



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



In the matter of: )  
 )  
 [NAME REDACTED] ) ISCR Case No. 15-07322  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: *Pro se*

01/30/2018

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**Decision**

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BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the security concerns about his financial problems. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 29, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations).<sup>1</sup> Applicant responded to the SOR on June 10, 2016, and he elected a decision on the written record in lieu of a hearing. On July 29, 2016, Department Counsel submitted her file of relevant material (FORM) and provided a complete copy to Applicant. Applicant did not respond to the FORM. The case was assigned to me on June 2, 2017.

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<sup>1</sup> The action was taken 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 implemented by the DOD on September 1, 2006.

## **Procedural Issues**

On October 16, 2017, I issued an order informing both parties that although the SOR referenced the adjudicative guidelines implemented by the DOD on September 1, 2006, I would be applying the revised adjudicative guidelines (AG) effective as of June 8, 2017, pursuant to Security Executive Agent Directive 4 (SEAD 4). I also permitted the parties to supplement the record with additional evidence and argument. Both parties received the order. On October 29, 2017, Applicant submitted one document, which I admitted as Applicant Exhibit (AE) A, without objection.<sup>2</sup>

In the FORM, Department Counsel references FORM Items 1-11.<sup>3</sup> FORM Item 11 consists of the unauthenticated summaries of two interviews with a government investigator conducted on May 30, 2012 and June 11, 2012. In the FORM, Department Counsel advised Applicant that he could object to FORM Item 11 and it would not be admitted, or that he could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that his failure to respond to the FORM or to raise any objections could constitute waiver, and the evidence would be considered by me. Applicant did not object to any of the Government's exhibits in his October 2017 response. Given Department Counsel's advisement and Applicant's response to the FORM, I find his waiver to be knowing and intelligent.<sup>4</sup> FORM Items 5-11 are admitted into evidence as Government Exhibits (GE) 5-11, without objection.

## **Findings of Fact**

The SOR alleges financial considerations security concerns based on Applicant's Federal and state income tax debts and a bankruptcy filing. In his response to the SOR, Applicant neither admitted nor denied the SOR allegations. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 61 years old. He received his general equivalency degree (GED) in 1977. He served in the U.S. Air Force Reserve from December 1979 to October 2006. Since November 2006, he has been employed full time as a security officer for a DOD contractor. Since January 2012, Applicant has held a second full-time security job for another DOD contractor. From 2009 to about 2012, he has also been self-employed part time with a security business. He was married in 1988 and was divorced in 1999. He has two sons, ages 17 and 29.<sup>5</sup>

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<sup>2</sup> Administrative Exhibit I includes my order, the attachments, and the Government's email acknowledging receipt.

<sup>3</sup> FORM Items 1 through 4 consist of the SOR, administrative documents, and Applicant's response, which are pleadings and are included in the administrative record.

<sup>4</sup> See ISCR Case No. 15-05252 at 3 (App. Bd. Apr. 13, 2016) (Applicant's waiver of the authentication element must be knowing and intelligent.). See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016) ("Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive.")

<sup>5</sup> GE 5; GE 11.

In March 2014, Applicant filed a petition for Chapter 13 bankruptcy. In his bankruptcy petition, Applicant listed owing Federal income taxes totaling \$31,000 and state income taxes totaling \$6,832 for tax years 2009 through 2011. He also listed unsecured, consumer debt totaling \$44,565. In April 2015, this bankruptcy case was converted to a Chapter 7 bankruptcy, and the dischargeable debts were discharged in July 2015. The tax liabilities were not discharged through the bankruptcy case.<sup>6</sup>

During his May 2012 security interview, Applicant explained that he was contacted by the IRS in about 2011 because Applicant owed taxes for income associated with his self-employment. Applicant claimed that these taxes were resolved; however, he has provided no explanation for the ongoing tax delinquencies.<sup>7</sup>

