



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-00314

**Appearances**

For Government: Carroll Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

06/29/2017

**Decision**

KILMARTIN, Robert J., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on August 28, 2015. On March 7, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted 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 (AGs) implemented by DOD on September 1, 2006.

On December 10, 2016, the Director of National Intelligence signed Security Executive Agent Directive 4 (SEAD 4), implementing new AGs effective within the DOD on June 8, 2017. Accordingly, I have applied the June 8, 2017 AGs in this decision.<sup>1</sup>

Applicant answered the SOR on March 22, 2017, admitting all of the SOR allegations, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 13, 2017. The case was assigned to me on May 2, 2017. On May 22, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 20, 2017. I convened the hearing as scheduled.

Government Exhibits (GE) 1 through 5 were admitted into evidence without objection. At the hearing, Applicant testified and submitted Applicant's Exhibit (AE) A which was admitted without objection. At Applicant's request, I left the record open until June 30, 2017. Applicant timely provided additional documents consisting of bank statements, which were collectively marked as Applicant's Exhibit (AE) B and admitted into evidence without objection. DOHA received the transcript (Tr.) on June 28, 2017.

### **Findings of Fact<sup>2</sup>**

Applicant is 55 years old. He obtained a bachelor's degree in 1984. Applicant has been employed by a federal contractor with an interim-security clearance since January 2016. He had previous security clearances under various employers, dating back to the mid -1980's. He was married in 1986 and divorced in 1988. Applicant has two children, ages 29, and 31. He reports no military service.

In 2000, Applicant had 85,000 shares in a start-up technology company. When it was acquired by another company, Applicant cashed in his shares and received \$2.8 million dollars, after taxes. Thus, from 2000 through 2007, Applicant was semi-retired living off the capital gains from the sale of his shares. Then, in 2008, he obtained employment for six months at a research laboratory. His employer lost that contract when the economy weakened, and Applicant was constrained to obtain unemployment benefits. Applicant did not explain how he went through the \$2.8 million.

The SOR alleged in ¶ 1.a that Applicant is indebted to the Federal Government for delinquent taxes in the approximate amount of \$7,791. Applicant admitted this allegation in his Answer to the SOR. At the hearing, he produced evidence in AE A that he was making payments to the IRS in the amount of \$125 a month initially. Recently, he increased these payments to \$150 a month. Additional evidence in the form of bank

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<sup>1</sup> Although I have decided this case under the adjudicative guidelines (AG) effective June 8, 2017, I also considered the case under the former AG effective on September 1, 2006, and my decision would be the same under either AG.

<sup>2</sup> Unless stated otherwise, the source of the information in this section is Applicant's August 8, 2015 Security Clearance Application (SCA) and the summary of his security clearance interview on November 4, 2016.

statements, admitted as AE B, corroborated Applicant's testimony that he has been consistently making these payments to the IRS for over one year, and well before the SOR was issued.

The SOR alleges in ¶ 1.b that Applicant is indebted to a state for delinquent taxes in the amount of \$6,818. Applicant admitted this allegation in his Answer to the SOR. At the hearing, he produced evidence in AE A that he was making payments of \$256 each month toward settling this debt. Additional evidence in the form of bank statements admitted as AE B, corroborated Applicant's testimony that he has been consistently making these payments to date.

Applicant became delinquent on taxes owed for tax years 2008, 2009 and 2010 because he misunderstood his tax liability during his period of unemployment. Once employed in 2008, he overstated the number of his dependents on his IRS W-4 form, resulting in insufficient withholdings.<sup>3</sup> Applicant hired an accountant shortly after he completed his SCA to review his taxes from 2008 to 2015 and to ascertain the amount of his tax arrearages, both state and federal, for the tax years in question. He has also reduced the number of deductions (dependents) on his IRS Form W-4, thereby increasing tax withholdings.<sup>4</sup>

SOR ¶ 1.c is a delinquent utility bill in the amount of \$729. Applicant's September 2015 credit report indicates that this account was opened in February 2008 and charged off in July 2009.<sup>5</sup> Applicant admitted this debt in his Answer to the SOR. In his clearance interview of November 2016, Applicant told the investigator that he fell behind on his utility bills for the residence where he lived due to little or no income.<sup>6</sup> Applicant testified that he thought this debt might be a duplicate with the delinquent debt alleged at SOR ¶ 1.e, another utility bill in the amount of \$155 that he paid in full September 25, 2015.<sup>7</sup> It is not a duplicate. Applicant testified that it was possible he had already paid this bill off.<sup>8</sup> It was accrued during a time when he lost his job at the laboratory due to loss of the contract, and a general recession. Whether or not Applicant paid this off previously, it is less than \$1,000 and he clearly has the means to do so now.

SOR ¶ 1.d is a delinquent debt for back rent that Applicant owed for a residence where he lived in 2008. Applicant was unemployed after his six month contract with the laboratory ended in 2008. He was unable to pay the rent. He owed a total amount of

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<sup>3</sup> Tr. 46.

<sup>4</sup> Tr. 51.

<sup>5</sup> GE 5.

<sup>6</sup> GE 3 at p. 2.

<sup>7</sup> GE 3 at p. 2.

<sup>8</sup> Tr. At 39.

\$4,325 but has since made four separate payments of \$500 each to the collections agent for his former landlord to settle this debt.<sup>9</sup> It has been resolved.

Applicant needs a security clearance for his systems engineer job. Applicant's monthly take-home pay is presently \$4,900 after taxes.<sup>10</sup> His monthly expenses are considerably less than that. He expects to have all of his delinquent tax debts resolved within the next 18 to 36 months. He testified that he had next to nothing in his checking and savings accounts and his net worth at the time of the hearing was zero.<sup>11</sup>

### **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, 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, Appendix A, ¶ 2(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is 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, Appendix A, ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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."

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<sup>9</sup> GE 3 at p. 2, AE A, and Tr. at 33.

<sup>10</sup> Tr. at 58.

<sup>11</sup> Tr. at 61.

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 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 EO 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.”

### **Analysis**

#### **Guideline F, Financial Considerations**

The security concern relating to financial considerations is set out in AG ¶18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance abuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable 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 apply here:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and

- (f) failure to file or fraudulently filing annual Federal, state or local income tax returns or failure to pay annual Federal, state or local income tax as required.

Applicant's delinquent debts alleged in the SOR are confirmed by his credit reports, clearance interview and answer to the SOR. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b), 19(c) and 19(f), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.<sup>12</sup> Applicant has met that burden. Most of the delinquent debts have been resolved.

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 . . . , and the individual acted responsibly under the circumstances;
- (c) the individual has received, or is receiving financial counseling for the problem from a legitimate and credible source, such as non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (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; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant was semi-retired from 2000 to 2007 until his windfall from cashing-in 85,000 shares in a start-up company ran out. Then, he was employed briefly for six months at a laboratory, but had a long period of unemployment from 2008 to August 2015 during the downturn in the economy. Arguably, these conditions were beyond his

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<sup>12</sup> Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

control. He has now produced relevant and responsive documentation, demonstrating that he acted responsibly under the circumstances. Applicant has met his burden to provide sufficient evidence to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur. He has either paid off, or has made consistent payments pursuant to a plan, most of his delinquent debts. He produced a matrix and bank statements to confirm that four out of the five delinquencies alleged in his SOR have been resolved. The mitigating conditions enumerated above 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, Appendix A, ¶ 2(d):

(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, Appendix A, ¶ 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, Appendix A, ¶ 2(d) were addressed under those guidelines. Most important, Applicant has addressed the specific allegations in the SOR and taken affirmative measures to resolve them. He has met his burden of production.

Applicant's finances no longer remain a security concern. There is sufficient evidence to conclude that Applicant's financial problems are under control. He is gainfully employed and managing his financial affairs. The record evidence leaves me with no questions or doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has 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: FOR APPLICANT

Subparagraphs 1.a through 1.e: FOR Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Robert J. Kilmartin  
Administrative Judge