



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-01828

**Appearances**

For Government: Carroll Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

11/14/2017

**Decision**

KILMARTIN, Robert J., Administrative Judge:

Applicant has not mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on November 4, 2014. On August 8, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (EO) 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.

On December 10, 2016, the Director of National Intelligence signed Security Executive Agent Directive 4 (SEAD 4), implementing new AGs effective within the DOD on June 8, 2017. Accordingly, I have applied the June 8, 2017 AGs in this decision.<sup>1</sup>

Applicant timely answered the SOR, admitting all of the SOR allegations except for SOR ¶ 1.a. Department Counsel withdrew SOR ¶ 1.a before the hearing. Applicant attached a Special Power of Attorney (SPOA) and copies of an e-mail chain reflecting confusion about his state-tax withholdings, to his answer. He admitted to owing delinquent state and federal income taxes as alleged in SOR ¶¶ 1.b and 1.c. Applicant also requested a hearing before an administrative judge. The case was assigned to me on April 7, 2017. On June 14, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 10, 2017. I convened the hearing as scheduled.

Government Exhibits (GE) 1 through 6 were admitted into evidence without objection. At the hearing, Applicant testified and submitted several documents, which were marked as Applicant's Exhibits (AE) A through O, and admitted without objection. DOHA received the transcript (Tr.) on August 17, 2017. I granted Applicant's request to leave the record open until August 24, 2017, so that he could provide substantiating documentation.<sup>2</sup>

### **Findings of Fact<sup>3</sup>**

Applicant is 52 years old. He graduated from high school in 1983, and obtained an associate's degree in 2005. Applicant has been employed as a deputy project manager for a federal contractor currently working at an overseas naval support activity since 2015. He served honorably in the U.S. Air Force from 1983 until he retired in 2009. Applicant was married in 1987 and divorced in 2008. He re-married in 2008 and reports four adult children. He also reported previous security clearances while he was on active duty as a subject matter expert in anti-terrorism and force protection. He disclosed his failure to file and pay state income taxes to state A for tax year (TY) 2011, and federal income taxes for TY 2012, in section 26 of his November 2014 SCA. He explained that he had problems filing since he was constantly deployed overseas. He also provided a SPOA appointing his uncle as attorney in fact to file his income tax returns.

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<sup>1</sup> Although I have decided this case under the adjudicative guidelines (AG) effective June 8, 2017, I also considered the case under the former AG effective on September 1, 2006, and my decision would be the same under either version.

<sup>2</sup> Tr. at 101.

<sup>3</sup> Unless stated otherwise, the source of the information in this section is Applicant's November 4, 2014 Security Clearance Application (SCA) and the summary of his personal subject interview (PSI) on January 26, 2015.

In his personal subject interview (PSI) (GE 2) in January 2015, Applicant stated that he owed state A \$861 for back taxes from TY 2011. State A was his home of record. He filed his 2011 state A tax return in October 2013 when he returned to the U.S. briefly. He was to start a payment plan in February 2015, paying \$304 a month to state A. He explained in the PSI that he was traveling extensively overseas and failed to file his federal income tax return for TY 2012. He owed \$5,677 to the IRS. He was to start a payment plan to IRS in February 2015, with an unstated monthly amount. Applicant also failed to file and pay his TY 2012 state A income tax return and he owes \$8,534 for that TY. His employer improperly filled out his W-4 paperwork and wrongly assumed that his home of record would be in the state B where the employer site was located. Thus, no state income taxes were withheld by the employer for state A, but they were withheld for state B. Applicant claims he could not resolve this error quickly because of his isolated, overseas location. Eventually, it was resolved and he was to start a payment plan with state A in February 2015.

