



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



In the matter of: )  
)  
) ISCR Case No. 17-01191  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Erin Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

11/30/2018  
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**Decision**  
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GOLDSTEIN, Jennifer, Administrative Judge:

Applicant mitigated the security concerns arising under the guidelines for financial considerations and foreign influence. He resolved state tax liens incurred while residing overseas and credibly testified that he now understands his tax obligations. His service as a government contractor overseas shows strong ties to the United States, despite his family's property and ties to the Philippines. National security eligibility for access to classified information is granted.

**Statement of the Case**

On September 1, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and B. The action was taken 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 Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), effective June 8, 2017.

Applicant answered the SOR in writing (Answer) on October 10, 2017, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on April 13, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on May 8, 2018, scheduling the hearing for May 31, 2018. Applicant failed to appear in person, but attempted to appear telephonically. The matter was rescheduled on June 7, 2018, for an in-person hearing on July 26, 2018. The case was transferred to me for hearing on July 17, 2018. I convened the hearing as scheduled on July 26, 2017. Applicant was present, as was Department Counsel. The Government offered Government Exhibits 1 through 6, which were admitted without objection, and two hearing exhibits (HE) marked HE I and II. Applicant testified on his own behalf, and presented Applicant Exhibits (AE) A and B. DOHA received the transcript of the hearing (Tr.) on August 8, 2018.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a, 1.b, 2.a, 2.c, 2.d, and 2.f with explanations. He denied SOR ¶¶ 2.b and 2.e. Under the financial considerations concern, the SOR alleged that Applicant was indebted to his state for a 2014 tax lien in the amount of \$9,272; and a 2016 tax lien in the amount of \$9,551. These liens were identified on his October 20, 2016 credit report. (GE 5.) Under foreign influence, the SOR identified concerns relating to his contacts with family and property in the Philippines. After a thorough and careful review of the testimony, pleadings, and exhibits, I make the following findings of fact:

Applicant is 43 years old. He is a high school graduate. He served on active duty in the Army from 1993 to 1999. He was honorably discharged. He has been employed by various government contractors in the Middle East since 1999 as a skilled laborer, except for a six-month period in 2001 when he returned to the United States, and a six-month period of unemployment in 2002. He married in 2006, and has two minor children. He often works in areas where accompanying family members are not permitted. (Tr. 23-26.)

Applicant's wife, age 45, is a citizen and resident of the Philippines.<sup>1</sup> She is a homemaker. She and their two U.S. citizen children reside in a house that Applicant financed in the Philippines for \$106,000. Because property in the Philippines must be owned by a citizen, his wife holds the majority interest in the home. He sends her \$2,500 every two weeks for living expenses. Applicant intends to file for a Visa to allow his wife to move to the United States with their children within the next year. When Applicant has time off he resides with his wife and children in the Philippines. (GE 1; GE 2; Tr. 49-58.)

Applicant is a native-born U.S. citizen. His parents reside in the United States and he is close to his mom. He has two storage units filled with possessions and a vehicle in the United States. His mom receives all of his U.S. mail. (Tr. 20, 42, 46.)

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<sup>1</sup> Department Counsel stated, "Generally, we don't consider the Philippines to be a country of heightened risk in and of itself." As a result, the Government did not offer any administrative notice material on the Philippines. Applicant testified that his family lives an area unaffected by terrorists. (Tr. 61-62.)

Applicant's wife's four sisters are also citizens of and residents in the Philippines. Two are homemakers, one is a school teacher, and one works in food service. None of his wife's siblings work for the government or military of the Philippines, or know what he does for a living. He sees them two to three times per year at family holiday gatherings. (GE 1; GE 2; Tr. 49-60.)

Applicant attributed the state tax liens to living abroad and failing to understand the requirements when faced with preparing his tax returns unassisted. He admitted that he is at fault for failing to file federal and state income tax returns since 2008. Before 2008, his mother hired a tax preparer to prepare his tax returns and sent them to him for signature. He had always qualified for the foreign income tax credit, did not owe any additional taxes, and filed in a timely manner. Beginning approximately 2008, he no longer had assistance and preparing tax returns, and did not know how to do it alone. He was confused about the foreign income tax credit. He neglected to fulfill this requirement. (Tr. 18-28.)

IRS tax transcripts reflect Applicant filed his 2009, 2010, and 2011 Federal income tax returns late in 2013. His 2012 and 2013 Federal tax returns were filed in a timely manner.<sup>2</sup> (GE 3.) He does not owe any Federal taxes for those years.

Applicant testified that he filed all his past-due state tax returns for tax years 2008 through 2015, in 2016, after he learned of the \$9,272 state tax lien filed in 2014 for tax year 2011 during his security clearance interview. A second state tax lien for \$9,551 was filed against him in 2016 for tax year 2012. He timely filed 2016 and 2017 Federal and state tax returns. He testified he paid off the state tax liens through a collection agency. He provided documentation to show that they are resolved and released, although the dates of payment are unclear from the record evidence. While it could be presumed that the liens were resolved sometime between February 28, 2017, when the Government accessed a credit report showing them as unresolved, and October 2, 2017, when the state issued a copy of the satisfaction of lien, Applicant credibly testified that he paid them off sooner, through the collection agency, but the collection agency failed to update the records in a timely manner. He petitioned the state to remove the liens, which had been previously paid in 2017, before receiving the SOR. His state tax debt is fully resolved. (GE 5; AE A.)

Applicant now understands his obligations to file Federal and state tax returns while overseas in a timely manner and is committed to doing so in the future. He has filed both Federal and state tax returns in a timely manner since 2016. In 2017, he owed approximately \$9,000 in 2017 Federal taxes and he immediately set up a voluntary payment plan with the IRS, upon which he testified he is current. He also contacted his employer and requested an allotment for taxes so that he does not have a balance owed to the IRS at the end of the year. He promised to file in a timely manner in the future. (Tr. 32-44.)

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<sup>2</sup> The overseas filing deadline is June 15.

Applicant testified that he earns sufficient income to meet his financial obligations. His mortgage loan payment on the home in the Philippines is \$1,200 per month. He has savings of approximately \$5,000, which he plans to use to resolve his 2017 Federal tax balance. He recognizes that he needs to be more frugal with his expenditures and has made adjustments in the amounts he spends, preferring less extravagant products than he used to buy. (Tr. 75.) His 2017 credit report reflects that he is in good standing on all commercial accounts. (GE 6.) He has not participated in financial counseling because it is hard to find overseas. (Tr. 45-49.) He now has a calendar alarm set to remind him to file his tax returns. It is set to alert him every 15 days beginning in January of each year, until they are filed. (Tr. 71.)

Applicant testified with candor and honesty. He accepted responsibility for his past actions and vowed to act responsibly toward his tax obligations in the future. He is a proud American and enjoys serving his country overseas. He testified that he would not do anything to harm U.S. interests. (Tr. 70-72.)

### **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 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 as to potential, rather than actual, risk of compromise of classified information.

Finally, Section 7 of EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern relating to the guideline 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. 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

(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 failed to timely pay his state income taxes, as required by state law, for tax years 2010 and 2011, which resulted in the 2014 and 2016 tax liens in the amounts

of \$9,272 and \$9,551. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from Applicant's financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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.

The DOHA Appeal Board has well established case law concerning how to evaluate an applicant's failure to meet their tax obligations:

A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to sensitive or protected information. See, e.g., ISCR Case No. 15-02884 at 3 (App. Bd. Apr. 26, 2018). See *Cafeteria and Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and regulations. Voluntary compliance with rules and regulations is essential for guarding sensitive or protected information. See, e.g., ADP Case No. 15-00198 at 3 (App. Bd. Jan. 30, 2017).

