



**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. 16-04094

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

01/19/2018

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate the security concerns regarding his financial considerations. Eligibility for access to classified information is denied.

**Statement of Case**

On March 10, 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Executive Agent, by Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs).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 April 10, 2017, and requested a hearing. The case was assigned to me on May 5, 2017, and scheduled for hearing on August 1, 2017. The Government's case consisted of three exhibits (GEs 1-3) Applicant relied on one witness (himself) and two exhibits. (AEs A-B) The transcript was received on August 9, 2017.

### **Procedural Issues**

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with documented Internal Revenue Service (IRS) payment receipts, application for approval of an installment agreement, and an historical accounting of IRS payments between 2010 and 2016. (Tr. 27, 49) For good cause shown, Applicant was granted 14 days to supplement the record. Department Counsel was afforded two days to respond.

Within the time permitted, Applicant supplemented the record with IRS account transcripts for tax years 2010-2016, timely-filed 2015 and 2016 federal tax returns, and an historical record of payments made to the IRS. Applicant's submissions were admitted without objection as AEs C-E.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) failed to timely file federal tax returns for tax years 2011-2014 and (b) incurred federal tax liens in May 2010 (for \$26,443), in January 2015 (for \$42,315), in January 2015 (for \$34,547), and in April 2016 (for \$111,000).

In his response to the SOR, Applicant admitted each of the allegations with explanations. He claimed he filed all of his back tax returns in December 2016 and is working with an IRS agent to establish an installment agreement to repay his owed federal taxes. And he claimed that he and his wife repaid over \$10,000 of owed federal taxes.

### **Findings of Fact**

Applicant is a 67-year-old senior consultant 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 March 1972 and divorced in August 1981. (GEs 1-2) He remarried in October 1992 and has three adult stepchildren from this marriage. Applicant earned a bachelor's degree in June 1972, and a master's degree in June 1973. (GEs 1-2) He reported no military service. (GEs 1-2)

Applicant has worked for his current contractor since March 2013. (GEs 1-2) Between March 2010 and March 2013, he was self-employed as a senior consultant and filed 1099 quarterly forms with the IRS. (Tr. 30) And between March 2005 and March 2010, he worked as an associate for a federal contractor. He has held a security clearance since July 1992. (GE 1)

## **Applicant's finances**

Records confirm that Applicant failed to timely file his federal tax returns for tax years 2011-2014. (GEs 1-2, A and D) He attributed his filing lapses to insufficient income to pay his taxes owed. (GEs 1-2 and Tr. 31-33) After completing his security clearance application (e-QIP) in January 2016 and answering questions about the status of his tax returns to an agent of the Office of Personnel Management (OPM) in a follow-up interview in August 2016, Applicant filed his back federal tax returns, but not until December 2016. (GEs 1-2 and AE B; Tr. 35) Applicant is credited with filing his federal tax returns for tax years 2015 and 2016 in a timely manner. (AE D; Tr. 35-36)

Beginning in 2010, Applicant and his wife encountered difficulties in putting enough money away to satisfy the IRS's 1099 quarterly tax payment requirements. (Tr. 31-32) Their money set-aside efforts were consistently weakened by their competing financial commitments to travel and buying expensive vehicles. (Tr. 50-52) In November 2009, the IRS filed a tax lien for taxes owed for prior years. (Tr. 32-33) Records show that this lien was satisfied and released in 2012. (GEs 2-3; Tr. 32)

Reported current account balances furnished by the IRS covering Applicant's unpaid federal taxes for tax years 2010-2014 exceed \$280,283. (AE C) Federal tax liens filed against Applicant in May 2010 (for \$26,443), in January 2015 (for \$42,345), and in April 2016 (for \$111,000,) respectively, total \$179,788 and have not been satisfied or released to date. (GEs 1-3)

From the historical accounting provided by Applicant for the covered years of 2010-2014, he documented voluntary payments to the IRS of around \$41,245. (AEs A and E) Since December 2016, the IRS has been levying Applicant's social security account at the rate of \$400 a month. (Tr. 27-28, 42-43)

Currently, Applicant grosses about \$140,000 a year using the W-2 supplied by his employer; while his wife earns approximately \$103,000 a year. Applicant has no 401(k) retirement account or investment income to supplement his employment income. (Tr. 45-46) Without an installment agreement in place with the IRS, it is unclear whether

Applicant has formally applied for an installment agreement or whether the IRS would be willing to enter into a payment agreement with him, given the sizeable amount of back taxes owed. Based on the evidence presented, owed federal taxes covered by SOR ¶¶ 1.b-1.e remain unresolved, outstanding, and uncovered by any approved IRS installment agreement.

### **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. 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 of dependence. 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 failure to timely file his federal tax returns for tax years 2011-2014 and his accrual of \$179,788 in unresolved federal tax

liens. Applicant's failure to timely file federal tax returns for multiple years and his incurring of unresolved federal tax liens 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 admitted federal tax filing lapses and his federal tax lien pleading admissions negate the need for any independent proof. See *McCormick on Evidence*, § 262 (6th ed. 2006). Each of Applicant's delinquent federal tax returns and unresolved federal tax liens are fully documented and create some judgment issues. See ISCR Case 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 the holder of a security clearance that entitles him 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 filing federal tax returns and resolving federal tax liens in DOHA proceedings are 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. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015)

Applicant's cited extenuating circumstances (i.e., lack of income to cover delinquent tax debts) provide little basis for his failure to timely file his federal tax returns and address his federal taxes due for the tax years in issue. He and his wife together grossed over \$200,000 a year for the tax years and still failed to file timely federal tax returns and adequately address their taxes due for the tax years in issue.

Not until after Applicant initiated the security clearance process in January 2016 with his completion of an e-QIP did he file his back federal tax returns in issue or apply for an installment agreement with the IRS. And, since 2011, he has made only modest payment progress (\$41,245 in documented payments) on his accrued taxes due for tax years 2011-2014. So, while 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," might have some application to Applicant's situation, application is very limited and cannot excuse his past failures to timely file his tax returns and make his quarterly tax payments as required by law.

Applicant's failure to establish more probative evidence of his addressing his federal tax returns and tax liens earlier in time precludes his entitlement to credit for his meeting the acting responsibly under the circumstances prong of MC ¶ 20(b). See ISCR Case No. 15-06440 at 3-5 (App. Bd. Dec. 26, 2017); 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)). For similar reasons, MC ¶ 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts," is not available to mitigate his federal tax return filing lapses and incurring of federal tax liens (still unresolved) over an extended number of years.

Whether Applicant is entitled to the mitigating 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," is unclear at this point. See ISCR Case No. 16-02246, at 2 (App. Bd. Dec. 8, 2017) Applicant provided no documentation at hearing or in permitted post-hearing submissions of his completing an installment agreement with the IRS and making more concerted prior efforts to file his federal tax returns and address his federal tax liens before the initiation of the security clearance process in 2016.

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, and implicitly where applicable the timely filing of tax returns. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) In Applicant's case, his late filing of his federal tax returns after the initiation of the security clearance process and modest efforts in addressing his outstanding federal tax returns with the benefit of an installment agreement with the IRS are not enough to facilitate favorable findings and conclusions with respect to raised security concerns.

### **Whole-Person Assessment**

Whole-person assessment is unfavorable to Applicant. He has shown insufficient progress to date in addressing his tax returns and tax liens covered in the SOR to merit positive overall credit. What general contributions he has made to his current employer are not enough to overcome historical trust and judgment issues associated with his failure to timely file his federal tax returns over the course several years (2010-2014) and his incurrence of federal tax liens that are still far from resolution.

Overall, Applicant's actions to date in addressing his finances reflect too little evidence of restored financial responsibility and judgment to overcome reasonable doubts about his trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18. Conclusions are warranted that his finances are insufficiently stabilized at this time to meet minimum eligibility requirements for holding a security clearance.

Unfavorable conclusions are entered with respect to the allegations covered by SOR ¶¶ 1.a-1.e of the SOR. Eligibility to hold a security clearance under the facts and circumstances of this case is inconsistent 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): AGAINST APPLICANT**

Subparagraphs 1.a-1.e:

Against Applicant

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility to hold a security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge





