



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 16-00908

Applicant for Security Clearance

**Appearances**

For Government: Michele Tilford, Esq., Department Counsel

For Applicant: Alan V. Edmunds, Esq.

03/07/2018

**Decision**

MASON, Paul J., Administrative Judge:

Credit bureau reports dated March 2015 and July 2016 indicate that the Internal Revenue Service (IRS) filed a tax lien against Applicant in 2008 and in 2010. Two state tax agencies filed a tax lien against him in 2008 and in 2011. Two credit card accounts became delinquent in 2012. Although Applicant claimed he took steps to contact and resolve three of the debts, the only documented proof of resolving the delinquent debt was a \$200 payment to one of the credit card creditors. Applicant has not mitigated the financial considerations guideline. Conversely, there is insufficient evidence to find against him under the personal conduct guideline. Eligibility for security clearance access is denied.

**Statement of the Case**

On February 9, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to continue a security clearance. DOD issued to Applicant a

Statement of Reasons (SOR), dated September 30, 2016, detailing security concerns raised by financial considerations (Guideline F) and personal conduct (Guideline E). The action was taken under Executive Order (E.O.) 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) effective in the DOD on September 1, 2006.

While this case was pending a hearing, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing *National Security Adjudicative Guidelines for Determining Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs). The guidelines were applicable to all individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the September 1, 2006 AGs and are effective on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.<sup>1</sup>

Applicant provided his notarized answer on November 1, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 20, 2017, for a hearing on October 3, 2017. I was reassigned the case for administrative reasons. The hearing was held as scheduled. The government's three exhibits (GE) 1-3 and Applicant's 4 exhibits (AE) A-D were entered into evidence without objection.<sup>2</sup> On October 19, 2017, Applicant submitted four post-hearing exhibits (AE F-I). By October 27, 2017, after Applicant provided a clearer reproduction of AE G, the government indicated no objection to the post-hearing exhibits. DOHA received the transcript on October 11, 2017. The record closed on October 27, 2017.

### **Findings of Fact**

The SOR has six allegations under the financial considerations guideline and one allegation under the personal conduct guideline. Applicant denied the federal tax liens listed in SOR 1.a and 1.b. He claimed that he contacted his certified public accountant (CPA) to assist him in filing his taxes and was trying to find out why he was the object of the lien(s). He claimed that he talked to the government investigator who told him (they) looked into this and did not find anything (regarding the liens). Applicant claimed that his research into online resources revealed nothing. Applicant provided no independent documentation to confirm how the investigator and he determined the liens did not exist. (Applicant's answer to the SOR; Tr. 40)

Applicant essentially admitted that state tax lien alleged under SOR 1.c and claimed he contacted the state tax agency and discovered he owed the lien. He

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<sup>1</sup> My decision in this case would be the same under the 2006 or 2017 guidelines.

<sup>2</sup> There is no AE E. (Tr. 10-13)

categorically denied the tax lien identified in SOR 1.d. Concerning SOR 1.e which he denied, he explained that he had no recollection of the account. He denied SOR 1.f explaining that he disputed the debt and the creditor told him the debt was resolved. He advised that he would take immediate action to eradicate the debt. He changed his position regarding SOR 1.c, 1.e, and 1.f. Applicant denied SOR 2.a indicating that he did not find out about the delinquent credit card accounts until the 2015 interview with the investigator after his February 2015 e-QIP. (Answer to SOR; Tr. 31, 58)

Applicant is 40 years. He has been married since June 2017. His wife is an operations planner. He has 2 stepchildren, ages 10 and 14, and a 22-year-old son from a previous marriage. A defense contractor has employed him as a field service representative for the past one and a half years. His previous job was in a special tactics unit from May 2011 to about 2016. Before three months of unemployment in 2011, he spent four years working for a defense contractor as a high-threat shift leader. Applicant was in the United States Marines from 1996 until his honorable discharge in December 2003. He has held a security clearance since 1996. (GE 1 at 12-17; Tr. 14-16, 20)

Applicant, while working for defense contractors between 2007 and October 2017, was deployed to the Middle East six or seven times since 2007. He recalled that mail delivery from the U.S. was erratic and the mail did not reach him occasionally. On October 2, 2017, Applicant returned to the U.S. following a two-week deployment to the Middle East. He indicated that he tried to contact the IRS without success. He tried to contact his CPA (who files his taxes) to obtain tax information related to some of the SOR allegations. The record contains no additional tax information or other documentation from the CPA. Applicant submitted his 2015 and 2016 federal and state tax returns as post-hearing exhibits. He prepared them himself and filed them electronically. (AE H, I; Tr. 17-20)

