



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



In the matter of: )  
)  
) ISCR Case No. 16-03780  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

01/31/2018

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**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On January 26, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD 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 (AG).<sup>1</sup>

Applicant answered the SOR on April 7, 2017, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA)

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<sup>1</sup> I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous version of the AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

issued a notice of hearing on July 17, 2017, and the hearing was convened as scheduled on August 16, 2017. The Government offered exhibits (GE) 1 through 7, which were admitted into evidence without objection. The Government's exhibit list was identified as hearing exhibit (HE) 1. Applicant testified and offered one exhibit (AE A), which was admitted without objection. The record remained open until September 29, 2017, to allow Applicant to submit documentary evidence. He submitted AE B through E, which were admitted without objection. DOHA received the hearing transcript (Tr.) on August 24, 2017.

### **Findings of Fact**

Applicant admitted the SOR allegations, with explanations, and his admissions are incorporated into these findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 38-year-old employee of a defense contractor. He began working at his present job in January 2013. He previously worked for other federal contractors. He served four years in the Marine Corps and was honorably discharged in 2003. He has a high school diploma. He was married in 2003 and divorced in 2006. He remarried in 2013 and divorced in 2014. He has one child from his first marriage for whom he has custody. This child is a special-needs child.<sup>2</sup>

The SOR alleged Applicant failed to file his federal and state income tax returns for years 2010-2012; he misused a corporate credit card in 2010; and that he had three delinquent collection debts totaling approximately \$624. He admitted not filing his tax returns in his June 2015 security clearance application (SCA) and during his interview with a defense investigator in September 2016. He also admitted his corporate credit card misuse to a defense investigator. The debts were listed in a credit report from June 2015 (SOR ¶¶ 1.a – 1.f).<sup>3</sup>

Applicant credibly explained that he failed to file his federal and state tax returns for years 2010 to 2012 initially because he was going through a custody dispute issue with his first wife and he was focused on that. He also readily admitted that he just lost track of the issue. This was complicated by the fact that when he attempted to address the issue he no longer had his electronic W-2 forms from his employer because the computer where they were stored crashed. He had to go back to his former employer and ask for duplicate copies of the W-2 forms. The company was not overly responsive and Applicant failed to follow-up as frequently as he should have.<sup>4</sup>

Applicant sought the assistance of a tax service, and in September 2017 he filed his federal and state tax returns for tax years 2010-2012. The filed returns showed that

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<sup>2</sup> Tr. at 6, 21-23; GE 1.

<sup>3</sup> GE 1, 2, 4.

<sup>4</sup> Tr. at 25-27, 30; GE 2.

he was due refunds for the years in question. On the state returns, he owed approximately \$744 in taxes. The state previously garnished his wages in the amount of \$2,725 to satisfy the total amount owed. The garnishment took place in April and June 2017. Applicant has filed all his federal and state tax returns since this time and he has no outstanding tax obligations. Applicant provided documentation showing his filed tax returns and completed garnishment. His federal and state tax issues are resolved.<sup>5</sup>

Applicant credibly explained that he was unclear what the company policy was for using his corporate credit card. He used it for mixed business and personal purposes when he should not have done so. He also left the balance unpaid for a time. He ultimately was counseled for the personal use and paid the balance owed. This occurred in 2010, and Applicant has not had a similar incident and is still in possession of a corporate credit card. Applicant voluntarily disclosed this issue to a defense investigator. This issue is resolved.<sup>6</sup>

Applicant pointed out documentation showing that the debt listed at SOR ¶ 1.d was paid. The remaining two debts were disputed by Applicant and no longer appear on his credit report. Additionally, the total amount for those two debts (\$383) is minor. These debts are resolved.<sup>7</sup>

Applicant presented statements from co-workers and supervisors who attest to his integrity, work ethic, trustworthiness, honesty, and good judgment. They recommend that he retain his security clearance. Applicant also provided employee work evaluations showing that he is well thought of and a valued employee.<sup>8</sup>

### **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 for each guideline, the adjudicative guidelines list potentially disqualifying 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 ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available,

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<sup>5</sup> Tr. at 25, 27-28; AE A, D-E.

<sup>6</sup> Tr. at 30-31.

<sup>7</sup> Tr. at 32-36; GE 5-7.

<sup>8</sup> AE B-C.

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 contained in the record.

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 to obtain 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 about 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust; 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.

The evidence showed Applicant failed to timely file his federal and state tax returns for 2010-2012 and he accrued several delinquent collection debts. I find all the above disqualifying conditions are raised, except Applicant's actions in misusing his corporate credit card did not rise to the level of deceptive or illegal practices, and AG 19(d) does not apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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;
- (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; 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.

Although Applicant should have responded in a more timely fashion, he has resolved his federal and state tax issues. His debts are resolved, or are of minimal

security significance. There are clear indications that his financial issues are resolved and that recurrence is unlikely. AG ¶¶ 20(a) and 20(c) are applicable. Applicant contacted a tax preparer and filed his 2010-2012 federal and state income tax returns in September 2017. He paid his state tax liability and will receive tax refunds from his federal returns. AG ¶ 20(g) applies.

### **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 ¶ 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 a security clearance must be an overall commonsense judgment based upon careful consideration of the guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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 ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's military service, his federal contractor service, the recommendations from his co-workers and supervisors, his work appraisals, and the circumstances surrounding his indebtedness. I also considered that Applicant acknowledged making a huge mistake in not addressing his taxes quicker than he did. I'm convinced he will act in a timely manner with his taxes from now on, and that he will not incur tax problems or delinquent debts in the future.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the financial considerations 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.f: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, 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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Robert E. Coacher  
Administrative Judge