



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



In the matter of: )  
 )  
 ) ISCR Case No. 16-00164  
 )  
Applicant for Security Clearance )

**Appearances**

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

12/12/2017  
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**Decision**  
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GARCIA, Candace Le'i, Administrative Judge:

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

**Statement of the Case**

On October 4, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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 (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on December 9, 2016, and requested a hearing before an administrative judge. The case was assigned to me on June 6, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 9, 2017, scheduling the hearing for August 1, 2017. On July 11, 2017, with no objection from the Government, DOHA issued a notice of cancellation due to Applicant's

unavailability. On July 21, 2017, DOHA issued a notice of hearing rescheduling the hearing for September 11, 2017. I convened the hearing as rescheduled.

At the hearing, Applicant requested another continuance. He indicated he was not ready to proceed because he had been deployed by his employer to another state to assist with relief efforts, and he left the documents he intended to present at the hearing at that location. The Government objected to Applicant's request. With the understanding that I would leave the record open for Applicant to provide his documentation, I determined that Applicant did not show good cause in accordance with E3.1.8 of the Directive and denied Applicant's second request for a continuance.<sup>1</sup>

The Government's discovery letter and exhibit list were appended to the record as Hearing Exhibits (HE) 1-2, respectively. Government Exhibits (GE) 1, 2, and 5 to 13 were admitted in evidence without objection. Applicant objected to GEs 3 and 4. I overruled his objections and admitted GEs 3 and 4 in evidence.<sup>2</sup> Applicant testified.

At Applicant's request and with no objection from the Government, I left the record open until September 25, 2017, for Applicant to submit additional documentation. At his request and with no objection from the Government, I subsequently granted Applicant an extension until October 25, 2017. He timely provided additional evidence, which I marked collectively as Applicant's Exhibit (AE) A and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on September 19, 2017.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a to 1.e and 1.g. to 1.o, and denied SOR ¶¶ 1.f and 1.p.<sup>3</sup>

Applicant is 55 years old. He received his high-school diploma in 1981, and he attended college in 2002 but did not earn a degree. He completed security training in 2007 and 2008, and he obtained a master's certificate in information systems in 2015. He served honorably in the U.S. military from February 1981 until he retired in February 2003. He has worked for federal contractors since at least September 2006. He was first granted a security clearance at the age of 19. As of April 2017, he was separated from his wife. He has three adult children, two of whom are in college.<sup>4</sup>

The SOR alleges Applicant's failure to timely file federal and state income tax returns for tax years 2013 and 2014, as required; an April 2009 federal tax lien of \$28,707; delinquent federal taxes totaling \$33,213 for tax years 2005, 2009, and 2010; delinquent state taxes of \$4,000 for tax year 2012; and nine delinquent consumer

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<sup>1</sup> Tr. at 5-6.

<sup>2</sup> Tr. at 16-25.

<sup>3</sup> Response to the SOR.

<sup>4</sup> Tr. at 7-9, 28-32, 37, 70-71, 80; GE 1.

accounts totaling \$53,899. The allegations are established by Applicant's admissions and the credit reports. Applicant also discussed his failure to timely file federal and state tax returns, his delinquent taxes, and his delinquent debts in his July 2016 response to interrogatories.<sup>5</sup>

Applicant attributed his 2005 delinquent taxes to his limited understanding of how to handle his taxes after he retired from the military and began earning more money. Though he did not seek financial counseling, he followed the advice of his taxperson, increased his withholdings, and claimed zero exemptions. He attributed his 2009 and 2010 delinquent taxes to the harsher burden he faced as a result of filing his tax returns separately from his wife.<sup>6</sup>

Applicant attributed his failure to timely file 2013 and 2014 federal and state tax returns to his June 2013 chapter 13 bankruptcy. During a difficult period in their marriage, when Applicant and his wife could not afford their mortgage payments, they acted on their attorney's advice and filed bankruptcy. When Applicant learned of the possible negative implications for his security clearance, they voluntarily dismissed the bankruptcy in April 2014. He attributed his failure to timely file his 2015 and 2016 tax returns to his wife's decision to file separately.<sup>7</sup>

Applicant's delinquent mortgage culminated in the loss of his home to foreclosure in around 2013 to 2014. He attributed his mortgage delinquency to the creditor losing one of his payments, his unsuccessful attempt to modify his mortgage, and the failing economy that caused him to become underwater.<sup>8</sup>

Applicant also encountered financial troubles when he and his wife separated in 2001, and again in 2005 or 2006. In addition, he has contributed \$500 monthly to his mother since his father's passing in 2006, and \$300 monthly to his father-in-law since his mother-in-law's passing in 2009. He was also unemployed for seven months, and his wife for three to four months, in 2010. He stated that he was also a victim of the Office of Personnel Management hacking. Finally, he acknowledged that he incurred some of his debts by indulging his children.<sup>9</sup>

SOR ¶¶ 1.a, 1.b, and 1.c are delinquent federal taxes for tax years 2005, 2009, and 2010 totaling \$33,213, and SOR ¶ 1.g is a \$28,707 federal tax lien filed against Applicant in April 2009. Applicant testified that he made payments towards his outstanding federal taxes prior to and through his 2013 Chapter 13 bankruptcy. He initially testified that he had not made any payments towards his outstanding federal

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<sup>5</sup> Response to the SOR; GEs 2-5, 10, 12.

<sup>6</sup> Tr. at 26-27, 29-30, 33-34, 37, 42-44, 48, 54-56, 67-69, 73-74; GE 2.

<sup>7</sup> Tr. at 26-27, 29-30, 33-34, 37, 42-44, 48, 54-56, 67-69, 73-74; GEs 2, 8.

<sup>8</sup> Tr. at 28, 50-54, 76-77; GEs 1, 2.

<sup>9</sup> Tr. at 26-27, 29-30, 33-34, 37, 42-44, 48, 54-56, 67-69, 73, 77; GE 1.

taxes since the voluntary dismissal of his bankruptcy in 2014, but he then testified that he had. He also testified that his tax refunds have been applied to his outstanding federal taxes, and he has worked with a tax relief company since early 2017 to reach a payment arrangement with the IRS to resolve his outstanding balance. He provided documentation to show that \$500 of his military pay was allotted for the IRS in December 2008 and January 2009.<sup>10</sup>

SOR ¶¶ 1.d and 1.e are Applicant's failure to timely file federal and state income tax returns for tax years 2013 and 2014, as required. Applicant testified that though he was late in filing them, he did so in 2017 with the help of the tax relief company; he also testified that he filed his 2012 and 2015 federal income tax returns. Though he had not filed his 2016 federal income tax returns, he stated that the IRS gave him an extension to file them by October 2017. However, he testified that he had not filed his 2015 and 2016 state income tax returns. He believed he did not owe the IRS for tax years 2012, 2013, 2014, and 2015; rather, he believed he received refunds, which the IRS applied to his outstanding taxes as previously discussed. He testified that he did not owe the state for tax years 2013 and 2014, and he did not believe he had any outstanding state taxes. He stated he would continue working with the tax relief company to file his outstanding returns.<sup>11</sup>

Applicant provided copies of his joint 2013 and 2014 federal and state income tax returns, completed and signed by him and his wife in March 2017. The tax returns reflected that Applicant and his wife claimed as deductions for gifts to charity \$35,496 in 2013, and \$51,498 in 2014. The returns did not reflect that they had been filed. Applicant also provided IRS tax account transcripts from July 2016 for tax periods 2004 through 2013. The transcripts reflected that Applicant had not filed his 2013 federal income tax return. The transcripts also reflected that he had an \$11,098 balance for tax year 2005, a \$4,178 balance for tax year 2009, a \$17,936 balance for tax year 2010, and a \$13,623 balance for tax year 2012. They also reflected that he had a zero balance for tax years 2004, 2006, 2007, 2008, and 2011.<sup>12</sup>

SOR ¶ 1.f is \$4,000 in delinquent state taxes for tax year 2012. Applicant testified that these taxes were resolved in mid-2017, through the application of a federal tax refund. He did not provide documentation to corroborate his claim.<sup>13</sup>

SOR ¶¶ 1.h, 1.i, and 1.n are debts to the same federal credit union, for a \$7,502 charge-off, a \$6,424 charge-off, and a debt of \$14,916 placed in collection, respectively. Applicant testified that he believed he paid SOR ¶ 1.h, and was resolving SOR ¶¶ 1.i and 1.n through payment arrangements. He provided documentation from the federal credit union from October 2017, which reflected that it accepted a settlement amount of

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<sup>10</sup> Tr. at 26-27, 36-44, 60-61, 75-76; GE 6; AE A.

<sup>11</sup> Tr. at 26-27, 36-44, 60-61, 74-76.

<sup>12</sup> GE 2; AE A.

<sup>13</sup> Tr. at 27, 41-42, 74-75.

\$12,000 for SOR ¶ 1.n, to be paid in 12 monthly installment payments of \$1,000, with the final payment due no later than November 2018. The documentation also reflected that the creditor accepted a settlement amount of \$6,078 for another account, to be paid in 12 monthly installment payments of \$506, with the final payment due no later than November 2018; the record is unclear as to whether this latter settlement applies to SOR ¶¶ 1.h or 1.i.<sup>14</sup>

Applicant testified that he had to further research SOR ¶¶ 1.j, 1.l, and 1.p. He did not understand how he was responsible for SOR ¶ 1.j, though he acknowledged that it was a credit card he opened for one of his daughters. He intended to resolve it since she had not done so after he spoke to her about it. He was disputing SOR ¶ 1.l, as he did not believe he owed it. He contacted the creditor after he received the SOR, but he was unable to obtain information about it. He believed SOR ¶ 1.p was for a parking ticket, but he was unsure how it was incurred. In his post-hearing submission, Applicant stated that he was unable to obtain information about SOR ¶ 1.j since it belonged to his daughter, and he requested that the creditor remove it from his credit report. He also requested that the creditors remove SOR ¶¶ 1.l and 1.p from his credit report.<sup>15</sup>

The Government withdrew SOR ¶ 1.k, as Applicant is only an authorized user on this account.<sup>16</sup>

SOR ¶ 1.m is for a credit card opened by Applicant's wife, for which he cosigned. He testified that he would resolve it with a payment arrangement from his military retirement pay. In his post-hearing submission, he stated that he requested the creditor remove this debt from his credit report.<sup>17</sup>

SOR ¶ 1.o is one of two mortgage accounts for the home Applicant purchased in October 2006 that was foreclosed in 2013. Applicant testified that he received an IRS form 1099-C from the creditor, which he filed with his 2013 or 2014 tax returns. He did not provide documentation to corroborate his claim. The copies of his joint 2013 and 2014 federal and state income tax returns that Applicant provided did not contain an IRS form 1099-C.<sup>18</sup>

In November 2001, Applicant was granted a conditional security clearance by the Department of the Navy Central Adjudication Facility due to financial concerns. He was cautioned that the future receipt of derogatory information would be cause for immediate reconsideration. In around 2010, he had a DOHA security clearance hearing due to financial concerns; that proceeding ended favorably for him and he was granted

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<sup>14</sup> Tr. at 27, 44-45; GEs 5, 10; AE A.

<sup>15</sup> Response to the SOR; Tr. at 27-28, 45-48, 54, 65-67; AE A.

<sup>16</sup> Tr. at 46-47; GE 3.

<sup>17</sup> Tr. at 48-49, 65-67; AE A.

<sup>18</sup> Tr. at 28, 50-54, 76-77; GEs 1, 2; AE A.

a security clearance. He denied that another federal government agency denied him employment due to credit issues.<sup>19</sup>

While not alleged in the SOR, Applicant admitted to gambling. He denied, however, the gambling transactions as documented in FINCEN reports provided by the Government. He testified that he gambled six to seven times in 2017, \$100 on each occasion, and at most \$900 on one occasion. He stated that he has never taken out loans to gamble. He also stated that his separations from his wife were unrelated to his gambling.<sup>20</sup>

As part of his chapter 13 bankruptcy, Applicant testified that he received financial counseling between 2013 and 2014. His wife managed the household expenses, though he started to take control of his finances in light of their recent separation. He testified that he has a budget; his monthly net income from his job is \$8,800, and he also receives \$1,600 monthly in military disability and retirement pay. He was unable to testify as to his wife's income. As of the hearing, his rental payments were \$2,500 monthly. He contributed \$400 to \$500 monthly to his two children's college expenses. He was also responsible for the expenses related to a car he purchased for his youngest child. Though his middle child's car is registered in his name, it was fully paid for by his brother, and his child pays the insurance costs. He believed his monthly net was a couple thousand dollars, and he had \$1,500 in savings. He testified he did not have any other delinquent debts. He also testified that he loves serving his country.<sup>21</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 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.

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<sup>19</sup> Tr. at 34-36, 60; GEs 9, 11, 13.

<sup>20</sup> Tr. 28, 56-60, 77-78, 80-81; GEs 3, 7.

<sup>21</sup> Tr. at 31-33, 54-56, 61-63, 69-73, 77, 80.

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 Exec. Or. 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* Exec. Or. 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 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 greater risk of having to engage in illegal or otherwise questionable 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;

- (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 was unable or unwilling to pay his debts, to include his delinquent federal and state taxes. He also failed to file federal and state income tax returns for tax years 2013 and 2014, as required. The evidence is sufficient to raise AG ¶¶ 19(a), 19(b), 19(c), and 19(f) as disqualifying conditions.

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 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 SOR debts are unresolved. He did not provide corroborating documentation to show that he made a good-faith effort to resolve his delinquent debts, to include his taxes. In addition, he did not demonstrate that he filed his 2013 and 2014



federal and state income tax returns, as required. While he received financial counseling as part of his 2013 bankruptcy, his finances are not under control. There is insufficient evidence to conclude that his financial problems are unlikely to recur. His failure to address his delinquent debts, and to file his 2013 and 2014 federal and state income tax returns as required, cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(d), 20(e), and 20(g) do not apply.

Conditions beyond his control contributed to Applicant's financial problems. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. Applicant has not provided corroborating documentation of his efforts to resolve his SOR debts. He has not demonstrated that he filed his 2013 and 2014 federal and state income tax returns, as required. There is insufficient evidence to conclude Applicant acted responsibly under the circumstances. AG ¶ 20(b) is therefore only partially applicable.

### **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 in my whole-person analysis.

I have considered Applicant's honorable service with the U.S. military from 1981 until he retired in 2003, and that he has worked for federal contractors since at least September 2006. I have considered that he was first granted a security clearance at the age of 19.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. 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.j, 1.l - 1.p:	Against Applicant
Subparagraph 1.k:	Withdrawn

### **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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Candace Le'i Garcia  
Administrative Judge