



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



In the matter of: )  
)  
) ISCR Case: 15-07517  
)  
Applicant for Security Clearance )

**Appearances**

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

11/09/2017

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**Decision**

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WHITE, David M., Administrative Judge:

Applicant claimed that six state tax liens entered against him in 2014 and a bank debt placed for collection in 2015 were not his valid debts, but offered insufficient proof to substantiate a basis to dispute their legitimacy. These delinquent debts total \$19,706 and remain unresolved. Financial security concerns were not mitigated. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

**Statement of Case**

On February 4, 2015, Applicant submitted an electronic questionnaire for investigations processing (e-QIP). (Item 5.) On May 11, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F (Financial Considerations). (Item 1.) 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after September 1, 2006.

Applicant submitted his Answer to the SOR on June 3, 2016, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 4.) On July 26, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing eight Items, was mailed to Applicant on July 27, 2016, and received by him on August 3, 2016. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not provide any response to the FORM, file any objection to the FORM's contents, or request additional time to respond beyond the 30-day period he was afforded. The case was assigned to me on July 6, 2017. Items 1 through 8 are admitted in evidence.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions<sup>1</sup> issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as set forth in Appendix A of SEAD 4. I considered the 2006 adjudicative guidelines, as well as the SEAD 4 AG, in determining Applicant's national security eligibility. My decision would be the same under either set of guidelines, but this decision is issued pursuant to the SEAD 4 AG.

### **Findings of Fact**

Applicant is 46 years old and married for the second time. He has two adult children and a 17-year-old daughter who lives with her mother. He has held his present position with a defense contractor since June 2013; and is seeking a security clearance in connection with that position. He is a high school graduate and has taken some college classes. He served in the Air Force from 1992 to 2012, and received an honorable discharge upon his retirement as a technical sergeant (E-6). He held a security clearance while on active duty, but it was suspended in May 2005 due to financial issues. (Item 5; Item 8.)

Applicant denied all of the allegations in the SOR with some explanations. (Item 4.) SOR ¶¶ 1.a through 1.f allege six tax liens, totaling \$12,815, which were entered against Applicant in August 2014 by the state in which he has lived with his current spouse since January 2005. This period included his last eight years on active duty and has continued since he retired. Applicant claimed that these liens were based on the state's unfounded claim that he owed state income tax while he was on active duty but claimed official residence in another state that does not have an income tax. Despite being advised in the FORM that he had not sufficiently demonstrated that these liens

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<sup>1</sup> SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

were imposed for unpaid state income taxes during his active duty, or that such a claim by the state would not be legitimate under the facts of his case, he submitted no documented proof to substantiate the basis for his asserted dispute. He claimed to have retained a law firm in February 2016 to dispute the state's tax claims, but offered nothing to indicate that any action had been taken toward resolution of the issue. The liens remain unresolved according to both record credit reports. (Item 4; Item 6; Item 7.)

Concerning the \$6,891 debt alleged in SOR ¶ 1.g, which a bank placed for collection in February 2015, Applicant wrote in his June 2016 answer to the SOR:

I have contacted [the bank] on this debit [sic] that I believe is not mine. They have been unable to send me any information about this debit [sic] and they have not returned my phone calls. I will continue to pursue this bank to resolve this issue.

He submitted no evidence to corroborate this attempted communication. He did not explain how he requested that the bank send him information about the debt if "they" had not returned his phone calls. He made no apparent effort to contact the collection agency that is the current creditor holding the debt. He did not claim that this debt arose from circumstances beyond his control. It remains unresolved, and no documented proof to substantiate a basis to dispute its legitimacy was provided in response to either the SOR or FORM. (Item 4; Item 7.)

Applicant did not document any financial counseling. He provided no recent budget information from which to predict his future solvency or his ability to make any payments toward his delinquent debts. He offered no evidence to support findings concerning the level of responsibility his duties entail in his defense contractor work, or his track record with respect to handling sensitive information and observation of security procedures there. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing. (Item 4.)

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline F: Financial Considerations**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes four conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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 incurred, and continues to owe according to the record evidence, more than \$19,700 in delinquent state taxes and a bank debt placed for collection. He documented neither the ability nor willingness to satisfy these debts. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes six conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's delinquent debts:

- (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, 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;

(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; 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 delinquent state tax and bank debts are substantial and ongoing. His failure to address these debts in a meaningful way creates ongoing concerns about his reliability, trustworthiness, and judgment. He offered no reasonable basis to conclude that such problems will not continue or recur. Mitigation was not established under AG ¶ 20(a).

Applicant neither documented a reasonable basis to claim that his delinquent debts arose from circumstances beyond his control, nor showed that he acted responsibly under such circumstances, as required for mitigation under AG ¶ 20(b). He disputed that he owed these debts, but failed to provide either documented proof of a reasonable basis to dispute their legitimacy, or evidence of substantive actions to resolve them. Mitigation under AG ¶ 20(e) was not demonstrated.

Applicant offered no evidence of financial counseling, or budget information that would demonstrate either solvency going forward or an ability to repay his delinquencies. He provided insufficient evidence that these problems are being resolved, are under control, or that a good-faith effort toward resolution has been initiated. Neither arrangements with state tax authorities to pay the amounts owed, nor compliance with such arrangements was demonstrated. Accordingly, Applicant failed to establish mitigation of financial security concerns under the provisions of AG ¶¶ 20(c), 20(d), or 20(g).

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who is accountable for his choices. He continues to owe more than \$19,700 in delinquent state tax and bank debts, and provided no evidence that he has taken action to resolve them. He provided insufficient evidence to demonstrate rehabilitation or other permanent behavioral changes. The potential for pressure, exploitation, or duress remains undiminished, and recurrence was not shown to be unlikely.

Overall, the evidence creates significant doubt as to Applicant's judgment, reliability, eligibility, and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a through 1.g:

Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. National security eligibility is denied.

DAVID M. WHITE  
Administrative Judge