



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-00715  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Brittany Muetzel, Esq., Department Counsel  
For Applicant: *Pro se*

04/24/2018

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**Decision**

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GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 13, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). 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 (AG).<sup>1</sup>

Applicant responded to the SOR on May 15, 2017, and requested a hearing before an administrative judge. The case was assigned to me on December 4, 2017.

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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 AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 4, 2018, scheduling the hearing for January 26, 2018. I convened the hearing as scheduled.

The Government's exhibit list was appended to the record as Hearing Exhibit (HE) I. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through D, which were admitted in evidence without objection.

Upon completion of the evidentiary portion of the hearing, Department Counsel (DC) moved to amend the SOR to conform to the evidence, under ¶ E3.1.17 of the Directive, by amending ¶ 1.a to allege that Applicant's \$173,000 federal tax lien from December 2015 was for unpaid taxes for tax years 2010 through 2016. DC also moved to amend ¶ 1.d to allege that Applicant's untimely federal and state income tax returns were for tax years 2012, 2013, and 2015. I explained the motion to Applicant and provided him with the opportunity for additional time. Applicant indicated he did not require additional time and he was prepared to proceed with the hearing. I granted the motion and amended the SOR.<sup>2</sup>

DOHA received the hearing transcript (Tr.) on February 2, 2018. Upon further review, I determined that part of DC's amendment to ¶ 1.a was unsupported by the evidence. I therefore, grant in part and deny in part her motion to amend ¶ 1.a, so that ¶ 1.a alleges that Applicant's \$173,000 federal tax lien from December 2015 was for unpaid taxes for tax years 2010 through 2014.<sup>3</sup>

### **Findings of Fact**

Applicant admitted all of the SOR allegations. He is 45 years old. He received a high-school diploma in 1991, and he subsequently attended college but did not earn a degree. He has worked as a self-employed independent contractor for various federal contractors since September 2005. He was first granted a DOD security clearance in February 2009. At the time of the hearing, he was single and he had one minor child.<sup>4</sup>

The SOR alleges Applicant's failure to timely file federal and state income tax returns for tax years 2012, 2013, and 2015, as required; a \$173,000 federal tax lien from December 2015 for unpaid taxes for tax years 2010 through 2014; \$24,234 in delinquent state taxes for tax years 2011 through 2014; and Applicant's Chapter 7 bankruptcy case, filed in November 2015 and discharged in March 2016, in which he claimed liabilities totaling \$315,503. The allegations are established by Applicant's

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<sup>2</sup> Tr. at 11, 13-14, 65-69.

<sup>3</sup> Tr. at 11, 13-14, 65-69.

<sup>4</sup> Response to the SOR; Tr. at 20, 22, 49, 65-69; GE 1; AE D. Applicant was previously granted a security clearance by another government agency in September 2005. Tr. at 21-22, 49; GE 1; AE D.

admissions. He also discussed them in his January 2017 response to interrogatories. His outstanding federal tax lien is also reported in his January 2017 credit report.<sup>5</sup>

Applicant attributed his December 2015 federal tax lien of \$173,000 and his \$24,234 delinquent state taxes to unpaid taxes, after an IRS audit in 2012 negated his claimed deductions due to a lack of supporting documentation. The IRS determined through its audit that Applicant had not paid sufficient taxes, and it added penalties and interest accordingly. Applicant testified that he made quarterly tax payments of unrecalled amounts during the 2010 and 2011 tax years, but he stopped doing so after the IRS audit due to a number of factors. His contracting work was unsteady and inconsistent, and the nature of such work was that he would often not get paid until 30 to 45 days after work completion. In addition, since 2009, he was unemployed annually due to the lack of contracting work during the months of December and January. Applicant's annual income from 2012 to 2014 was around \$90,000. In 2015, it was \$75,000. In 2016, it was \$65,000, of which \$46,000 came from a company for whom he only earned \$800 in 2017. In 2017, his annual income was \$53,000. At a date not in the record, he lost \$90,000 in potential annual income after two of his contracts were terminated. Also during this period, he became financially overextended when he supported his then fiancée's two children and then had a child of their own in 2011. In December 2013, his relationship with his fiancée ended. He simultaneously incurred out-of-pocket medical costs for his child, who was determined to be special needs. He was also, at one point, homeless.<sup>6</sup>

