



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-04084  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: John Bayard Glendon, Esq., Deputy Chief Department Counsel  
For Applicant: *Pro se*

01/31/2018  
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**Decision**  
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NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Although Applicant has taken some steps to resolve his outstanding tax debt, he has failed to address the underlying problem. As a result, his financial problems are not under control. Clearance is denied.

**Statement of the Case**

On June 14, 2016, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke his security clearance.

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<sup>1</sup> The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

Applicant timely answered the SOR and requested a hearing.<sup>2</sup> On March 22, 2017, I issued a prehearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of any witnesses, and the parties complied.<sup>3</sup> At the hearing, convened on June 8, 2017, I admitted Government's Exhibits (GE) 1 through 8 and Applicant's Exhibits (AE) A through F, without objection. DOHA received the transcript (Tr.) on June 19, 2017.<sup>4</sup>

### **Procedural Matters**

While the case was pending decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have applied them in this case.

### **Findings of Fact**

Applicant has worked for his current employer, a federal contractor, since August 2015. When he completed the security clearance application in August 2014, he was working for a different federal contracting company. On his security clearance application, Applicant disclosed some derogatory financial information: a 2012 Chapter 7 bankruptcy and unpaid state taxes for the 2013 tax year. Applicant's background investigation revealed additional delinquent accounts: \$10,042 in unpaid federal taxes and another outstanding state tax debt for \$3,380. The SOR alleges the four debts, which Applicant admits.<sup>5</sup>

According to Applicant, his financial problems started when he refinanced his home in 2006 or 2007. Applicant initially purchased the home in 2002 with traditional 30-year financing. He refinanced the home with an adjustable rate mortgage (ARM), believing that the payment would not adjust more than \$100 per month. In August 2007, Applicant's mortgage adjusted more than \$600 per month, which he could not afford. For the next 18 months, the lender modified the terms of the loan. When the modification period ended, Applicant could not afford to make the adjusted mortgage payment and his other obligations, which included a home equity line of credit (HELOC) he opened in approximately 2006. Applicant stopped paying all financial obligations associated with the home in 2010. He diverted the money that would have paid his mortgage to other things, admitting that he behaved irresponsibly with his money during that time. In 2012, the HELOC creditor sued Applicant for non-payment. He consulted

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<sup>2</sup> Hearing Exhibit (HE) III.

<sup>3</sup> The prehearing scheduling order and the discovery letter are appended to the record as HE I and II, respectively.

<sup>4</sup> HE IV.

<sup>5</sup> Tr. 22 -24; GE 1.

an attorney, who advised him to file for bankruptcy protection. Applicant did so, using the process to seek relief from over \$450,000 in liabilities. Applicant ultimately lost his home to foreclosure in December 2015.<sup>6</sup>

Between 2006 and 2012, Applicant also began to experience federal and state tax income tax problems. Applicant is single and lives alone. Although he has a child, he does not claim her as a dependent. From approximately 2002 to 2006, Applicant claimed nine state and federal income tax exemptions from his pay. This resulted in insufficient tax withholdings. Applicant's tax problem was exacerbated in 2010, after he stopped paying his mortgage because he could no longer claim the mortgage interest deduction. As a result, Applicant incurred \$10,042 in federal and \$3,997 in state tax debt he could not pay as alleged in the SOR. In 2013, Applicant reduced his state and federal income tax exemptions to 6 or 7 in an effort to reduce his end-of-year additional income tax payments. For the 2016 tax year, Applicant reduced his exemptions to five.<sup>7</sup>

In 2015, Applicant tried to set up a payment plan for his federal tax debt. Because someone filed a fraudulent income tax return in 2014 using Applicant's social security number, the IRS would not enter into an installment agreement with Applicant until the agency could resolve the issue. Applicant also claimed that his employer experienced a security breach that compromised employees' 2015 W-2 forms, which led to another incident of identity theft. In May 2017, Applicant entered into an installment agreement with the IRS, agreeing to pay \$75 per month on his federal taxes beginning in June 2017. The payment amount will increase to \$335 per month in June 2018. In March 2016, Applicant established a payment agreement of \$148.00 for 80 months to pay \$8,845 in outstanding state taxes. Applicant is in compliance with the payment agreements. Applicant, who currently has \$700 in disposable income each month, plans to get a part-time job so that he can continue to make the tax payments.<sup>8</sup>

As of June 2017, Applicant owed \$25,562 in federal taxes and \$10,336 in state taxes. At the time of the hearing, Applicant had not filed his 2016 federal or state income tax returns. He timely filed a request for an extension until October 2017. Applicant testified that he had completed the forms, but was going to have them reviewed by another person before submitting them. Applicant expects to owe \$3,000 in federal taxes and \$2,300 in state taxes.<sup>9</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

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<sup>6</sup> Tr. 24-31, 47-50; GE 2-3; AE F; Answer.

<sup>7</sup> Tr 21-22; 32-38, 41, 50-51, 55.

<sup>8</sup> Tr. 38-41; GE 4-5; AE A-D; Answer.

<sup>9</sup> Tr. 43-46, 54, 56, 59-65.

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 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, 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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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**

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, or willingness 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.<sup>10</sup>

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<sup>10</sup> AG ¶ 18.

The record establishes the Government's *prima facie* case, that Applicant has a history of not meeting his financial obligations and an unwillingness to pay his debts, regardless of his ability to do so.<sup>11</sup> Applicant's history of financial problems began in approximately 2009, when he could no longer afford to pay the mortgage on his home. Applicant decided to use the funds that would have otherwise paid his other creditors for other purposes, admitting that he behaved irresponsibly. Over the three years, Applicant's failure to pay his bills resulted in his being sued by a creditor in 2012 followed by his decision to seek Chapter 7 bankruptcy protection and the loss of his home to foreclosure in December 2015.

The record also establishes that Applicant has failed to pay Federal and state income taxes as required.<sup>12</sup> Applicant's tax issues were caused by his failure to properly manage the number of federal and state withholdings from his pay. Although he has now established an installment agreement to pay his federal taxes and has been participating in a payment plan for his state taxes since April 2016, it is not enough to mitigate the underlying concern. Applicant's tax problem is ongoing. As of the 2016 tax year, the income tax withholdings from Applicant's pay were insufficient, resulting in additional tax liability.

After a review of the record and a consideration of the whole-person factors at AG ¶ 2(d), I conclude that Applicant's financial problems render him unsuitable for continued access to classified information at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the type of financial stability necessary to reapply for national security eligibility in the future. Rather, it is recognition of the fact that financial issues have historically been a motivating factor behind acts of espionage. The award of a security clearance is not a once-in-a-lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. While a favorable decision is not warranted at this time, he may present persuasive evidence of financial rehabilitation and reform in the future.

### **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, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 1.a – 1.d:	Against Applicant

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<sup>11</sup> AG ¶¶ 19(a) and (c).

<sup>12</sup> AG ¶ 19(f).

## **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Nichole L. Noel  
Administrative Judge