



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-08259  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

03/21/2017  
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**Decision**  
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GARCIA, Candace Le'i, 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 9, 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 answered the SOR on April 13, 2016, and elected to have his case decided on the written record. On May 13, 2016, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, who received it on May 18, 2016. Applicant was afforded an opportunity to file

objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence. The Government's documents identified as Items 1 through 5 are admitted into evidence. Other than his Answer, identified also as Item 1, Applicant failed to submit any additional documentation. The case was assigned to me on March 10, 2017.

### **Findings of Fact**

Applicant admitted all of the SOR allegations, numbered as ¶¶ 1.a to 1.y. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 40 years old. He obtained his high-school diploma in 1994. He earned his real-estate license in August 2004 through an online real-estate class. He was previously married from July 2004 through June 2010, and has two children ages 13 and 11. He worked as a self-employed realtor from August 2004 to September 2011, and was unemployed from September 2011 to May 2012. He began his current job with a federal contractor in May 2012.

The SOR alleges Applicant's failure to file his federal and state income tax returns for tax years 2009 through 2013 as required, three federal tax liens totaling about \$52,276, and 20 consumer and medical debts totaling about \$84,560. Applicant completed a Questionnaire for National Security Positions (SF 86) in February 2015 and was interviewed by an authorized DOD investigator in August 2015.<sup>1</sup> In his SF 86 and during his interview, Applicant disclosed his failure to file his federal and state income tax returns for tax years 2009 through 2013.<sup>2</sup> He indicated that he planned to file all of his relevant tax returns by February 2016. In his answer to the SOR, Applicant noted that he is currently working on filing his back tax returns.<sup>3</sup>

Credit reports from March 2015, January 2016, and May 2016 verify the debts that are alleged in the SOR, to include Applicant's three federal tax liens.<sup>4</sup> Applicant acknowledged that he still owes federal taxes, indicated an intent to set up a payment plan to resolve his outstanding federal tax debt once he filed his returns, and stated that he is currently working on his credit.<sup>5</sup> Regarding the remaining debts in SOR ¶¶ 1.d to

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<sup>1</sup> Items 2, 3.

<sup>2</sup> Applicant also disclosed his failure to pay his federal and state income taxes for tax years 2009, and 2011 to 2013. He indicated that he paid his state tax debt through a wage garnishment placed on him by his resident state. Items 2, 3.

<sup>3</sup> Item 1.

<sup>4</sup> Items 4, 5.

<sup>5</sup> Items 1, 2, 3.

1.w, Applicant indicated that he planned to file bankruptcy by February 2016 and that he was working on his credit.<sup>6</sup>

Applicant attributes his financial problems to his divorce in 2010, the consequent expense of child custody hearings and his child support obligation, the downturn in the real-estate market in the same year, his period of unemployment, and his medical conditions. He failed to timely file his relevant federal and state income tax returns because he did not understand the forms, and he did not have the income to pay someone to file them on his behalf. He has not sought the assistance of a credit counselor.<sup>7</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 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

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<sup>6</sup> Items 1, 3.

<sup>7</sup> Items 1, 2, 3.

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 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.<sup>8</sup>

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (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.

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<sup>8</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

Applicant has failed to file his federal and state income tax returns for tax years 2009 through 2013 as required, and he has numerous delinquent debts to include three federal tax liens. 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 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 yet to file his federal and state income tax returns for tax years 2009 through 2013. He also has three federal tax liens and a number of other debts that are unresolved. There is insufficient evidence to conclude that his financial problems are unlikely to recur. His failure to timely file his relevant tax returns and address his delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Circumstances beyond his control contributed to Applicant's financial problems. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. Applicant has not filed his relevant federal and state income tax returns nor has he set up a payment plan to resolve his outstanding federal tax liens, despite his indication that he planned to do so by February 2016. He has not provided evidence of bankruptcy or other actions he may have taken to resolve his debts. There is insufficient evidence to conclude Applicant acted responsibly under the circumstances. AG ¶ 20(b) partially applies.

Applicant has not sought financial counseling. Applicant's financial problems are not under control. AG ¶ 20(c) does not apply. Applicant has not provided evidence of

any efforts he may have taken to repay or otherwise resolve his debts. AG ¶ 20(d) does 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 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 has worked for a federal contractor since 2012. Circumstances beyond his control contributed to his financial problems. He has failed to file his federal and state income tax returns from 2009 through 2013 as required, and he has a history of financial delinquencies that remain unresolved. His finances remain a security concern. He has failed to meet his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a-1.y:    | 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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Candace Le'i Garcia  
Administrative Judge