Applicant hired two different tax companies to assist him, but the four individuals with whom he worked were either unhelpful or provided him with incorrect advice. In 2012, he paid \$3,000 to the first tax company. The first individual with whom he worked advised him to simply wait, as an IRS audit took awhile and she would get back to him as soon as she had information about his case. She also wrongly advised him that he was not required to timely file his federal or state tax returns for tax years 2012 through 2015, or pay any of his outstanding taxes, since the audit process was ongoing. He followed her advice. He testified that eventually, the tax company filed his tax returns for tax years 2012 through 2015. When he later called the individual with whom he had been working to check on the status of his outstanding taxes as a result of the IRS audit, he learned that she had left and the company did not have any information about his case. Applicant then worked with another individual from the same tax company who also proved to be unresponsive. He did not have money to consult with another tax company.<sup>7</sup>

In around 2016, Applicant's ex-fiancée referred him to a friend who was an accountant, who provided him with some tax assistance at a minimal cost. The accountant told him that the advice given him by the first individual from the first tax company was incorrect. Applicant testified that the accountant also assisted him with

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<sup>5</sup> Response to the SOR; Tr. at 65-69; GE 3.

<sup>6</sup> Tr. at 22-64, 68-69; GE 1, 3.

<sup>7</sup> Tr. at 22-39, 51-59; GE 3; AE A, B.

filing his 2012, 2013, 2015, and 2016 federal and state tax returns. He testified that though she did not timely file his 2015 tax returns, she timely filed his 2016 tax returns. Concerning his outstanding taxes, she told him that she would explore the possibility that the IRS and state tax authority could either place him in an uncollectible status, or be amenable to an offer in compromise, in light of his employment situation. When she later proved to be unresponsive, Applicant resumed working with the second individual from the first tax company.<sup>8</sup>

In late 2016 to early 2017, Applicant tried to work directly with the IRS, but he did not understand the tax information required of him. Six months before the hearing, Applicant learned that the second individual no longer worked for the first tax company. From December 2017 to January 2018, he began working with a third individual from the same company, and he re-contacted the accountant, but both were unresponsive as of the hearing. After the hearing, he expected to re-contact the first tax company and potentially the accountant to try to resolve his tax situation. He had limited financial means to do so, or to try to hire another tax company altogether.<sup>9</sup>

IRS tax account transcripts from January 2017 reflect that Applicant was granted an extension of time until October 2013 to file his 2012 federal tax returns, but he did not file them until November 2014. The transcripts reflect that he filed his 2013 federal tax returns in December 2014, and he filed his 2014 federal tax returns in May 2015. The transcripts also reflect that he was granted an extension of time until October 2016 to file his federal tax return for tax year 2015, but he had not filed as of November 2016.<sup>10</sup>

Applicant testified that he owed the IRS \$43,000 for tax year 2010 and \$39,000 for tax year 2011. The tax account transcripts reflect that Applicant owed \$36,032 for tax year 2012; \$43,196 for tax year 2013; and \$31,166 for tax year 2014. Applicant also testified that he owed around \$20,000 to the IRS and \$4,000 to the state authority for tax years 2015 and 2016.<sup>11</sup>

As of the hearing, Applicant had not made any payments towards any of his outstanding federal or state tax obligations for tax years 2010 through 2016. He had not contacted any other tax companies for assistance. He planned to re-contact either the first tax company or the accountant with whom he previously worked, or a third tax company altogether. Once he received money from an anticipated settlement for a March 2017 car accident, he intended to try to resolve his outstanding taxes.<sup>12</sup>

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<sup>8</sup> Tr. at 22-39, 50, 52-59; GE 2, 3; AE A, B.