From 2012 to his most recent two-week deployment in the Middle East (September-October 2017), Applicant's employers had assigned him to only projects in the U.S. In February 2015, he completed and certified an e-QIP. In response to the financial section of the form (Section 26), Applicant answered "No" to all questions, but did reveal that he was trying to obtain more information about a tax lien filed against him by the state identified in SOR 1.c. Later in 2015, he provided an interview (PSI) to a government investigator and learned about all the debts (except for SOR 1.c) for the first time. (GE 1 at 33-34; Tr. 26, 39, 59-60)

## **Financial Considerations**

SOR 1.a – A 2015 credit report shows that the IRS filed a tax lien against Applicant in October 2008.<sup>3</sup> He denied responsibility for the lien. He believes he filed the

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<sup>3</sup> The report lists Applicant's Social Security Number (SSN) and several residential addresses where he resided in the past. The SSN and addresses match those furnished by Applicant in his e-QIP. (GE 1 at 7-11, GE 3 at 1)

appropriate federal tax returns while on leave from his deployment in Middle East. He contacted the IRS and his CPA without success. Applicant provided no additional information. (GE 3 at 7; Tr. 21-23)

SOR 1.b – A 2015 credit report shows that the IRS filed a tax lien against Applicant in June 2010. He denied responsibility for the lien. He indicated that he contacted his CPA and the IRS to seek more information without success. As with SOR 1.a, he believes he filed the appropriate federal tax returns. Applicant looked for his tax return records, but could not find them. Applicant provided no additional information. (GE 3 at 6; Tr. 24, 40-42)

SOR 1.c – A 2016 federal report indicates that a state tax agency filed a lien against Applicant in May 2011. On October 2, 2017, he signed a payment plan request agreeing to pay \$200 a month for the tax year 2007. The state must still authorize the request. He contended that he did not address SOR 1.c and the other debts sooner because he was in and out of the U.S. In addition, he did not believe he was responsible for the debts. He conceded that he forgot about the lien did not handle the debt as vigorously as he should have. (GE 2; AE A; Tr. 24-27, 42-43)

SOR 1.d – A 2015 credit report indicates that a state tax agency filed a tax lien against Applicant in December 2008. He does not believe he is responsible for the lien. He tried to contact the state tax agency in 2011, but was unsuccessful. He believed he was living in the state before 2008, and filed the appropriate tax returns. His e-QIP reflects that he lived in the state between 2003 and 2006. (GE 1 at 11; GE 3 at 6; Tr. 27-28, 43)

SOR 1.e – Credit card account opened in June 2008 and became delinquent in July 2012. Applicant received a corrected 1099-C Form in approximately August 2017, indicating the creditor decided to discontinue trying to collect on the debt. (AE C; Tr. 29, 44)

SOR 1.f – Credit card account for business purposes which Applicant opened in July 2006. The account became delinquent in September 2012. He thought he had paid and closed the account in 2011. Though he originally denied the debt in his November 2016 answer to the SOR, the creditor informed that he owed the debt. He set up a payment plan and made his first \$200 payment on October 2, 2017. (AE G; Tr. 29-30, 45)

Applicant recalled receiving financial counseling when he first joined the Marines in 1996. He has recently signed up to receive additional counseling. He promised to submit verification of his enrollment. There is no documentation of financial counseling in the record. (Tr. 32, 55)

## **Personal Conduct**

On February 9, 2015, Applicant completed and certified an e-QIP. Under Section 26 (Financial Record), he was asked whether in the past 7 years, he had bills or debts turned over to a collection agency; and whether he had an account or credit card suspended, charged off, or canceled for failing to pay as agreed. By answering “No” to the questions, he did not disclose the debts at SOR 1.e and 1.f. (SOR 2.a) (Tr. 31, 58)

## **Character Evidence**

Applicant’s DD 214 indicate that he received: the Air Force Achievement Medal, Marine Corps Good Conduct Medal, 2<sup>nd</sup> Award; Navy and Marine Corp Achievement Medal with Gold Star; National Defense Service Medal; Meritorious Unit Commendation; Certificate of Commendation; Certificate of Appreciation 2<sup>nd</sup> Award; Meritorious Mast; Letter of Appreciation; and Rifle Expert Badge, 4<sup>th</sup> Award; Pistol Sharpshooter Badge; and a Good conduct Medal. (AE F)

For the employment period of April 2016 through December 31, 2016, Applicant’s performance review comments by his supervisor were “highly motivated,” “dependable and trustworthy,” and “a model employee.” On October 2, 2017, Applicant signed and notarized a statement of intention to file and pay all federal and state taxes in the future. If he does not comply with his statement of intention, he consents to having his security clearance automatically revoked. (AE B, D, F)

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with common sense and the general factors of 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(d) 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

## Analysis

### Financial Considerations

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

19. Conditions that could raise a security concern and may be disqualifying include:

(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.