In his response to the SOR, Applicant included a payment plan to resolve his delinquent state taxes, totaling \$12,789. This payment plan was initiated in February 2016. Applicant made three payments, totaling \$1,010, in February 2016, March 2016, and April 2016 in accordance with this payment plan. Applicant further included documentation from the IRS stating that his tax year 2006 refund (\$500) was applied to his tax year 2010 delinquency. He also made three payments, totaling \$1,500, to the IRS in February 2016, March 2016, and April 2016; however, there is no evidence of an established payment plan with the IRS.<sup>8</sup>

Applicant's October 2017 response to the FORM included a September 2017 payment agreement with the IRS to resolve his tax delinquencies for tax years 2011 and 2014. There is no documentary evidence of any payments in accordance with this payment plan, no any further documentary evidence demonstrating that Applicant adhered to his previous payment plans to resolve his Federal and state income tax delinquencies for tax years 2009 through 2011.<sup>9</sup>

Applicant has provided no information as to the circumstances that led to his 2014 bankruptcy filing, particularly the listed consumer debts. He has provided no explanation for his tax delinquencies or the delay in addressing these delinquencies.

## **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 to be used in evaluating an applicant's eligibility for access to classified information.

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<sup>6</sup> GE 7-10.

<sup>7</sup> GE 11.

<sup>8</sup> Response to SOR.

<sup>9</sup> AE A.

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(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 national security eligibility will be resolved in favor of the national security."

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**

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

The security concern 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 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 risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (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's delinquent Federal and state income taxes totaled approximately \$37,832, for tax years 2009 through 2011. Applicant's inability to satisfy his financial obligations led to his bankruptcy filing and the discharge of approximately \$44,000 in unsecured, consumer debt. The Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(f).

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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, 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 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's tax delinquencies began with tax year 2009 and they are ongoing. In fact, Applicant's September 2017 payment plan with the IRS indicates that he has a tax delinquency for tax year 2014. Applicant has not demonstrated that the circumstances that caused his tax delinquencies are unlikely to recur, and his failure to timely address his tax delinquencies casts doubt on his reliability and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his bankruptcy filing to his outstanding tax debt; however, his bankruptcy filing also included significant consumer debts. Applicant has not identified any circumstances beyond his control that contributed to his financial problems. More importantly, there is no documentary evidence of any debt-resolution efforts on his delinquent taxes for tax years 2009 through 2011 until his February 2016 payments. Applicant has not demonstrated that he has acted in a financially-responsible manner in addressing his delinquent taxes. AG ¶ 20(b) does not apply.

There is no documentary evidence that Applicant has sought credit counseling. Nor is there evidence of his monthly income or expenses to establish that his financial problems are under control. AG ¶ 20(c) does not apply.

The concept of good faith requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Applicant has provided no explanation for his delay in addressing his delinquent taxes. Although he has provided documentary evidence of three payments on his Federal and state tax delinquencies, he has failed to establish a track record of payments or that he adhered to the payment plans. Furthermore, there is no evidence of any payments in accordance with the September 2017 payment plan with the IRS. AG ¶ 20(d) does not apply.

Applicant initiated payment plans on his delinquent Federal and state taxes in February 2016, and he provided documentary evidence of three payments in adherence to those plans. He has provided no documentary evidence of any further payments on his delinquent taxes. He entered into a second payment plan with the IRS in September 2017; however, there is no evidence of any payments under that plan. AG ¶ 20(g) does not apply. I find that Applicant did not mitigate the financial considerations security concerns.

### **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 relevant 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 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 and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant did not act in a financially-responsible manner in addressing his aged tax delinquencies. He has not established a track record of payments in adherence to the payment plans, and he has not demonstrated that his tax problems are unlikely to recur. Given his burden to demonstrate financial responsibility, trustworthiness, and good judgment, I conclude Applicant did not mitigate 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.c.:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Eric H. Borgstrom  
Administrative Judge