



**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. 16-01756

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel

For Applicant: *Pro se*

01/22/2018

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant mitigated the security concerns regarding his financial problems. Eligibility for access to classified information is granted.

**Statement of Case**

On January 19, 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) implemented by DOD on September 1, 2006.

The Security Executive Agent, by Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs). They apply to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. Procedures for administrative due process for contractor personnel continue to be governed by DOD Directive 5220.6, subject to the updated substantive changes in the AGs, effective June 8, 2017. Application of the AGs that were in effect when the SOR was issued would not affect my decision in this case.

Applicant responded to the SOR on January 27, 2017, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on March 9, 2017, and did not object to any of the exhibit items in the FORM. Responding to the FORM, he provided additional information within the time permitted. Applicant's submissions were admitted without objections as Items 5-6. The case was assigned to me on October 1, 2017.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) incurred a state tax lien in 2014 in the amount of \$24,829 and (b) incurred a deficiency on his mortgage foreclosure in August 2014 in the amount of \$118,000. Allegedly, the listed state tax lien and mortgage deficiency remain unresolved.

In his response to the SOR, Applicant admitted both allegations. He claimed the debts resulted from a failed business, which he owned from 2012 to 2014.

### **Findings of Fact**

Applicant is a 51-year-old instructional systems designer 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 August 1985, and he has three children from this marriage. (Item 3) He earned an associate's degree in August 1995 and a bachelor's degree in December 2002. (Item 3) And he earned a master's degree in December 2011. (Item 3) Applicant enlisted in the Army in April 1987 and served 20 years of active duty. (Item 3) He received an honorable discharge from the Army in April 2007.

Since April 2015, Applicant has worked for his current employer. (Items 3-4) Between September 2014 and the present, he worked a second job as a bus driver for his local school system. (Item 3) Between November 2007 and April 2015, he worked for a number of contractors (both federal and non-federal) in mostly program and project manager positions.

## **Applicant's finances**

In 2012, Applicant opened a bowling center business in an adjoining state with the financial assistance of creditor ¶ 1.b. (Items 3-4) The building housing the bowling center that he purchased with lending assistance totaling around \$325,000, was not occupied at the time he made the purchase. Early after he assumed ownership of the bowling center, he learned of operation problems under the management direction of the previous owners, and continued to overcome recurrent obstacles to keep the business running in the black. (Item 2) For the years he operated the business, he kept the lender updated on his struggles with the business. Creditor ¶ 1.b continued to work with Applicant in his efforts to keep the doors of the business open, and accepted Applicant's less than full remittances over the course of his last ten months of operation. (Item 2)

Records show that Applicant incurred a state tax lien in the amount of \$24,829 in 2014. (Items 2-6) This lien covered delinquent state sales and use taxes that mounted over the last ten months of Applicant's business operations in 2014. The statement of account he furnished documented monthly payments made between September 2013 and April 2014 totaling \$3,581, leaving an account balance due of \$21,248. (Item 6) Under a payment plan he arranged with the state tax authority, Applicant has since made additional monthly payments between February 2014 and February 2017 totaling \$5,300 in compliance with his payment agreement. (Items 3 and 5-6)

Addressing SOR debt ¶ 1.a, (with a deficiency balance of \$118,000), Applicant documented making regular monthly payments of \$200 a month between December 2014 and January 2017 that reduced the balance owing on the loan to \$21,248. (Items 2, 5, and 7) Since February 2017, he has made additional monthly payments exceeding totaling \$5,000, further reducing the outstanding balance owing on the real estate debt.

## **Policies**

The SEAD 4, App. A 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.

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. . . . 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.

### **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. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

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 history of financial problems associated with his unsuccessful bowling center and underlying commercial property. Delinquent property taxes and the loan deficiency following foreclosure and sale of the underlying property became personal debts to Applicant that he could not manage with the resources available to him. These accrued debts warrant the application of four of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), “inability to satisfy debts”; 19 (b), “unwillingness to satisfy debts regardless of the ability to do so”; 19(c), “a history of not meeting financial obligations”; and 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.”

Applicant’s pleading admissions with respect to his accumulation of a state tax lien and mortgage deficiency negate the need for any independent proof (see *McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant’s delinquent debts are fully documented and create some judgment issues. See ISCR Case No. 03-01059 at 3 (App. Bd. Sep. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in persons cleared to access classified information. While the principal concern of a security clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving debt delinquencies.

Historically, the timing of paying or otherwise resolving owed federal and state taxes in DOHA proceedings is critical to an assessment of an applicant’s trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 15-06440 at 3-5 (App. Bd. Dec. 2017); ISCR Case No. 14-of MC ¶ 20(d), “the individual initiated and is adhering to a good-faith effort to repay

overdue creditors or otherwise resolve debts.” ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015).

In Applicant’s case, he documented evidence of extenuating circumstances associated with his business losses and ultimate closing of his business. He also provided documentary proof of good-faith payments to both creditors in compliance with his payment plans with the state taxing authority and mortgage lender. Based on the evidence provided in the record, Applicant may take full advantage of MC ¶ 20(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), and the individual acted responsibly under the circumstances.”

Other mitigating conditions are available to Applicant, too, based on his good-faith payment initiatives. MC ¶ 20(d), “the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts,” applies. And by establishing a payment plan agreement with his state taxing authority and maintaining compliance with the express terms of his plan, Applicant may avail himself of the benefits of MC ¶ 20(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.”

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a “meaningful track record” that includes evidence of actual debt reduction through voluntary payment of debts. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). In Applicant’s case, his demonstrated extenuating circumstances associated with his buying and operating a business that ultimately failed and following through with good-faith arrangements with his two SOR creditors reflect demonstrated responsible efforts in addressing his SOR-listed state tax lien and mortgage deficiency. His efforts to date in handling his finances justify favorable findings and conclusions with respect to his security clearance application. See ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. Nov. 29, 2005).

Taking into account all of the documented facts and circumstances surrounding Applicant’s handling of his listed state tax lien and mortgage foreclosure deficiency, Applicant is able to demonstrate enough probative efforts to mitigate financial concerns. Conclusions are warranted that his finances are sufficiently stabilized at this time to meet minimum eligibility requirements for holding a security clearance.

### **Whole Person Assessment**

Whole-person assessment is favorable to Applicant. He has shown good progress to date in addressing his delinquent state tax lien and mortgage foreclosure covered in the SOR. His actions to date reflect considerable financial responsibility and judgment and demonstrate trustworthiness, reliability, and ability to protect classified

information. See AG ¶ 18. His efforts enable him mitigate financial concerns under the financial guideline and consideration of the whole person.

Favorable conclusions are entered with respect to the allegations covered by subparagraphs 1.a-1.b of the SOR. Eligibility to hold a security clearance under the facts and circumstances of this case is consistent with the national interest.

### **Formal Findings**

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

#### **GUIDELINE F (FINANCIAL CONSIDERATIONS): FOR APPLICANT**

Subparagraphs 1.a-1.b:

For Applicant

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility to hold a security clearance. Clearance is granted.

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Roger C. Wesley  
Administrative Judge