When the SOR was issued in September 2016, Applicant owed \$81,737 in delinquent debt to five creditors. About 94% of the debt are two federal tax liens. The liens, which are posted in the government's 2015 and 2016 credit reports, indicate that the federal liens were filed in October 2008 and June 2010.<sup>4</sup> The state liens were filed in December 2008 and May 2011. Except for documentation that indicates he made a \$200 payment to the SOR 1.f credit card creditor on October 2, 2017, the other four liens are still unresolved, demonstrating a history of not meeting financial obligations. AG ¶¶ 19(a), 19(c), 19(f) apply.

20. Conditions that could mitigate security concerns include:

(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;

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<sup>4</sup> Adverse information from credit reports can normally meet the substantial evidence standard and Government's obligations under E3.1.14. See, e.g., ISCR Case No. 14-02403 at 3 (App. Bd. Aug. 18, 2015); 03-20327 at 4 (App. Bd. Oct. 26, 2006)

(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; 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.

Though Applicant's most recent debt became delinquent more than five years ago in 2012, all the liens and almost the entire debt to the SOR 1.f creditor remain unpaid. Due to the large amount of federal tax debt, it is likely that the debts will continue into the future. Applicant's inaction after learning in 2015 about the liens and delinquent debts raises ongoing questions about his trustworthiness and judgment. AG ¶ 20(a) does not apply.

Applicant's three-month period of unemployment in 2011 is a circumstance recognized under AG ¶ 20(b). However, he has been steadily employed for the last six years without any work-related disruption or any other unanticipated event. When he learned about his delinquent debts in 2015, he did not act responsibly to address his delinquent debts. Applicant receives no mitigation under AG ¶ 20(b).

Applicant receives no mitigation under AG ¶ 20(c) because his only financial counseling occurred in 1996. While he claimed he was enrolled for future financial counseling, he provided no documentation of participation and there are no clear indications his financial problems are resolved or under control. I draw the same conclusion under AG ¶ 20(d) as the evidence is devoid of any good-faith efforts by Applicant to repay his delinquent debts. The fact that Applicant no longer owes the SOR 1.e creditor is not the result of a record of good-faith payments to resolve the debt, but the creditor's decision to terminate additional collection efforts.

AG ¶ 20(e) does not apply because there is no evidence corroborating Applicant's bald claim that he does not owe the federal tax liens and the one state tax claim in SOR 1.d. The mitigation due Applicant under AG ¶ 20(g) for his documented action to address the state tax lien in SOR 1.c must be weighed against the fact that the

action was taken one day before the hearing, even though he was aware of the lien in 2015.

## **Personal Conduct**

15. 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 adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

16. Conditions that could raise a security concern and may be disqualifying include:

(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;

Applicant omitted relevant financial information from his February 2015 e-QIP when he answered "No" in Section 26 of having debts turned over to a collection agency or charged off in the last seven (7) years. He denied falsifying the answer because he did not know at the time he filled out the security form that he owed any debts. Providing false information on a government document raises concerns, but must be accompanied by an intent to mislead the Government about information used to determine security clearance suitability. The investigator informed Applicant about the two creditors (SOR 1.e and 1.f) later in 2015 after he submitted his e-QIP. However, there is no evidence that he received any prior collection or late payment notices from either credit card creditor before he submitted the February 2015 e-QIP, even though he was assigned to U.S. duty since 2012. Considering the evidence as a whole, I do not find sufficient evidence of a deliberate intent by Applicant to falsify his security clearance application. AG ¶ 16(a) does not apply. Therefore, it is unnecessary to discuss the mitigating conditions under the guideline.

## **Whole-Person Concept**

I have examined the evidence under the specific guidelines in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is married and has two stepchildren and a son from a previous marriage. His DD 214 shows that he received several awards and commendations for his honorable service in the U.S. Marine Corps between 1996 and 2003. His current supervisor praised Applicant's job performance for the period between April and December 31, 2016.

Weighing against the favorable evidence is the disqualifying evidence of Applicant's delinquent debts that he accrued between October 2008 and July 2012. He was placed on notice during his PSI in 2015 that he had these federal and state tax liens, and credit card debts. Though he claimed he made follow-up phone calls to the IRS and his CPA shortly after the interview in 2015, he also acknowledged that he did not believe he owed the debts and that he neglected the debts. He received additional notice upon issuance of the SOR in September 2016, and he responded in November 2016 that he was researching the liens with his CPA. He conceded at the October 2017 hearing that he had done very little to resolve his debts since he submitted his November 2016 answer to the SOR. The documented \$200 payment to the SOR 1.f creditor and the promise to pay the SOR 1.c creditor on the day before the hearing substantiates his observation. Viewing the evidence from an overall standpoint, Applicant has not mitigated the security concerns arising from the guideline for financial considerations. He has sufficiently mitigated the adverse evidence under the personal conduct guideline.

### **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.f:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

## **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 grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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Paul J. Mason  
Administrative Judge