



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



In the matter of: )  
)  
) ISCR Case No. 14-04319  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

03/24/2017  
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**Decision**  
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RICCIARDELLO, Carol G., 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 7, 2015, the Department of Defense (DOD) issued to 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 25, 2015, and elected to have his case decided on the written record. On October 29, 2015, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on October 30, 2015. Applicant was afforded an opportunity to file

objections and submit material in refutation, extenuation, or mitigation within 30 days from receipt of the FORM. Applicant did not object to the Government evidence and did not provide any material within the required timeframe. The Government's documents identified as Items 1 through 6 are admitted into evidence. The case was assigned to me on September 20, 2016.

### **Findings of Fact**

Applicant denied the sole allegation in the SOR with an explanation. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 57 years old. He is married and has three adult children. He earned a bachelor's degree in 1992. He was unemployed for approximately three months in 2009, but otherwise has been consistently employed since 1994.<sup>1</sup>

Credit reports from March 2013, April 2014, and February 2015 report that Applicant has a Federal tax lien in the amount of approximately \$104,000 that was filed in 2010 and remains unpaid (SOR ¶ 1.a).<sup>2</sup>

Applicant was interviewed by a government investigator in March 2013. He did not disclose on his security clearance application (SCA) that he had a 2010 Federal tax lien. He also did not disclose he had several state tax liens from 2009 and 2010 that had been released. He indicated to the investigator that the state tax liens were due to discrepancies in his tax returns that were filed between 2001 and 2005. When confronted by the investigator with the Federal tax lien, Applicant indicated that the Internal Revenue Service (IRS) had contacted him between 2005 and 2007 and placed tax liens on him for discrepancies on his Federal tax returns for previous tax years or the IRS claimed he had not filed his Federal income tax returns. Applicant indicated to the investigator that he then re-submitted his Federal income tax returns for 2001 through 2008. He did not disclose this information on his SCA because he believed these issues were outside of seven years and had been resolved. He advised the investigator that he was unsure if he owed anything for a Federal tax lien, because he never heard from the IRS again regarding his resubmission of his Federal income tax returns. He further advised the investigator that he would follow up with the IRS and make sure all of his tax liens were clear, and if he owed money he would pay it.<sup>3</sup>

In Applicant's answer to the SOR, he explained there is a Federal tax lien against him. He stated that he attempted to reconcile the matter before the lien was entered in

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<sup>1</sup> Item 2.

<sup>2</sup> Items 3, 5, and 6.

<sup>3</sup> Items 2 and 4. I have not considered for disqualifying purposes that Applicant had state tax liens that were released. I have also not considered for disqualifying purposes that Applicant failed to disclose on his SCA the state tax liens or that he had an unpaid Federal tax lien. I may consider this information in my analysis of Applicant's credibility, in mitigation, and the whole person.

2010. He stated he made numerous attempts to have the Federal “tax lien removed and the original cause rectified.”<sup>4</sup> He further stated:

The original cause is that the IRS claims that I did not file tax returns for the years 2000, 2001, 2003, and 2004, and the IRS did their own calculations of what taxes I owe plus penalties. I not only did file my tax returns on time, but I have also by the direction of representatives of the IRS re-filed them and marked them as “Substitute” and “Duplicate” neither of which were ever acknowledged or entered. When I was notified of the tax lien in 2010, I contacted several tax attorneys in the [city] and all stated that they could assist me in resolving this matter. They also stated that I could also try again myself with the IRS, and I chose to do so and obtained the same results.<sup>5</sup>

Applicant further stated in his answer that in November 2014 he hired a law firm to assist him in resolving the matter. He stated that a tax lawyer and his team were actively working to resolve the matter. Applicant did not provide any documentary evidence of his efforts to resolve the matter. He did not provide any documents from the IRS or from his lawyer to substantiate that he has made attempts to resolve or pay the 2010 Federal tax lien.<sup>6</sup> He did not provide a response to the FORM.

### **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

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<sup>4</sup> Item 1.

<sup>5</sup> Item 1.

<sup>6</sup> Item 1.

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 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 handing and safeguarding classified information.<sup>7</sup>

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

(a) inability or unwillingness to satisfy debts.

Applicant has a 2010 Federal tax lien in the amount of \$104,000 that remains unpaid and unresolved. 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;

(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 has a 2010 Federal income tax lien that is unpaid and unresolved. He indicated he has been dealing with the IRS on the matter since before the lien was entered, but he failed to provide documentary evidence of his actions. He indicated he attempted to resolve the matter by himself after he re-submitted Federal income tax returns, but did not provide documentary evidence to support his actions. He indicated that in 2014 he hired a tax attorney to resolve the matter, but failed to provide evidence

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<sup>7</sup> See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

from the IRS or the attorney to substantiate his assertions that the matter is being resolved or under control. None of the above mitigating conditions 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 is 57 years old. A Federal tax lien was entered against him in 2010. He was confronted with the debt during his 2013 background interview. He has not provided evidence to show what action he has taken to resolve the debt. He has failed to meet his burden of persuasion. 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 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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	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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Carol G. Ricciardello  
Administrative Judge