



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



In the matter of:

)  
)  
)  
)  
)

ISCR Case No. 15-04353

Applicant for Security Clearance

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

01/08/2018

---

**Decision**

---

CURRY, Marc E., Administrative Judge:

Applicant did not falsify his 2014 security clearance application. Consequently, there are no Guideline E personal conduct security concerns. As for the financial considerations security concerns, it is too soon to conclude he has mitigated them, given the amount of money that Applicant owes in back income tax payments. Clearance is denied.

**Statement of the Case**

On July 30, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guidelines F, financial considerations, and E, personal conduct, explaining why it was unable to find it clearly consistent with the interests of national security to grant or continue security clearance eligibility. The DOD CAF took the action 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On September 6, 2016, Applicant answered the SOR allegations, denying all of them, and requesting a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on April 7, 2017. On June 5, 2017, I scheduled a hearing for June 29, 2017. The hearing was held as scheduled. I received five Government exhibits (GE 1 – 5), 12 exhibits from Applicant (AE A – AE L), and I considered Applicant's testimony. Additionally, I took administrative notice of the Government's discovery letter to Applicant, dated October 5, 2016. At the close of the hearing, I left the record open to allow Applicant the opportunity to submit additional exhibits. Within the time allotted, he submitted three additional exhibits. Department Counsel did not object, and I incorporated them into the record as AE M through AE O. The transcript was received on July 10, 2017.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing 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 AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.<sup>1</sup>

### **Findings of Fact**

Applicant is a 45-year-old married man with one child, a teenager. Applicant graduated from college in 1997. He is a physicist who has been working for the same employer, a federal contractor, since 2016. He is currently pursuing a master's degree in physics. (Tr. 21) He has held a security clearance for approximately 18 years. (Tr. 58)

Applicant has a history of trouble keeping up with his rent payments, his student loan payments, and his income tax payment obligations, as set forth in the SOR. Subparagraph 1.a, totaling \$1,472, is a delinquent mortgage payment, stemming from a period between November 2010 and August 2012 when Applicant was separated from his wife. Applicant acknowledges trouble paying his rent timely while separated from his wife, but thought that he was current when he left the apartment and reconciled with his wife. (GE 2 at 22) He satisfied it in August 2016. (AE J)

Subparagraph 1.b, totaling \$8,472, is one of Applicant's student loan accounts. (Tr. 23) It became delinquent in June 2014. (GE 4 at 1) In January 2016, Applicant began the process of consolidating all of his student loans into one account with a principal balance of \$164,000. (AE F) He has been making monthly payment ranging between \$1,500 and \$1,793 per month since August 2016. (AE B) Recently, upon enrolling in graduate school, he placed them in deferment status. (Tr. 17; AE I)

Subparagraph 1.c, totaling approximately \$32,000, is an income tax debt that Applicant owes the U.S. Internal Revenue Service (IRS) for 2013. Applicant incurred this

---

<sup>1</sup> Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

debt after withdrawing \$93,000 from his individual retirement account (IRA) to purchase a condominium, and neglecting to set aside part of the withdrawal into an escrow account. (Tr. 24; GE 2 at 24, 29) Applicant realized that he owed this amount when he began preparing his income tax returns in early 2014, prompting him to file for an extension. By January 2015, Applicant had negotiated an installment agreement. (AE M at 1) Under the plan, he made monthly payments ranging between \$498 and \$550 monthly. (AE M at 1) He stopped making payments in November 2015, after encountering additional financial problems. (Tr. 40) In November 2016, he re-negotiated the payment agreement and has been making \$650 monthly payments since then. (AE M at 1)

Each year since 2013, Applicant has withdrawn money from his IRA. (Tr. 41, 44) He does this to make ends meet. (Tr. 43) He has filed his 2014 and 2015 income tax returns. He owes \$12,451 and \$5,469, respectively. (AE N at 2; AE O at 2) These balances include interest and penalties. He has established installment agreements for both years. (AE N, AE O) As of the hearing date, he had filed for an extension of the due date for his 2016 income tax return, and was working on its preparation. (Tr. 41)

Applicant maintains a budget. He has approximately \$1,300 of monthly discretionary income. (AE P)

Applicant completed a security clearance application in May 2014. (GE 1) He answered "no" in response the following question under Section 26:

In the past seven (7) years, have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?

