



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



In the matter of:

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) ISCR Case No. 15-08440  
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Applicant for Security Clearance

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel

For Applicant: *Pro se*

December 19, 2016

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to mitigate his long history of unpaid Federal tax liens under the guideline for Financial Considerations. His request for a security clearance is denied.

**Statement of the Case**

On March 10, 2016, the Department of Defense 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective September 1, 2006.

Applicant answered the SOR on May 16, 2016 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on July 19, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 16, 2016, scheduling the hearing for September 14, 2016. The hearing was

convened as scheduled. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection. Applicant offered Exhibits (AE) A and B, which were admitted without objection. Applicant testified. DOHA received the transcript of the hearing (Tr.) on September 22, 2016. The record then closed.

### **Findings of Fact**

Applicant is a 51-year-old employee of a defense contractor. He has worked for his employer since April 2015. Prior to April 2015, he was employed by another government contractor, since August 2009. He is married and has two adult children. (GE 1; Tr. 20-21.)

Applicant was alleged to be indebted to the Federal government for Federal tax liens entered against him in 2006 and 2007 in the amount totaling \$70,376, as alleged in SOR subparagraphs 1.b, 1.c, and 1.d. Additionally, Applicant failed to pay his Federal income taxes for tax years 2009 through 2013, as stated in SOR subparagraph 1.e. SOR subparagraph 1.a also alleged that he filed Chapter 7 bankruptcy in 2008, which was discharged in 2009. In his Answer, Applicant admitted all of the allegations. His debts are identified in the credit reports entered into evidence. (Answer; GE 3; GE 4.) After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is indebted on a tax lien entered against him in 2006, in the amount of \$66,838, as alleged in SOR subparagraph 1.b. (GE 3.) Two additional Federal tax liens of \$1,121 and \$2,417 were filed against him in 2007, as identified in SOR subparagraphs 1.c and 1.d. (GE 3.) He does not know the total amount of his Federal tax debt owed from 2009 to 2013. (Tr. 31.)

Applicant attributes his financial problems to the failure of his business. Applicant started a business in approximately 2000. He began having difficulties paying his payroll taxes in 2003 or 2004. When the economy declined, Applicant was not prepared and suffered further economic losses. He did not have money to pay his business's taxes. He sold his equipment and used the proceeds to pay back state taxes owed for prior years in 2007 or 2008, but his payments did not fully satisfy all of what he owed in Federal taxes. He testified that he did not recall how much was paid on his delinquent taxes at that time. (Tr. 19, 22-29.)

Applicant explained that he is a "major procrastinator and that is what made [him] delay so long" in addressing his delinquent taxes. He hired a tax representative in 2012 and submitted an offer in compromise to the Internal Revenue Service (IRS) a year ago. He sent in a \$100 payment at that time. The tax representative "mistakenly put that [he] wanted to settle the whole debt for \$100" and the offer was rejected. He has since submitted another offer in compromise, but does not know its status. Other than that \$100 payment, Applicant has not made any payments to the IRS on his tax liens or delinquent taxes. None of Applicant's Federal tax debts are resolved. (AE B; Tr. 19, 29-32, 37.)

Applicant filed for Chapter 7 bankruptcy in 2008, as a result of his business debt. He identified liabilities of \$557,812 and assets of \$360,931. His debt was discharged in March 2009. He completed the financial counseling required before discharge. (GE 2; Tr. 25.)

Applicant presented one letter of recommendation from a friend who has known him for over 15 years. The letter indicated that Applicant is trustworthy, responsible, and honest. (AE A.)

Applicant testified he has \$428 in a savings account. He has \$25,000 in a 401(k) retirement plan. He hopes to resolve the tax liens using money from the 401(k) account. (Tr. 32-33.)

### **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 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 AG ¶ 2 describing 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.

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 clearance 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 protect or 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 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, as follows:

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 ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant's alleged delinquencies began in approximately 2003, when he failed to pay his Federal payroll taxes, which eventually culminated in the 2006 and 2007 tax liens against him. From 2006 to present, he has done little to address his numerous delinquencies. He filed Chapter 7 bankruptcy in 2008 and discharged some of his debt in 2009. In 2012 he hired a representative to assist him with his Federal tax debt. However, he failed to establish an offer in compromise agreement with the IRS. Since 2012, he has only made one \$100 payment to the IRS on these delinquent taxes. The evidence raises security concerns under both of these conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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.

Applicant's financial problems are ongoing. Applicant has no history of making consistent payments toward his substantial IRS debt. He has procrastinated on resolving his Federal tax debt, and no repayment agreement has been established. Given his lack of savings, he failed to demonstrate that future financial problems are unlikely. Mitigation under AG ¶ 20(a) has not been established.

Applicant blamed his financial problems on the failure of his business in 2007 or 2008. This may have been due to circumstances beyond his control. However, he failed to establish that he has acted responsibly under the circumstances, and has not demonstrated that he addressed his debts in a timely manner. Mitigation under AG ¶ 20(b) has not been fully established.

Applicant provided evidence that he has had assistance from a tax agent. He also completed financial counseling required by the bankruptcy court more than seven years ago. However, there are no clear indications that his financial problems are being resolved or are under control. His recent efforts to set up an offer in compromise do not establish a good-faith effort to repay overdue creditors because his minimal efforts do not demonstrate a sincere desire to repay his obligations after at least ten years of remaining in a delinquent status without action. Mitigation under AG ¶¶ 20(c) or 20(d) has not been established.

AG ¶ 20(e) requires Applicant to provide documented proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue. Applicant has not provided evidence of any formal dispute or a basis for one. Mitigation under AG ¶ 20(e) has not been established.

## 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 an honest, hard-working employee. However, despite his good reputation, his financial difficulties are significant and have continued over an extended period of time. He does not appear to be on a path to rectifying his tax delinquencies. He has made only one \$100 payment toward his tax liens.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations security concerns.

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	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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Jennifer I. Goldstein  
Administrative Judge