Applicant was unemployed from October 2013 to November 2014.<sup>4</sup> He received a refund from state B for the state taxes that had erroneously been paid to state B. He used the refund to sustain himself during that period of unemployment rather than paying it to State A.<sup>5</sup> In his SCA, Applicant stated that he was to begin a payment plan to pay state A of \$305 per month starting on December 15, 2014. He did not do so. Then, a few months later in his PSI, he told the OPM investigator that he would start making payments in that same amount in February 2015.<sup>6</sup> He did not do so. Instead, Applicant testified that he made an agreement with state A on August 9, 2017, the day before the hearing. State A purportedly promised Applicant that he would be provided with releases of the tax liens against him when he returned to the state tax office on the day after the hearing. Applicant has yet to produce the releases. He testified that he filed his 2013, 2014, and 2015 state tax returns on May 3, 2017.<sup>7</sup>

In his May 6, 2016 Answers to Interrogatories (GE 3), Applicant explained that he's always had his uncle, (WN), prepare his income tax returns. He testified that he had provided his uncle with a SPOA to prepare Applicant's income tax returns for over 20 years.<sup>8</sup> His uncle had been trained as a tax preparer by H&R Block. Applicant described this 70-year old uncle as reclusive, prone to panic attacks, and possibly suffering from dementia. "Being overwhelmed with this financial mess, has compelled me to hire a tax lawyer . . . to help me sort it out."<sup>9</sup> He provided no explanation about services provided or work product from the tax lawyer. Applicant also explained that he

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<sup>4</sup> Tr. at 79.

<sup>5</sup> Tr. at 79.

<sup>6</sup> Tr. at 80.

<sup>7</sup> AE B, Tr. at 37 and 82.

<sup>8</sup> AE C, Tr. at 40 - 43.

<sup>9</sup> GE 3, p. 10.

had voluntarily paid half of his 26 year retirement pay (from USAF), or \$1,400 each month, to his ex-wife for seven years as alimony, but this was not recognized as a proper deduction by the IRS because it was not court ordered spousal support in the divorce decree.<sup>10</sup> Applicant had added in another \$1,000 per month in child support payments for his son, and \$220 a month for his daughter's automobile loan.<sup>11</sup>

After SOR ¶ 1.a was withdrawn, the SOR alleged two delinquent debts totaling approximately \$55,000 for the state and federal back taxes owed. Department Counsel moved to amend these two allegations to conform to the evidence presented at the hearing: The motion was allowed. SOR ¶ 1.b now states that Applicant is indebted to state A in the approximate amount of \$43,539 (vice \$9,395) for TY's 2011–2014 (vice TY's 2011 and 2012). SOR ¶ 1.c now states that Applicant is indebted to the federal government in the approximate amount of \$11,709 (vice \$5,677) for TY's 2011 and 2012 (vice TY 2012). This motion was granted.<sup>12</sup> It did not change Applicant's admissions to both of these amended SOR allegations.

Applicant submitted a bank statement that reflected a deposit of \$20,582 into his account from the Veterans Administration (VA) on May 11, 2017.<sup>13</sup> He testified that he received this money as a lump sum for the period during which the VA processed his VA disability claim. Applicant is 80% disabled.<sup>14</sup> He used this money to immediately pay-off: credit card debts, Home Depot, USAA and his daughter's student loan.<sup>15</sup> He did not use it for his delinquent tax debts that were alleged in the SOR because he wanted to focus on the high-interest debts first. He did submit evidence that he had made a few payments on his federal tax debt in the form of a payment confirmation<sup>16</sup> at the hearing and by post-hearing submissions.

Applicant testified that he was back in the United States working for a different contractor from November 2014 to October 2015.<sup>17</sup> Yet, he took no action to resolve his income tax delinquencies. He stated it was his fault and "I should have been more proactive."<sup>18</sup> At the time of the hearing, the balance owed to state A was \$43,539, and

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<sup>10</sup> AE E and F.

<sup>11</sup> GE 3, p. 10-11.

<sup>12</sup> Tr. at 29.

<sup>13</sup> AE H.

<sup>14</sup> AE E and F

<sup>15</sup> Tr. at 56.

<sup>16</sup> AE I.

<sup>17</sup> Tr. at 94.

<sup>18</sup> Tr. at 63.

Applicant claimed to be making monthly payments of \$838.<sup>19</sup> The balance owed to the federal government was \$11,709, and he claimed to be making payments of \$184 per month.<sup>20</sup> He testified that he had already made four payments to the IRS totaling \$1,800.

