by rules and regulations. He failed to establish a track record of financial responsibility. The financial considerations security concerns are not mitigated. Clearance is denied.

**History of the Case**

Applicant submitted a security clearance application (SCA) on August 14, 2013. On April 1, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations).<sup>1</sup> Applicant answered the SOR on April 19, 2016, and requested a decision based on the written record.

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<sup>1</sup> DOD acted 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

A copy of the Government's file of relevant material (FORM), adducing the evidence supporting the security concerns, was provided to Applicant by transmittal letter dated June 29, 2016. Applicant received the FORM on July 8, 2016. He was allowed 30 days to submit any objections to the FORM and to provide material to refute, extenuate, and mitigate the concerns. Applicant did not respond to the FORM or submit any additional evidence. The case was assigned to me on May 9, 2017.

### **Procedural Issue**

In the FORM, Department Counsel moved to amend the SOR to conform the allegations with the evidence. (Directive ¶ E.3.1.13) The amendment added SOR ¶¶ 1.n through 1.t, as set forth in the FORM at pages 2 and 3. Applicant did not object and I granted the motion. Applicant did not answer the additional allegations and I considered SOR ¶¶ 1.n through 1.t to be denied.

Department Counsel also advised Applicant that the FORM included his unauthenticated summary of interview with a background investigator from September 26, 2013. Applicant was informed he could object to the summary of his interview and it would not be admitted, or that he could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that his failure to respond to the FORM or to raise any objections could be construed as a waiver, and the evidence would be considered by me. Applicant failed to respond to the FORM, submitted no documents, and raised no objections. I admitted the document and considered it.

### **Findings of Fact**

In his answer, Applicant admitted the factual allegations in SOR ¶¶ 1.a through 1.c, and 1.e through 1.m, with comments. He denied the allegations in SOR ¶¶ 1.d and 1.n through 1.t. Applicant's SOR admissions are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 28-year-old employee of a defense contractor. He graduated from high school in 2006, and received his associate's degree in 2010. He has never been married and has no children, but has been living with a cohabitant since 2007.

Applicant's work history shows that he worked for two private companies from 2007 to 2010. He was unemployed between October 2010 and November 2011, and employed from December 2011 to January 2013. He has been working for his current employer, a federal contractor, since February 2013. This is his first SCA.

In response to Section 26 (Financial Record) of Applicant's 2013 SCA, Applicant disclosed that he had failed to pay federal and state taxes for tax year 2010, owing about \$2,800. He claimed he had established payment arrangements to pay his back taxes. He also disclosed a delinquent credit card account from 2007, owing \$4,000, and a delinquent hospital account from 2009, owing \$12,000. Applicant explained that in 2010,

he had knee surgery without medical insurance or the funds to pay for the medical services.

During his September 2013 interview with a background investigator, Applicant explained that he had knee surgery in 2010. He was laid off for missing too many days of work, and was unemployed between October 2010 and November 2011. During this period, he was recovering from his operation and his girlfriend supported him. He also received unemployment benefits.

Applicant stated that he filed his federal income tax returns for tax years 2011 and 2012 late. Because he was unemployed, he mistakenly believed he was not earning enough money to be required to file. He later found out he owed taxes and promised to contact the IRS to establish a payment plan. He promised to resolve his tax debt by the beginning of 2014. He presented no documentary evidence to show any efforts to contact the IRS, settle his tax debt, establish payment arrangements, or of any payments made, except through an IRS garnishment.

During the interview, Applicant confirmed the debts disclosed in his SCA, and stated he had paid two delinquent credit cards, and had made payment arrangements on other debts. He presented no documentary evidence to support his financial arrangements. Applicant claimed his financial situation was stable. He was earning \$16.16 an hour, with some additional overtime earnings. He implied his income was sufficient to pay for his living expenses and some debts, but not the old delinquent debts. Applicant volunteered he owed about \$13,000 in student loans that would come out of deferment in September 2014. He had not participated in financial counseling. He disclosed no other delinquent debts.

The ensuing clearance investigation disclosed the 18 delinquent accounts alleged in the SOR, which are established by Applicant's admissions and the FORM credit reports. Applicant did not respond to the FORM and failed to provide any documentary evidence of any SOR debts paid, settled, under payment agreements, disputed, or otherwise resolved. He presented no documentary evidence to show that he filed any of his delinquent federal and state income tax returns, or that he established payment arrangements with the state or the IRS. He made tax payments to a state through a garnishment of wages. There is no information to indicate whether he has participated in financial counseling or hired an accountant or a tax professional to assist him with preparing and filing the overdue tax returns.

### **Policies**

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

### **Financial Considerations**

Under Guideline F, the security concern is that 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 ¶ 18)

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.

Applicant's failure to file his 2011 and 2012 income tax returns, his tax debts to the state and IRS, and his delinquent debts were established by his 2013 SCA, his SOR response, his 2013 statement, and his FORM credit reports.

AG ¶ 19 provides disqualifying conditions that could raise a security concern 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.” The Government established the above disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

Five 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;
- (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.

The Appeal Board concisely explained Applicant’s responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. *See Directive ¶ E3.1.15*. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” *Directive, Enclosure 2 ¶ 2(b)*.

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

None of the financial considerations mitigating conditions fully apply. Applicant's financial problems are recent and ongoing. He presented no documentary evidence to show that he filed any of his delinquent tax returns or that he made any efforts to contact his creditors, or to pay or resolve his delinquent debts. He presented insufficient evidence to show that his financial problems are under control. Applicant implied that his periods of unemployment and underemployment contributed to or aggravated his financial problems. Notwithstanding, he presented insufficient information to establish that he was financially responsible under the circumstances.

Applicant was made aware of the Government's financial considerations security concerns when he completed his 2013 SCA. The Government's security concerns were reinforced during his September 2013 interview, when he received the SOR, and when he was provided the FORM. He was allowed a period of 30 days after receipt of the FORM to produce evidence in extenuation and mitigation. He failed to provide any documentary evidence to show he has been in contact with his creditors, or that he attempted to settle, pay, dispute or otherwise resolve any of his delinquent debts. He failed to provide any documentary evidence to show that he is a law abiding, diligent, and financially responsible person.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

I considered that Applicant is 28 years old, he has worked for a federal contractor since 2013, and this is his first SCA. Notwithstanding, Applicant did not submit sufficient evidence to show his financial responsibility. He knew of his legal obligation to file his tax returns, and he failed to do so. He promised twice to take care of his delinquent accounts and he failed to submit documentary evidence to show any efforts to resolve them. Questions remain about his reliability, trustworthiness, and ability to abide by rules and regulations and to protect classified information.

Once a concern arises regarding an Applicant's eligibility for a security clearance, there is a strong presumption against the grant or renewal of a security clearance. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With a track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness. The financial considerations security concerns are not mitigated.

### **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
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Subparagraphs 1.a-1.t:	Against Applicant
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### **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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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JUAN J. RIVERA  
Administrative Judge