Applicant admits that he exercised poor judgment in the past when he failed to timely file Federal and state tax returns and pay his state taxes. He was working overseas during this period and was confused about the foreign income tax credit. His failure to pay state taxes led to the liens. Those liens were resolved by Applicant prior to receiving the SOR, and his delinquent tax returns, which were not alleged in the SOR, but were considered for assessing mitigation,<sup>3</sup> have all been filed for a number of years. He has filed the last five years of Federal tax returns in a timely manner and filed the past two years state tax returns as required by law, thereby demonstrating a recent track record of responsibility and a change in his behavior. Applicant testified credibly and at length about his remorse for his past poor judgment and the steps he has taken to rehabilitate himself, including proactive steps like setting a calendar reminder to make sure he remembers to file and setting up an allotment to save funds for his Federal taxes. He has reduced his spending on frivolous items.

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<sup>3</sup> See, ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

In weighing Applicant's good-faith efforts to resolve his state tax liens, I must consider the timing of Applicant's actions. The Appeal Board has consistently held that timing of an applicant's resolution of his tax filing problems is relevant in evaluating mitigation. An applicant who resolves financial or tax problems only when his clearance might be imperiled raises questions about his willingness to follow the sometimes complex rules governing classified information when his personal interests are not at stake.<sup>4</sup> In this case, Applicant cured all of his state tax liens before receiving the SOR. Further, the failure to file his past-due tax state and Federal returns was cured prior to the issuance of the SOR, known to the Government, and not in the SOR. It is clear from the record that Applicant resolved his state tax liens and is in compliance with tax requirements. His promise to fulfill his annual state and Federal tax obligations in a timely manner was credible. AG ¶¶ 20(d) and 20(g) provide full mitigation.

### **Guideline B, Foreign Influence**

¶ 6: The security concern relating to the guideline for Foreign Influence is set out in AG

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

AG ¶ 7: The guideline notes several conditions that could raise security concerns under

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology;

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<sup>4</sup> ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017).

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant's wife is a citizen of and resident in the Philippines; his children reside in the Philippines as do his sisters-in-law; and his largest asset is the property that he owns jointly with his wife in the Philippines. He visits his wife when on leave from work and provides financial support for his family. These facts raise concerns under AG ¶ 20(b) because a potential conflict of interest exists between his obligation to protect classified or sensitive information and his desire to help his family in the Philippines. However, AG ¶¶ 7(a), 7(e), and 7(f) requires evidence of a "heightened risk." The Government contended there was no heightened risk present. As a result, the evidence is insufficient to raise AG ¶¶ 7(a), 7(e), and 7(f).

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant served honorably in the U.S. Army from 1993 to 1999. He decided to continue serving his country as a government contractor and has been employed at overseas locations in that capacity largely for more than 18 years. While Department Counsel argued that "[A]pplicant's ties to the United States have faded over the years," I find service to the United States for more than 20 years to be compelling evidence of his deep longstanding ties to this country. In this case, there is no conflict of interest, because the Applicant's deep and longstanding relationships and loyalties in the United States show that he would resolve any conflict of interest in favor of the U.S. interest. The routine nature of his family home in the Philippines makes it unlikely that it could be used to manipulate him. The above mitigating conditions apply.



## **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security eligibility 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 pertinent facts and circumstances surrounding this case. Failing to pay income taxes is a serious transgression. It indicates that Applicant may have a problem abiding by well-established rules and regulations. Applicant is not highly educated but was exceptionally honest at hearing. It is clear he was confused about filing tax returns while overseas. He has accepted responsibility for his negligence and has documented behavioral changes. He has paid the entire delinquency, and is now actively engaged in the management of his finances. He is current on his payments to the IRS for his 2017 Federal taxes. He has filed Federal tax returns in a timely manner since 2013, and state tax returns in a timely manner for the past two years. His dedication and service to the U.S. government make it unlikely that his Filipino family members or property could be used to coerce him. In sum, the presence of rehabilitation outweighs the nature and seriousness of the security concerns. Applicant has mitigated the security concern.

## **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

Subparagraph 1.a:

For Applicant

Subparagraph 1.b:

For Applicant

Paragraph 2, Guideline B:

FOR APPLICANT

Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.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 access to classified information. National security eligibility is granted.

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Jennifer I. Goldstein  
Administrative Judge