The record was left open until August 24, 2017 so that Applicant could provide a list of specifically requested documents including: the promised releases of state A tax liens, IRS tax transcripts, a letter from Applicant's uncle (WN) explaining where he filed the income tax returns that he supposedly filed, and producing copies of exactly what he filed.<sup>21</sup> Applicant submitted post-hearing documentation that was not responsive. An affidavit from uncle (WN) was cryptic and did not answer specific questions posed. Bank statements showed five payments totaling \$2,600 made to the U.S. Treasury from January 2017 to July 2017 and a payment of \$111 to state A in July 2017. He also produced an IRS letter establishing a payment plan requiring Applicant to make monthly payments of \$184 starting on January 2017; a Joint Civilian Service Commendation Award;<sup>22</sup> some medical records showing his [medical] diagnosis in 2005; a performance evaluation; and some newspaper articles about his impressive accomplishments in his job overseas.

Applicant had no problems with taxes prior to deploying as a civilian contractor in 2011. He needs a security clearance for his job and career. His monthly take-home pay is \$8,000, plus another \$3,000 each month from his retirement and disability pay.<sup>23</sup> He has approximately \$8,000 in discretionary funds left over each month after paying his expenses.<sup>24</sup> He also pays approximately \$500 a month to support his elderly mother and disabled brother.<sup>25</sup> He provided no evidence of financial counseling or debt consolidation services. Applicant provided a list of civilian and military awards and decorations reflecting over 30 years of distinguished service to the nation including multiple overseas deployments as a senior noncommissioned officer.

### **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, the adjudicative guidelines list potentially disqualifying

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<sup>19</sup> Tr. at 69.

<sup>20</sup> Tr. at 71.

<sup>21</sup> Tr. at 100 – 102.

<sup>22</sup> AE M.

<sup>23</sup> Tr. at 72.

<sup>24</sup> Tr. at 96.

<sup>25</sup> Tr. at 74.

conditions and mitigating conditions, which are 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, these guidelines are applied 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, Appendix A, ¶ 2(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is 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.

The protection of the national security is the paramount consideration. AG, Appendix A, ¶ 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 contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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."

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to 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 abuse, 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 . . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (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 taxes as required.

Applicant's delinquent debts alleged in the SOR are confirmed by his SCA, clearance interview and answer to the SOR. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b), 19(c), and 19(f), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.<sup>26</sup> Applicant has not met that burden. He exercised poor judgment in relying on his elderly and infirm uncle to prepare his tax returns, even after Applicant was aware that it was a problem. Similarly, he demonstrated poor judgment and prioritization by using his lump sum payment of over \$20,000 to pay off various other debts, but not the tax delinquencies.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

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<sup>26</sup> Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

(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 . . . , and the individual acted responsibly under the circumstances;

(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 appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant was overseas continuously for two years preceding the hearing. He was isolated and had communication problems with his uncle who had a SPOA to prepare his tax returns. To some extent, these conditions were beyond his control. However, he has not produced relevant and responsive documentation, demonstrating that he acted responsibly under the circumstances. He broached the delinquent income tax debts in his SCA in 2014. He discussed this obvious concern with the OPM investigator at his clearance interview in January 2015. Yet, more than two years later, he has not resolved these issues. Applicant has not met his burden to provide sufficient evidence to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur. He has made some modest progress pursuant to payment plans with state A and the IRS. However, these efforts were only commenced in 2017 for taxes owed for TY's 2011–2014. In short, his response has been too little, too late. He produced scant substantiating documents even after being specifically requested to do so at the hearing. The delinquent tax debts alleged in the SOR have not been resolved. AG ¶ 20(g) applies only partially. Otherwise, the mitigating conditions enumerated above do not apply.

### **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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG, Appendix A, ¶ 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, Appendix A, ¶ 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. Some of the factors in AG, Appendix A, ¶ 2(d) were addressed under that guideline. Applicant had a distinguished military career of over 26 years, including multiple deployments in war zones. He received numerous medals and awards including the Meritorious Service Medal. He also acquitted himself well during crises in a war zone as a civilian contractor. He has made significant contributions to DOD for over three decades. Most importantly, Applicant has not addressed the specific allegations in the SOR and taken affirmative measures to resolve them. He has not met his burden of production.

Applicant's finances remain a security concern. There is insufficient evidence to conclude that Applicant's financial problems are under control. The record evidence leaves me with questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under Guideline F, financial considerations.

### **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
Subparagraph 1.a:	Withdrawn
Subparagraphs 1.b and 1.c:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Robert J. Kilmartin  
Administrative Judge