<sup>9</sup> Tr. at 22-39, 50, 52-59; GE 2, 3; AE A, B.

<sup>10</sup> Tr. at 22-39, 50-51; GE 3; AE C.

<sup>11</sup> Tr. at 22-39, 50-51; GE 3; AE C.

<sup>12</sup> Tr. at 22-39, 50-51; GE 3; AE C.

On his parents' recommendation that he needed a fresh financial start, Applicant paid an attorney \$2,100 to file Chapter 7 bankruptcy on his behalf in November 2015. He claimed liabilities totaling \$315,503, for which \$200,000 was for outstanding federal taxes and \$24,000 was for outstanding state taxes. His bankruptcy was discharged in March 2016, but his outstanding federal and state taxes were not among the discharged debts. The record does not contain evidence of any previous bankruptcy cases for Applicant.<sup>13</sup>

Applicant intended to timely file his future tax returns. He has not incurred any new delinquent debts since his bankruptcy discharge. He acknowledged, however, that he incurred \$250 monthly in late fees on his apartment rental due to untimely payments because of his inconsistent work. For several months, he was also unable to honor the agreement he made with his child's mother, in which he was responsible for his child's daycare expense of \$700 monthly. He was also 22 days delinquent on his monthly car payment of \$672. When he did not have contract work and since late 2015, he drove an Uber or a Lyft for which he earned minimal income. While he did not have a budget, he testified that he knew his income and expenses and he lived within his means. He typically did not have money remaining after he paid his monthly expenses, and at times he found himself at a negative remainder. He did not have any savings. He had not received any financial counseling.<sup>14</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 to be 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, administrative judges apply the guidelines 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, 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."

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

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<sup>13</sup> Tr. at 39-41, 61, 63; GE 2, 3.

<sup>14</sup> Tr. at 41-48, 53-54, 61-64, 69-70; GE 2, 3.

responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 10865 provides that adverse 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern for 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 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 . . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (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 was unable to pay his debts, to include his delinquent federal and state taxes. He also failed to timely file his federal and state income tax returns for tax years 2012, 2013, and 2015, as required. The evidence is sufficient to raise AG ¶¶ 19(a), 19(c), and 19(f) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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, 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; 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.

Applicant did not file his tax returns for 2012 and 2013 until late 2014. He testified that he eventually filed his 2015 tax return, but the IRS transcript reflects that it remains unfiled. While he attempted to resolve his outstanding federal and state taxes, to include his \$173,000 federal tax lien, they remain unresolved. As of the hearing, he had not made any payments towards them. Despite his discharged bankruptcy, Applicant's finances are not under control. There is insufficient evidence to conclude that his financial problems are unlikely to recur. His failure to address his delinquent taxes, and to timely file his 2012, 2013, and 2015 federal and state income tax returns as required, cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) do not apply, and 20(g) only partially applies.

Conditions beyond his control contributed to Applicant's financial problems. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. Since becoming aware of his outstanding taxes after the IRS audit in 2012, Applicant attempted to resolve his outstanding taxes by hiring a tax company and an accountant. He also unsuccessfully attempted to resolve

them by working directly with the IRS and claiming them in his bankruptcy. While the tax company and accountant assisted him with filing his 2012 and 2013 tax returns in 2014, his 2015 tax return remains unfiled and they made no progress in assisting him with resolving his outstanding taxes. They have proven to be unresponsive. Despite this and because of his limited finances, he planned to continue to try to work with either the tax company or the accountant. As such, I find that there is insufficient evidence to conclude that Applicant acted responsibly under the circumstances. AG ¶ 20(b) is therefore only partially applicable.

### **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 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.

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 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.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.d:	Against Applicant



## **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Candace Le'i Garcia  
Administrative Judge