



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 16-00462

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel

For Applicant: *Pro se*

03/20/2018

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate the security concerns regarding his financial considerations. Eligibility for access to classified information is denied.

**Statement of Case**

On June 29, 2017, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DoD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. 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 (AGs), effective June 8, 2017, by Directive 4 of the Security Executive Agent Directive (SEAD 4), dated December 10, 2016, entitled *National Security Adjudicative Guidelines* for all covered individuals who

require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position.

Applicant responded to the SOR on September 16, 2016, and requested a hearing. The case was assigned to me on June 20, 2017, and scheduled for hearing on August 2, 2017. The Government's case consisted of five exhibits (GEs 1-5) Applicant relied on one witness (himself) and one exhibits. (AE A) The transcript was received on August 11, 2017.

### **Procedural Issues**

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with documented filing of his federal tax returns for tax years 2008-2016 and payment of his SOR debts ¶¶ 1.a and 1.d. For good cause shown, Applicant was granted 14 days to supplement the record, and subsequently was granted an additional 30 days to supplement the record. Department Counsel was afforded two days to respond. Applicant did not supplement the record.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) failed to file his federal tax returns for tax years 2008-2012, as required; (b) is indebted to the Federal Government in the amount of \$49,000 for tax years 2008-2012 and 2014; and (c) accumulated six delinquent consumer debts exceeding \$3,000. Allegedly, these tax returns and debts have not been addressed.

In his response to the SOR, Applicant admitted each of the allegations with explanations. He claimed he filed his federal tax returns for the years in issue. He claimed he is paying on his owed federal taxes. And he claimed he paid off the consumer debts covered by SOR ¶¶ 1a-1.f.

### **Findings of Fact**

Applicant is a 49-year-old security officer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant married in November 1991 and divorced April 2004. (GE 1) He has three children from this marriage. (GEs 1-2; Tr. 35) He remarried in June 2004 and divorced in April 2009. (GEs 1-2; Tr. 34) Applicant married for the third time in May 2011 and divorced in 2014. (GE 1-2; Tr. 34) He has no children from this marriage. (GE 1) Applicant earned a high school diploma in August 1989 but reported no post-high school education credits. (GEs 1-2) He enlisted in the Army in March 1989 and served seven years before he received an honorable discharge in March 1996. (GE 1; Tr. 34)

Since March 2005, Applicant has worked on a full-time basis for his current Company A employer. (GE 1; Tr. 36) Contemporaneously with his Company A employment, he has worked for Company B (since January 2006) in plant protection. (GEs 1-2; Tr. 35-36) He reported brief unemployment in August 2005 and employment as a security guard between April 2005 and August 2005. (GE 1)

## **Finances**

Applicant failed to file his federal income tax returns for tax years 2008-2012, as required and currently owes over \$49,000 in back taxes to the Federal Government covering tax years 2008-2012 and 2014. (GEs 1-5)<sup>1</sup> He attributed his filing lapses to insufficient income to cover his taxes owed for these tax years.

Applicant is currently working with a tax service firm to resolve his tax-filing and tax debt issues. (AE A; Tr. 41-46) While he assured that he filed his 2008-2012 federal tax returns at one time, to date he has not provided any confirmation of his filings by himself or his retained tax service. (Tr. 36-39) Nor has he provided any documented updates of progress in resolving his tax debts with the Internal Revenue Service (IRS). (AE A; Tr. 46-47) His claims of filing his 2013-2016 federal tax returns, as required, are not corroborated with any documented proof of his filing any of his alleged unfiled federal tax returns for the years covered in the SOR, or other years in issue. (GEs 1-2 and AE A)

Applicant earns about \$60,000 a year from Company A and roughly \$30,000 a year from his second job with Company B. (Tr. 47) He maintains a small monthly remainder and has a small 401(k) retirement account with his Company A employer with little assets in the account. (Tr. 48)

## **Policies**

The SEAD 4, Appendix (App.) 4 lists guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and many of the conditions that could mitigate security concerns.

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<sup>1</sup> Applicant admitted to untimely filing of his 2008-2014 federal tax returns and expressed uncertainty about whether his 2015 and 2016 federal tax returns were timely filed. (Tr. 39-41) While Applicant committed to providing filing confirmations for these covered tax years, he failed to provide any post-hearing submissions documenting his filing of these returns. Although tax years 2013-2016 are not covered in the SOR, unalleged conduct may be considered (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive § 6.3. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)(internal citations omitted).

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with App. A, AG ¶ 2(c)

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in App. A, AG ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following App A, AG ¶ 2(d) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

### **Financial Considerations**

*The Concern:* 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 of dependence. An individual who is financially overextended is at greater risk of having to engage in illegal acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

### **Personal Conduct**

*The Concern.* 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. Of special interest is

any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicating processes . . . . AG ¶ 15.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Security concerns are raised over Applicant's non-filing of federal tax returns for tax years 2008-2012; his incurring of federal tax debts for tax years 2008-2012 and 2014; and his accumulating delinquent consumer debts. Applicant's filing lapses, incurring of federal tax delinquencies, and accumulation of delinquent consumer accounts warrant the application of three of the disqualifying conditions (DC) of the AGs: DC ¶ 19(a), "inability to satisfy debts," DC ¶ 19(c), "a history of not meeting financial obligations," and DC ¶ 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,"

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are also implicit in financial cases.

Applicant's tax filing failures and accruing of delinquent federal and consumer tax debts merit no application of any of the potentially available mitigating conditions. His unresolved tax filing and debt delinquencies prevent him from meeting the Appeal Board's requirements for demonstrating financial stability. See ISCR Case No. 07-06482 (App. Bd. May 21 2008); see also ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007)(citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000)); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999).

### **Whole-person assessment**

From a whole-person standpoint, Applicant's contributions to the defense industry are worthy of respect. They are not enough, though, to overcome security concerns associated with his history of failing to file his federal tax returns and address his delinquent tax and consumer debts. His delinquent tax returns and tax and consumer debts remain a source of trust concern. Considering all of the circumstances surrounding Applicant's tax filing lapses and unaddressed delinquent debts, unfavorable conclusions are warranted with respect to listed SOR debts ¶¶ 1.a-1.h of Guideline F.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparas. 1.a-1.h:

Against Applicant

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge



