



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



In the matter of: )  
)  
) ISCR Case No. 16-01726  
)  
Applicant for Security Clearance )

**Appearances**

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

10/31/2017

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense's (DOD) intent to deny his eligibility for a security clearance. He mitigated the security concerns raised by his failure to pay his Federal income taxes as required. Clearance is granted.

**Statement of the Case**

On August 22, 2016, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant's security clearance and recommended his case be submitted to an administrative judge for consideration.

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<sup>1</sup> The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

Applicant answered the SOR and requested a decision without a hearing.<sup>2</sup> The Government submitted its written case on November 21, 2016. A complete copy of the file of relevant material (FORM) and the Directive were provided to Applicant. He received the FORM on September 16, 2016, and provided a response. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 10, and Applicant's Exhibits (AE) A through D, without objection.

### **Procedural Matters**

While the case was pending decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded the AG implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have applied them in this case.

### **Findings of Fact**

Applicant has worked for his current employer, a federal contractor, since August 2011. It is unclear from the record if Applicant works as a direct employee of a federal contracting company or as an independent contractor. Although he has been granted access to classified information by other agencies, this is his first request for access to DOD. Applicant completed a security clearance application in October 2015. He disclosed failure to file and pay Federal taxes for the 2010, 2012, and 2013 tax years. He also disclosed his failure to pay Federal taxes for the 2014 tax year. Although all the returns were filed by the time Applicant completed the security clearance application, he had not paid his outstanding Federal tax balances. The SOR alleges that in 2016, the IRS filed a tax lien against Applicant for \$192,000 in unpaid Federal taxes. Applicant admitted the allegation.

Applicant blames his failure to pay his Federal income taxes for 2010, 2012, and 2013, on a reduction in income in 2011, as he took two months off to address a medical issue. Because of the loss of income, Applicant could not afford to pay his tax obligation and maintain his living expenses, which included \$3,400 monthly child support payments. Applicant claims that the 2011 income loss and college tuition payments for his oldest child continued to affect his ability to pay his 2012 and 2013 Federal tax obligations. In May 2015, Applicant retained a law firm to help him resolve his Federal and state tax issues for the 2010 through 2014 tax years. Applicant claims that he did not pay his 2014 taxes at the advice of his attorney, who recommended he keep current with his 2015 estimated tax payments.

In November 2015, Applicant's lawyer negotiated a payment plan to help Applicant resolve a \$19,000 outstanding state tax obligation. Applicant agreed to pay \$1,100 for 27 months, beginning in November 2015, to resolve the debt. In June 2016,

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<sup>2</sup> GE 1.

after prolonged negotiation with the IRS, which included a hearing and subsequent appeal, Applicant reached a payment agreement with the IRS. Under the terms of the payment plan, Applicant agreed to pay \$1,900 each month beginning in August 2016, increasing to \$3,100 in February 2018, and increasing again to \$4,800 in June 2018, until the outstanding tax balance is paid in full. The payments increase as Applicant's other financial obligations, his state tax debt and his child support obligations, are satisfied. Under the terms of the payment agreement, the tax lien will remain in place and will not be enforced by levy so long as Applicant complies with the terms of his payment plan.

As of December 2016, Applicant provided evidence to show that he was in compliance with his IRS payment plan. He also provided evidence to show that he paid his 2015 federal tax obligation and 2016 estimated taxes, as required. Aside from the tax issues, the September 2011, October 2015, and April 2016 credit reports in the record show that Applicant has maintained his consumer credit accounts in good standing. He has no other delinquent accounts.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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. 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.

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.

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

### Financial Considerations

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgement, or willingness 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.<sup>3</sup>

The record establishes the Government's *prima facie* case that Applicant failed to pay Federal income taxes as required for the 2010, 2012, 2013 and 2014 tax years.<sup>4</sup> His failure to do so is also evidence of a history of not meeting his financial obligations.<sup>5</sup> However, Applicant has made a good-faith effort to repay his outstanding Federal and state tax obligations.<sup>6</sup> Months before he completed the security clearance application, Applicant retained counsel to help him resolve his tax problem. Through counsel, Applicant negotiated payment plans with state tax authority and the IRS.<sup>7</sup> As of the most recent information available, Applicant is in compliance with both payment plans. In addition, there is no evidence of an ongoing problem. Applicant's tax problems are under control.

Accordingly, Applicant has mitigated the alleged security concerns. In reaching this decision, I have considered the whole-person factors at AG ¶ 2(d). Although Applicant failed to properly manage his Federal and state obligations for many years, he has taken the appropriate steps to remediate the issue. An Applicant is not required to be debt-free, all that is required is that he make a plan to resolve his delinquent debt and show that he has taken steps to effectuate that plan. Applicant has done so. Accordingly, his request for access to classified information is granted.

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<sup>3</sup> AG ¶ 18.

<sup>4</sup> AG ¶ 19 (f) failure to file . . . annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

<sup>5</sup> AG ¶ 19 (c) a history of not meeting financial obligations.

<sup>6</sup> AG ¶ 20 (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

<sup>7</sup> AG ¶¶ 20 (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source . . . and there are clear indications that the problem is being resolved or is under control; 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.

### **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, Financial Considerations: FOR APPLICANT

Subparagraph 1.a: For Applicant

### **Conclusion**

Based on the record, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Nichole L. Noel  
Administrative Judge