



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



In the matter of: )  
)  
) ISCR Case No. 15-08387  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

08/24/2017

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**Decision**

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COACHER, Robert E., Administrative Judge:

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

**Statement of the Case**

On April 5, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD 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 (AG).<sup>1</sup>

Applicant answered (Ans.) the SOR on April 27, 2016. The case was assigned to me on January 18, 2017. The Defense Office of Hearings and Appeals (DOHA) issued

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<sup>1</sup> I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous version of the AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

a notice of hearing on February 21, 2017, and the hearing was convened as scheduled on March 14, 2017. The Government offered exhibits (GE) 1 through 9, which were admitted into evidence without objection. Department Counsel's discovery letter and exhibit list were marked as hearing exhibits (HE) I and II. Applicant testified and offered exhibit (AE) A, which was admitted without objection. The record was held open for Applicant to submit additional information. Applicant failed to submit any additional evidence. DOHA received the hearing transcript (Tr.) on March 22, 2017.

### **Procedural Issue**

Department Counsel moved to amend the SOR to add an allegation. The new allegation is stated as: "You failed to file your 2013 through 2015 federal and state tax returns as it was your duty to do." Applicant admitted the allegation, did not request more time to address the allegation, and did not object to the addition. The amendment is granted and the new allegation will be reflected in my formal findings as ¶ 1.i.<sup>2</sup>

### **Findings of Fact**

Applicant admitted all the SOR allegations with explanations. The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 50-year-old employee of a defense contractor. He has worked for defense contractors since January 2007. He has a high school diploma. He is married with four children. A fifth child passed away because of medical issues in 2013. Two children and a grandchild live with Applicant for whom he provides financial support.<sup>3</sup>

The SOR alleges Applicant filed eight bankruptcy petitions between 1992 and 2015. Applicant admitted all the allegations, but explained that some of the filings were related to the same underlying facts (May and December 2002, and February 2003 Chapter 13 filings were all related to the same underlying debts. SOR ¶¶ 1.c – 1.e) (January 2015 Chapter 13 filing converted into June 2015 Chapter 7. SOR ¶¶ 1.g and 1.h). It also alleges Applicant failed to file his 2013 – 2015 federal and state income tax returns (SOR ¶ 1.i). The bankruptcies are listed in credit reports from March 2007, January 2014, August 2015, and February 2016. They are also listed in court documents.<sup>4</sup>

Applicant attributed his financial difficulties, which led to the multiple bankruptcy filings, to bad business decisions for the earlier bankruptcies and his daughter's illness and death for the 2015 bankruptcies. In 1992, he had his debts discharged through Chapter 7 bankruptcy after unsuccessfully owning a music store business. He and his

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<sup>2</sup> Tr. at 57-59.

<sup>3</sup> Tr. at 5-6, 27, 42; GE 1.

<sup>4</sup> GE 4-9.

wife were realtors in 1999 and were unable to maintain their living expenses from their commissions, so they chose to file for bankruptcy protection under Chapter 7 and his debts were again discharged. From 2001 to 2003, Applicant filed three Chapter 13 bankruptcies, all were ultimately dismissed for failing to comply with the payment plan established. Applicant admitted another business failure led to the original filing, but pointed out that advice from his attorney led to the multiple filings. This attorney was later disciplined by his state bar for actions related to his bankruptcy advice to other clients. In 2005, after falling behind on his debt payments, Applicant again filed for bankruptcy protection under Chapter 7. His debts were discharged. Applicant points out that in 2007 and 2008 he went through the security clearance application process and background check, and was granted a security clearance despite his financial history.<sup>5</sup>

