



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-01559  
 )  
Applicant for Security Clearance )

**Appearances**

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

04/26/2018  
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**Decision**  
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LOUGHRAN, Edward W., Administrative Judge:

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

**Statement of the Case**

On May 26, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on June 24, 2017, and requested a hearing before an administrative judge.

The case was assigned to me on November 9, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 18, 2017, scheduling the hearing for January 30, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 and 3 through 6 were admitted in evidence without objection. The objection to GE 2 was sustained. Applicant testified, but he did not submit any documentary evidence. The record was held open for Applicant to submit additional information. He submitted documents that I have marked Applicant's Exhibits

(AE) A through D and admitted without objection. DOHA received the hearing transcript (Tr.) on February 7, 2018.

### **Findings of Fact**

Applicant is a 52-year-old employee of a defense contractor. He has worked for his current employer since July 2016. He served on active duty in the U.S. military from 1985 until he was honorably discharged in 1994. He attended college for a period without earning a degree. He is married with an adult child.<sup>1</sup>

Applicant's wife is a citizen and resident of another country. Applicant met her when he was stationed in her country while in the military. He was able to get a job in that country after his discharge from the military. He became a dual citizen of the United States and his wife's country. In 2010, he went to another foreign country for a job opportunity, and his wife remained with their child in her home country. He returned to her country in 2011 where he was unemployed for about four months. He worked in a third country from 2011 until November 2015. He was unemployed from November 2015 until July 2016 when he started his current job in the United States. His wife and child are still in his wife's native country.<sup>2</sup>

Applicant did not have financial problems until his wife developed a medical condition in about 2009 that hindered her ability to work. A 2011 credit report did not show any derogatory accounts. His wife was diagnosed with a significant disease in 2016, which completely prevented her from working. The combination of his periods of unemployment and his wife's inability to work resulted in financial problems. Applicant also had his own medical problems in November 2016.<sup>3</sup>

The SOR alleges nine delinquent debts and that Applicant did not file his federal income tax returns for tax years 2014 and 2015. Some of the debts are charged off and others are just past due. The delinquent amount of the debts is about \$28,000. Applicant admitted owing all the debts with the exception of the debts alleged in SOR ¶¶ 1.h and 1.i.

Applicant denied owing the debts alleged in SOR ¶¶ 1.h and 1.i. The debts are to the same collection company on behalf of two banks. Applicant did not recognize the collection company. The underlying accounts to the banks are listed on the 2011 credit report as current. The collection accounts are both reported by Experian on the August 2016 combined credit reports. They are not listed on the subsequent Equifax credit reports. Applicant stated that he disputed the accounts online, but he did not provide copies of the disputes or the results.<sup>4</sup>

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<sup>1</sup> Tr. at 18-21; GE 1; AE C.

<sup>2</sup> Tr. at 17-24, 30, 51; GE 1.

<sup>3</sup> Tr. at 17, 23, 35-36, 53-54.

<sup>4</sup> Tr. at 39-41; GE 3-6.

Applicant initiated a \$25 per month payment plan for the \$418 debt alleged in SOR ¶ 1.a. As of February 2018, the balance had been reduced to \$343. He has payment arrangements to pay the debt alleged in SOR ¶ 1.b (\$87 past due with a \$383 balance), but the first payment was to be made after the hearing date. He has not paid any of the other debts.<sup>5</sup>

Applicant filed federal income tax returns for 2011 through 2013 while he was working in a foreign country. He stated that he had to file the returns because he was working for a U.S. company. He worked in the same country for a non-U.S. entity from 2013 to 2015. He did not file federal income tax returns for 2014 and 2015. He stated that he did not realize that he had to file the returns because he was working in a foreign country and he was not receiving any U.S. benefits. He did not file his 2016 federal income tax return even though he was working in the United States. He stated that he did not think he had to file a return if he was due a refund.<sup>6</sup>

Applicant has not received financial counseling. He stated that he intends to pay his debts. He filed his 2016 federal income tax return post-hearing. He wrote that he has been informed that even though he does not owe any taxes for 2014 and 2015 when he was working overseas, he still must file his returns. He wrote that he was still in the process of getting all the paperwork, and he will file them as soon as he receives everything.<sup>7</sup>

Applicant submitted a letter attesting to his professionalism, work ethic, and trustworthiness. The author wrote that Applicant “is always respectful of privacy, classified information, rules and restrictions.”<sup>8</sup>

### **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

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

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<sup>5</sup> Tr. at 24-29, 52; GE 4-6.

<sup>6</sup> Tr. at 41-52; Applicant’s response to SOR; GE 1. The SOR did not allege that Applicant did not file his 2016 federal income tax return. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered when assessing Applicant’s credibility, in the application of mitigating conditions, and during the whole-person analysis.

<sup>7</sup> Tr. at 26-29, 53; AE A, B.

<sup>8</sup> AE D.

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(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."

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 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 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 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 has a history of financial problems, including delinquent debts and unfiled tax returns for 2014 and 2015. The evidence is sufficient to raise the above 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;

(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.

Applicant was unemployed for about four months in 2011 and from November 2015 until July 2016. His wife developed a medical condition in about 2009 that hindered her ability to work and a significant disease in 2016 that completely prevented her from working. Applicant also had his own medical problems in November 2016. Those events were beyond his control.

Applicant's failure to file his income tax returns were not beyond his control. He has spent many years living and working outside the United States. His ignorance about his tax-filing responsibilities is baffling, particularly in this age of information where the answer is a click away on the Internet.<sup>9</sup> In any event, he knew his unfiled returns were a concern at least by June 2017 when he submitted his response to the SOR. The returns have still not been filed.

Applicant's repeated failure to fulfill his tax obligations suggests that he does not possess the high degree of good judgment and reliability required of persons granted access to classified information and that he has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. See ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016).

Applicant has paid a total of about \$75 toward his delinquent debts. He denied owing the debts alleged in SOR ¶¶ 1.h and 1.i, but he did not provide documented proof to substantiate the basis of the dispute. The underlying accounts to the banks are listed on the 2011 credit report as current. I conclude Applicant is responsible for these two debts. He stated that he intends to pay his debts. Intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good

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<sup>9</sup> See <https://www.irs.gov/individuals/international-taxpayers/us-citizens-and-resident-aliens-abroad>:

If you are a U.S. citizen or resident alien, the rules for filing income, estate, and gift tax returns and paying estimated tax are generally the same whether you are in the United States or abroad. Your worldwide income is subject to U.S. income tax, regardless of where you reside.

judgment. AG ¶¶ 20(a), 20(c), 20(d), 20(e), and 20(g) are not applicable. AG ¶ 20(b) is partially applicable, but it is insufficient to mitigate the concerns raised by Applicant's failure to file his tax returns and pay his debts.

### **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. I also considered Applicant's honorable military service and favorable character evidence.

Overall, the record evidence leaves me with questions and doubts about 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.j:	Against Applicant

## **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge