



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-01651  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: Leon J. Schachter, Esq.

05/03/2018  
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**Decision**  
\_\_\_\_\_

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On July 7, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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) effective June 8, 2017.

Applicant answered the SOR on August 26, 2017, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 8, 2017, and the hearing was convened as scheduled on February 8, 2018. The Government offered exhibits (GE) 1 through 4,

which were admitted into evidence.<sup>1</sup> The Government's discovery letter and exhibit list were identified as hearing exhibits (HE) I and II. Applicant testified and offered exhibits (AE) A through X, which were admitted without objection. Applicant's exhibit list was marked as HE III. DOHA received the hearing transcript (Tr.) on February 20, 2018.

### **Procedural Issue**

At hearing Applicant's counsel offered AE V (IRS Publication 3—Armed Forces Tax Guide for 2016). It was admitted without objection. Post-hearing, counsel asked that I take administrative notice of the same IRS publication for earlier years relevant to this case. Department Counsel did not object to Applicant's request. I will take administrative notice of the Publication 3 for earlier years. Applicant also moved to amend his answer to deny SOR allegations at ¶¶ 1.d and 1.f. Again, Department Counsel had no objection. The motion was granted.<sup>2</sup>

### **Findings of Fact**

Applicant admitted SOR allegations ¶¶ 1.a, 1.b, and 1.e, and denied the remaining allegations. His admissions are incorporated into these findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 45-year-old employee of a defense contractor. He has worked for various defense contractors since 2002 as an information technology (IT) specialist. As a civilian contractor, between 2007 and 2016, he deployed to Iraq twice for a total of 24 months and to Afghanistan twice for a total of 24 months, all in support of the U.S. military. He served ten years in the Army and was honorably discharged in October 2001. He has a high school diploma and has taken some college courses. He was married in 1999 and divorced in 2012. His ex-wife was a mortgage broker and handled the family finances when they were married. He has one child.<sup>3</sup>

The SOR alleged Applicant had two charged-off credit card debts (\$15,888; \$8,928) and an unsatisfied judgment (\$1,134). It also alleged he failed to timely file his federal income tax returns for years 2011-2015. He admitted not timely filing his 2011 tax return. The debts were listed in credit reports from January 2016 and April 2107.<sup>4</sup>

Before 2010, Applicant had no financial issues. His wife set up automatic bill paying from a bank account and paid the bills from that account. All the family tax

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<sup>1</sup> Applicant's Counsel's objection to GE 2 was overruled. Tr. at 15-17.

<sup>2</sup> Previous years of Publication 3 can be accessed from the following IRS website: <https://apps.irs.gov/app/picklist/list/priorFormPublication.html?resultsPerPage=200&sortColumn=sortOrder&indexOfFirstRow=0&criteria=title&value=Armed+Forces%27&isDescending=false>. See HE IV.

<sup>3</sup> Tr. at 33-35; GE 1; AE A, C, D.

<sup>4</sup> GE 3-4.

returns were filed timely. Applicant returned from his first deployment to Iraq in 2009 and because his company lost its contract, he was unemployed. In 2010, he was hired for a new position, which required a move to a different state. His wife and daughter stayed at their existing residence until he was established in the new state. In December 2010, he received divorce papers from his wife. He also found out that she moved in with another man while Applicant was away working. In February 2011, Applicant resigned his position so he could return to the state where his wife and daughter were located to deal with the pending divorce. He remained unemployed until March 2012. He supported himself by selling their residence and using his retirement funds. He attempted to pay some of the family bills, but because they were all electrically set up by his wife using her account, he could not gain access to the bills. He paid or settled several accounts not listed in the SOR that he could access.<sup>5</sup>

Applicant credibly explained that he first learned about the two charged-off credit cards (SOR ¶¶ 1.a and 1.b) when he was interviewed by an investigator during his background investigation in January 2016. He deployed shortly thereafter and was unable to contact the creditors before he left. Once he returned, he contacted the creditors but was told there was nothing he could do since the debts were charged off. He documented that he received IRS Forms 1099-C (cancellation of debt) for each debt, which involved tax consequences. These debts are resolved.<sup>6</sup>

Applicant documented that the lien associated with the judgment obtained by his homeowners association (HOA) was released in October 2011. This debt is resolved.<sup>7</sup>

Applicant was deployed to Iraq from May 2008 to December 2009, to Afghanistan from June 2012 to June 2013, and from May 2015 to May 2016. Because of his civilian deployment to hostile areas in support of U.S. forces, special income tax return filing rules applied for tax years 2012 through 2016. Applicant details how the rules apply to his situation in AE T, as set out in IRS Publication 3, for tax years 2012, 2013, 2014, 2015, and 2016. When these rule are applied to Applicant's situation, the evidence supports that for each of these years he filed a timely income tax return. Applicant's application of the IRS filing rules was corroborated by his accountant who has been filing his tax returns since 2006. These tax return issues are resolved.<sup>8</sup>

For tax year 2011, Applicant did not file his federal tax return until December 2017. He acknowledged that this return was untimely filed. Applicant credibly explains that while married he and his wife always filed their return as married filing jointly. In early 2012, while going through the divorce process, he attempted to convince his wife to file a joint return for year 2011, since they were married the entire year. She refused

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<sup>5</sup> Tr. at 35-43; GE 3 (lines 3-9 of Credit History).

<sup>6</sup> Tr. at 44-46; AE M, W.

<sup>7</sup> Tr. at 46, 48; AE I.

<sup>8</sup> Tr. at 55-63, 67-68; AE N-Q, T, V (including administrative notice of IRS Publication 3 for tax years 2012-2015), X.

and he left for his deployment in June 2012 with the issue unresolved. When he returned from the deployment in 2013, he discovered his ex-wife filed her tax return, claiming single or head of household status, and claiming all the deductions that were part of the marital property. Applicant worked with his accountant attempting to get his ex-wife to file an amended return for 2011 so Applicant could claim some deductions. A 2011 tax return was prepared by Applicant's accountant in July 2014, which reflected that Applicant owed approximately \$14,000 to the IRS. He did not file the return then because he still was trying to get his wife to amend her return. Under the terms of their divorce, she was obligated to pay half of their tax debt for the year. This issue did not get resolved before Applicant again deployed in May 2015. He also misunderstood his accountant when she told him it was too late to receive a refund (even if they could get his ex-wife to cooperate in filing an amended return), which he took to mean that it was too late to file a return for 2011. Once his attorney advised Applicant that he could file his 2011 federal tax return, he did so in December 2017 to resolve this issue. He verified that the IRS received his 2011 return. He acknowledged that he should have acted in a timelier manner filing his return. He intends to set up a payment plan with the IRS if he owes a significant amount from his 2011 return. For tax years 2012-2016 he received total refunds of approximately \$100,000, due to the foreign-earned-income exclusion. This tax issue is being resolved.<sup>9</sup>

Applicant presented statements from co-workers who attest to his integrity, work ethic, trustworthiness, honesty, and good judgment. They recommend that he retain his security clearance. Applicant also provided a series of certificates he received for completing several online personal finance courses. Applicant also completed emergency medical technician (EMT) training.<sup>10</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 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 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.

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<sup>9</sup> Tr. at 48-52, 54-55, 68-70, 72; AE N-S, X.

<sup>10</sup> AE B, E, K, L.

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.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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**

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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.

The evidence showed Applicant timely filed his federal tax returns for years 2012-2015, but he failed to timely file his federal tax return for 2011. He accrued two charged-off credit card debts. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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; 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.

Although Applicant should have responded in a more timely fashion, he filed his 2011 federal tax return and it is being processed. His delay was caused by his ex-wife's failure to cooperate, his overseas deployments, and his misunderstanding of his accountant's direction concerning filing his 2011 return. He intends to enter into a payment plan should he owe the IRS a significant amount from this return. He documented proof that the HOA judgment/lien was satisfied before the issuance of the SOR. His charged-off credit card debts are resolved. He received a Form 1099-C for each of the debts. He attempted to contact these creditors when he returned from his

deployment, but the debts were already charged off and the creditors refused to cooperate. Applicant acted responsibly under the circumstances. He received online financial counseling and there are clear indications that his financial issues are resolved and that recurrence is unlikely. AG ¶¶ 20(a) through 20(c) and 20(g) are 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 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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's military service, his federal contractor service, the recommendations from his co-workers, his EMT training, and the circumstances surrounding his indebtedness. I also considered that Applicant acknowledged making a mistake in not addressing his 2011 tax return quicker than he did. I'm convinced he will act in a timely manner with his taxes from now on, and that he will not incur tax problems or delinquent debts in the future.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated 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: FOR APPLICANT

Subparagraphs: 1.a - 1.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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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Robert E. Coacher  
Administrative Judge