Applicant's application for an extension of time to file his 2013 income tax return was timely. He filed his 2013 income tax return before the extended deadline, and began paying the debt shortly after negotiating an installment agreement in January 2015.

Section 26 of the security clearance application also required Applicant to disclose whether he was 120 days delinquent on any debt when he completed the application. The debt alleged in subparagraphs 1.a, an expense related to Applicant's apartment where he lived when he separated from his wife, was more than 120 days late when he completed the security clearance application. Applicant did not list this debt on the security clearance application because he thought that he had settled the account when he moved out and reconciled with his wife. (Tr. 22)

The debt alleged in subparagraph 1.b is a student loan. It did not become delinquent until one month after Applicant completed the security clearance application. (GE 4 at 1)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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. 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 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

## **Analysis**

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

Under this guideline, “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 or sensitive information.” (AG ¶ 18) Applicant’s delinquencies trigger the application of disqualifying conditions AG ¶ 19(a), “inability to satisfy debts,” AG ¶ 19(b), “unwillingness to satisfy debts regardless of the ability to do so,” AG ¶ 19(c), “a history of not meeting financial obligations,” and AG ¶ 19(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.”

The following mitigating conditions are potentially applicable:

AG ¶ 20(a) 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;

AG ¶ 20(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;

AG ¶ 20(c) the person has received or is receiving 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;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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's tax debt is still outstanding. Consequently, it is too soon to conclude that AG ¶ 20(a) applies. Applicant's rental property delinquency and student loan delinquency corresponded with the period when he was separated from his wife. However, he incurred the most significant debt, the \$32,000 tax bill, after he had reconciled with her. AG ¶ 20(b) does not apply. Nevertheless, he has satisfied the rental delinquency, consolidated his student loans, and arranged a payment plan to pay his income tax, to which he has been adhering for a year. AG ¶¶ 20(d and 20(g) apply, and I resolve subparagraphs 1.a and 1.b in his favor.

Although Applicant has been steadily making payments for the satisfaction of his income debt for tax year 2013, he continues to borrow money each year from his IRA without properly accounting for the income tax consequences. Consequently, he owes money for tax years 2014 and 2015, and has not yet filed his 2016 income tax return. Under these circumstances, I cannot conclude that there are clear indications that the problem is under control. AG ¶ 20(d) does not apply.

### **Guideline E, Personal Conduct**

Under this guideline, "conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." (AG ¶ 15) Applicant's responses to questions about his finances on his 2014 security clearance application raise the question whether AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities," applies.

Applicant's omission of the debt owed to the company that managed his apartment was unintentional because he was unaware that he owed any money when he completed the security clearance application. Applicant's student loan, as listed in subparagraph 1.b, was not delinquent when he completed the security clearance application, therefore he was not required to disclose it. As for Applicant's 2013 income tax return, he did not file it when due in April 2014, but filed for an extension before the due date tolled. Then, he filed the income tax return before the extended time elapsed. Under these circumstances, I conclude Applicant did not falsify any of his security clearance application responses. AG ¶ 16(a) does not apply, and there are no personal conduct security concerns.

### **Whole-Person Concept**

In assessing the whole person, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).<sup>2</sup> Applicant is currently making payments towards the satisfaction of his income tax debt. However, he continues to borrow money from his IRA without properly accounting for the income tax consequences. Therefore, although he is currently in compliance with a tax repayment plan, he continues to generate additional penalties and tax debt each year that he has not been able to satisfy when due. Under these circumstances, Applicant has demonstrated some reform, as exemplified by his satisfaction of the apartment complex delinquency and his consolidation of the student loan accounts, but the positive security inference from these steps is outweighed by the negative inference generated by his continued outstanding tax debt.

### **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.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a – 2.b:	For Applicant

---

<sup>2</sup> The factors under AG ¶ 2(d) are as follows:

(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.

## **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Marc E. Curry  
Administrative Judge