



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-02106

**Appearances**

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

For Applicant: *Pro se*

11/01/2017

**Decision**

Curry, Marc E., Administrative Judge:

Applicant has steadily been making payments into a Chapter 13 bankruptcy plan for more than two and a half years. In sum, he has reduced his debts by approximately \$36,000, nearly half of the amount that was originally delinquent. Under these circumstances, I conclude that Applicant has mitigated the financial considerations security concerns. Clearance is granted.

**Statement of the Case**

On October 3, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant him security clearance eligibility for him. The DOD CAF took the action 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 for Determining Eligibility for Access to Classified Information* effective within the DOD on September 1, 2006.

On October 26, 2016, Applicant answered the SOR, admitting all of the allegations and requesting a decision based on the written record instead of a hearing. On October 29, 2016, Department Counsel prepared a File of Relevant Material (FORM), consisting of a memorandum with seven attachments (Items 1-7). On December 14, 2017, Applicant filed a response (Item 8), and on August 8, 2017, the case was assigned to me.

On October 19, 2017, I re-opened the record *sua sponte* to allow Applicant the opportunity to submit additional documents. (Item 10) Within the time allotted, Applicant submitted a memorandum (Item 10) requesting the inclusion of four documents (Items 11 – 14) into the record. Department Counsel did not object (Item 15), and I admitted the supplementary documents into the record.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing 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 AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.

### **Evidentiary Ruling**

Item 6 is a Report of Investigation (ROI) summarizing Applicant's Personal Subject Interview conducted on March 18, 2015. Such reports are inadmissible without authenticating witnesses. Directive ¶ E3.1.20. Consequently, I have not considered this document in my disposition of this case.

### **Findings of Fact**

Applicant is a 55-year-old married man with an adult child. After graduating from high school, he earned a vocational degree, followed by an undergraduate degree. He has held a security clearance since 2006. (Item 2 at 27)

In 2002, Applicant and his wife began working at new jobs. Both jobs were the most well-paying jobs they had ever held. With ample discretionary income, they began making several big purchases, such as buying new cars and remodeling their home. Gradually, they began overspending. Beginning in 2007, they decided to forego paying their local income taxes, with the intention of using the money to pay their debts and "catch[ing] up" on their income taxes later. (Item 1 at 3)

In 2010, Applicant's father-in-law died. Applicant and his wife paid the burial expenses, receiving no help from any of their other family members. (Item 1 at 1) In 2011, Applicant's wife, upon whose income he was dependent to help make ends meet, lost her job. In 2012, Applicant's mother-in-law died. Applicant and his wife again assumed sole responsibility for the burial expenses.

Unable to get control of his finances, Applicant filed for Chapter 13 bankruptcy protection in 2013. (Item 1 at 3) After adhering to the plan for seven months, he came to believe that he could manage his debt repayment efforts without using the bankruptcy process. (Item 1 at 3) Consequently, he moved to dismiss the bankruptcy proceedings.

Applicant then began taking steps to get his finances under control, cutting off his cable television service, selling one of his cars, and refinancing his mortgage. (Item 1 at 3) Applicant's efforts at debt reduction were unsuccessful, prompting him to re-file for Chapter 13 bankruptcy protection in March 2015. By then, he had not filed any municipal tax returns from 2007 to 2014, and he had incurred \$85,000 of unsecured debt. (Item 4 at 30)

Applicant filed his delinquent municipal income tax returns in 2015, shortly after he re-filed for bankruptcy. The delinquent municipal income tax totals \$8,537, and is included in the Chapter 13 bankruptcy plan. (Item 4 at 25, 28) Applicant completed court-ordered financial counseling as part of the bankruptcy process. (Item 13) He pays approximately \$1,265 per month, deducted every other week from his pay, through the bankruptcy plan. (Item 8, Response at 3) To date, he has made Chapter 13 bankruptcy payments totaling \$36,170. (Item 11)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 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 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 to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).<sup>1</sup>

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<sup>1</sup> The factors under AG ¶ 2(d) are as follows:

## Analysis

### Guideline F, Financial Considerations

The security concerns about financial considerations are set forth in AG ¶ 18:

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 information. . . .

Applicant's financial delinquencies, together with his failure to file his municipal income tax returns between 2007 and 2014, trigger the application of disqualifying conditions AG ¶ 19(a), "inability to satisfy debts," AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(f), "failure to file . . . local income tax returns or failure to pay . . . local income tax as required."

The following mitigating conditions are potentially applicable:

AG ¶ 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving 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;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 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.

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(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.

Between 2010 and 2012, Applicant incurred unexpected expenses related to the death of his parents-in-law, and a decrease in income when his wife lost her job. Although these circumstances were beyond his control, he did not file his municipal income tax returns during this period, and he had begun falling behind on the repayment of his debts three years before his father-in-law died. Subparagraph 20(b) is inapplicable.

Applicant filed for Chapter bankruptcy protection in 2015. He arranged to pay the municipal income tax delinquency through the bankruptcy plan. He has steadily been making payments consistent with the plan. Since filing for bankruptcy, he has reduced his total financial delinquency by more than \$36,000. AG ¶¶ 20(c), 20(d), and 20(g) apply.

### **Whole-Person Concept**

Although circumstances beyond Applicant's control compounded Applicant's financial problems, they did not cause them, as Applicant was already behind on his debts in 2007 when he opted to stop filing his municipal income tax returns. Moreover, failure to file income tax returns raises a serious security concern, as it "suggests that an applicant has a problem with complying with well-established governmental rules and systems." (ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)). Conversely, his tax issues are now resolved, as he has filed his delinquent municipal income taxes and has been paying the delinquency through the Chapter 13 bankruptcy process. In addition, since filing for Chapter 13 bankruptcy protection and completing the requisite counseling, he has made more than \$36,000 of payments into the bankruptcy debt plan. He has made these payments steadily for more than two and a half years. Under these circumstances, I conclude that the strong presence of rehabilitation outweighs the nature and seriousness of Applicant's incurrence of the delinquencies and failure to file his municipal income tax returns on time. Applicant has mitigated the security concerns.

### **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:	FOR APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security interests of the United States to grant Applicant national security eligibility. Eligibility for access to classified information is granted.

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Marc E. Curry  
Administrative Judge