



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No: 16-03921

**Appearances**

For Government: Adrienne M. Driskill, Esquire, Department Counsel

For Applicant: *Pro se*

05/22/2018

**Decision**

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns, resulting from unfiled and unpaid Federal income taxes, and delinquent debts. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

**Statement of Case**

On January 19, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 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* (AG), effective within the DOD after September 1,

2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.<sup>1</sup>

Applicant answered the SOR on February 14, 2017, and requested that his case be decided by an administrative judge on the written record without a hearing (Answer). On March 30, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant and received by him on April 6, 2017. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not submit a response to the FORM or object to the Government's evidence. Items 1 through 5 are admitted into evidence without objection. The Defense Office of Hearings and Appeals (DOHA) assigned this case to another administrative judge on October 1, 2017, and re-assigned it to me on May 11, 2018.

### **Findings of Fact**

Applicant is 50 years old and divorced. He has two children. He served in the Navy Reserve from 1986 to 2007, and retired with an honorable discharge. He has worked for a defense contractor since 2007. He held a security clearance while serving in the military. (Item 2)

On September 22, 2015, Applicant submitted a security clearance application (SCA). In it, he disclosed that he failed to timely file and pay Federal income taxes for 2014, and owed about \$4,000. He disclosed a previous delinquent debt owed to a homeowners' association for \$3,500 that he stated was paid. (Item 2) During a December 15, 2015 interview with a government investigator, Applicant discussed additional debts and his tax problems. He indicated that issues with his mortgage contributed to his financial problems. (Item 3)

Based on Applicant's admissions and credit bureau reports (CBR) from August 2016 and October 2015, the SOR contained eight allegations, including three relating to taxes, two involving delinquent mortgage balances, and two consumer debts, all of which became delinquent between 2012 and 2015, and totaled over \$58,000. (Item 4, Item 5)

In his February 2017 Answer, Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.c, 1.e, 1.g, and 1.h. He denied the allegations in SOR ¶¶ 1.d and 1.f. (Item 1) He submitted a document from the Internal Revenue Service (IRS) indicating that he established a \$500 monthly payment plan, beginning on February 15, 2017, to resolve a tax liability of \$13,436. (Item 1) That document did not reference the tax year(s) but assumedly it is for 2014 and 2015, which Applicant admitted owing. He also submitted a document from the IRS confirming that in April 2016, he paid \$2,126 to resolve 2012

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<sup>1</sup> I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same under either set of guidelines.

Federal income taxes.<sup>2</sup> (Item 1). He did not submit documents addressing any of the other allegations.

There is no evidence that Applicant participated in financial or credit counseling. He did not provide a budget or other information related to his financial obligations from which to determine his current financial reliability and adherence to his legal responsibility to timely file and pay Federal and state income taxes.

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the pertinent AG. In addition to brief introductory explanations of the security concern, the guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables 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 ¶ 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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

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<sup>2</sup> The SOR did not allege any security concern related to Applicant's failure to timely pay his 2012 Federal income taxes. Thus, it will not be considered in applying disqualifying conditions, but may be considered in analyzing the mitigating conditions, the whole-person concept, and in evaluating Applicant's credibility.

reposes a high degree of trust and confidence in individuals to whom it grants national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline F: Financial Considerations**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

This concern is broader than the possibility that an individual might knowingly compromise sensitive information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting sensitive information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.<sup>3</sup>

AG ¶ 19 describes four conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;

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<sup>3</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(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 tax as required.

Applicant has a history of being unable or unwilling to meet his financial and legal obligations, which began in 2012 and continues to date. The evidence raises security concerns under the above disqualifying conditions, and shifts the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties. They are as follows:

(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 (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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.

There is insufficient evidence to establish mitigation under any of the above mitigating conditions.

Applicant's debts are ongoing. The evidence does not establish that circumstances beyond his control led to his financial delinquencies and that he has responsibly managed them. He provided no reasonable basis to dispute the allegations. He has not participated in financial or credit counseling and there are no clear indications that these issues are under control. Although he submitted an exhibit indicating that he negotiated a \$500 monthly payment plan with the IRS in February 2017, he took that action one month after he received the SOR, which does not demonstrate a good-faith effort to resolve debts. There is also insufficient proof documenting his compliance with that arrangement over a period of time.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all relevant 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and a circumstance surrounding this case, including those discussed in the analysis of Guideline F.

Applicant is a mature individual, who honorably retired from the Navy. He held a security clearance during that time. In January 2017, the SOR informed him that unfiled and unpaid Federal taxes and delinquent debts created security concerns. After submitting an Answer to the SOR, the Government notified him in the FORM that he did not submit sufficient information to mitigate the allegations and gave him more time to provide documentation. Despite that notice, he did not submit additional evidence to address the financial delinquencies. Overall, the record evidence leaves me with sufficient doubt as to Applicant's judgment, reliability, and suitability for a security clearance. He

failed to meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: **AGAINST APPLICANT**

Subparagraphs 1.a through 1.h: Against Applicant

## Conclusion

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

SHARI DAM  
Administrative Judge