In 2011, Applicant was working for his current contractor employer overseas making approximately \$250,000 per year. At that time, his daughter was diagnosed with an inoperable condition. He immediately came back to the United States. His work duties were reassigned to a location in another state. His salary fell to \$140,000 annually. Later in 2012, Applicant was assigned to a position in his home state, but that further reduced his annual income to approximately \$70,000. His daughter passed away in 2013. In 2015, because of his reduced income and his inability to meet all his obligations, particularly his mortgage payments, Applicant once again sought bankruptcy protection under Chapter 13. His bankruptcy case was later converted to a Chapter 7 and his debts were discharged in December 2015. During this same time, Applicant was seeking a mortgage modification which would allow him to keep his home. The mortgage lender's inaction resulted in no modification and his home was ultimately foreclosed.<sup>6</sup>

Applicant admitted he failed to file his 2013 – 2015 federal and state income tax returns. He claimed to have them prepared and ready to file, but as of the hearing date he had not done so. The record was held open for six weeks to allow Applicant to show proof that he filed those returns. No evidence of such was submitted within that timeframe. He also admitted that he would probably owe at least \$9,000 on this federal taxes and \$4,000 on his state taxes for that time period.<sup>7</sup>

### **Current Finances.**

Applicant testified that his current income is \$75,000 annually. His "take home" pay is approximately \$3,600 monthly. He has a car payment and two credit cards. He also admitted being one month behind on his current mortgage. Their home is up for sale because Applicant does not want to stress over having to make the monthly payments.<sup>8</sup>

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<sup>5</sup> Tr. at 37-39; Ans.; GE 2, 3, 8.

<sup>6</sup> Tr. at 27-32, 34, 50-51; Ans.; GE 3, 9.

<sup>7</sup> Tr. at 46-47, 57.

<sup>8</sup> Tr. at 43-44, 68-70.

### **Character Evidence.**

Applicant presented a recommendation letter from a friend. The friend opined that Applicant was honest, hardworking, dependable, and dedicated. He recommended retention of Applicant's clearance.<sup>9</sup>

### **Other Circumstances.**

Applicant has been diagnosed with Post-Traumatic-Stress-Disorder (PTSD) resulting from his daughter's death. He testified that he believes his wife is suffering from depression and that she is addicted to pain medication prescribed to her for an injury. She does not work because of these circumstances.<sup>10</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 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(a), 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 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.

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 to obtain a favorable security decision."

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<sup>9</sup> AE A.

<sup>10</sup> Tr. at 41-42; Ans. (letter dated October 22, 2015).

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 about 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

AG ¶ 18 expresses the security concern for financial considerations:

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 misuse, 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts;
- (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 has filed eight bankruptcy cases since 1992. He has had his debts discharged through Chapter 7 proceedings on four occasions, in 1992, 1999, 2006, and 2015. He also failed to file his federal and state tax returns for years 2013 - 2105. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), 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 a 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; 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 has a 25-year history of financial instability as reflected by his routine use of the bankruptcy process. His continual accruing of debts he could not pay, which were eventually discharged through bankruptcy shows a lack of reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant's business failures and his daughter's unfortunate death were circumstances beyond his control. However, continuing to use bankruptcy discharges to overcome his accumulated debts is not responsible action. AG ¶ 20(b) is partially applicable.

Applicant received financial counseling through the bankruptcy process. Given that Applicant is delinquent on his current mortgage and provided no proof that his tax returns were filed, Applicant's financial problems are not under control. Since he only relied on the bankruptcy process to have his debts discharged, evidence of good-faith efforts to pay or resolve his debts is lacking. AG ¶¶ 20(c) and 20(d) partially apply. He

was given extra time to provide documentation that he filed his missing federal and state tax returns, but he failed to do so. AG ¶ 20(g) 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(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 ¶ 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's federal contractor service, his letter of recommendation, his daughter's death, his PTSD diagnosis, his wife's possible depression and painkiller addiction, and the circumstances by which he became indebted. However, I also considered that his debts were discharged in bankruptcy on four occasions and he failed to file his federal and state tax returns for years 2013 – 2015. He has not established a meaningful track record of debt management.

Overall, the record evidence leaves me with questions and doubts about 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs: 1.a – 1.i:	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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Robert E. Coacher  
Administrative Judge