



**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. 17-02208

**Appearances**

For Government: David Hayes, Esq., Department Counsel

For Applicant: *Pro se*

10/31/2018

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant failed to mitigate the security concerns regarding his financial considerations. Eligibility for access to classified information is denied.

**Statement of Case**

On June 30, 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 Security Executive Agent, by Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016.

Applicant responded to the SOR on August 10, 2017, and requested a hearing. The case was assigned to me on May 30, 2018, and scheduled for hearing on June 6, 2018. The Government's case consisted of four exhibits (GEs 1-4) that were admitted without objection. Applicant relied on one witness (himself) and no exhibits. The transcript was received on June 14, 2018.

### **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 settlement of his first mortgage and filed tax returns for tax years 2013-2017. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded seven days to respond.

Within the time permitted, Applicant advised of (a) ongoing efforts to reconstruct his wife's business records to forward to his tax preparer and (b) preparation of his house for sale. He provided no follow-up documentation of his filing his back returns, paying his taxes owed for the past years, or resolving his delinquent mortgages. Applicant's email exchange and correspondence from his first mortgage were admitted as AEs A-B.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) accumulated two delinquent debts exceeding \$199,000; (b) failed to file his federal tax returns for tax years 2013-2015; and (c) failed to pay federal income taxes for at least tax years 2013 and 2014, as required. Allegedly, Applicant's back taxes owed for tax years 2013-2014 remain unpaid.

In his response to the SOR, Applicant admitted each of the SOR allegations with explanations. He claimed income losses from his wife's real estate business and financial support for his wife who encountered severe medical problems that contributed to his delinquencies. He further claimed he was unable to obtain debt consolidation loans due to the loss of equity in his home attributable to the economic recession. He claimed his home has recovered in value, and he has repaid \$52,000 to non-SOR creditors, but still has no funds besides the equity in his home to address his mortgage and consumer debts. And he claimed he is a proud graduate of a distinguished military academy with a 25 plus year Air Force (AF) career who would never compromise his integrity while safeguarding the nation's classified information.

Addressing the tax allegations, Applicant claimed filing delays due to his lack of funds to pay any past-due taxes and his wife's having no accurate and timely records from her business. He acknowledged laziness for his procrastination in filing his back tax returns, and he claimed to have tax professionals in place to work with the Internal Revenue Service (IRS) to determine what returns are still due, what net amount of taxes are owed, if and, whether any penalties are eligible for waiver due to mitigating circumstances.

## **Findings of Fact**

Applicant is a 74-year-old master test engineer for a defense contractor who seeks a security clearance. The allegations covered in the SOR were not admitted by Applicant and are reserved for fact-finding based on the developed evidence at hearing.

### **Background**

Applicant married in August 1967 and has two adult daughters (ages 46 and 43). His wife passed away in October 2017 following a long illness with Type II diabetes and non-alcoholic cirrhosis of the liver. (Tr. 33) Applicant earned a bachelor's degree from a distinguished military academy in June 1966 and a master's degree in June 1974 from an Air Force (AF) technology school. (GE 1) Applicant served in the active-duty AF between June 1962 and March 1987 and was honorably retired in March 1987.

Since August 2005, Applicant has been employed by his current defense contractor. (GEs 1-2) Previously, he worked for other defense contractors.

### **Applicant's finances**

Applicant purchased his current home jointly with his wife in December 2005 and financed his purchase with a \$400,000 first mortgage. (GEs 2-4; Tr. 32) Payments approximated \$3,100 a month. He missed a few payments on his first mortgage in 2014 due to medical bills related to his wife's liver disease illness, but has been current with his payments since 2014. (GEs 2-4)

In August 2006, Applicant obtained a \$200,000 home-equity line-of-credit with SOR creditor 1.a and secured the credit line with a second mortgage on his home. (GEs 3-4) Beginning in 2009, Applicant encountered difficulties keeping up with his mortgage payments due to his wife's loss of income from her real estate business and his providing financial support to his eldest daughter who had major medical problems and could not work. (GEs 2-3; Tr. 32-33) Although both he and his wife were fully employed at the time, they did not have enough equity in their home to obtain a consolidation loan. (Tr. 28-30, 32-34) Currently, Applicant has a delinquency balance of \$200,000 on his second mortgage with SOR creditor 1.a. (GEs 3-4; Tr. 30, 36-38)

Between 2009 and 2018, Applicant accumulated over \$50,000 in delinquent mortgage debt before the second mortgagee charged off the debt in October 2013. (GEs 1-2; Tr. 51) He admits to making no mortgage payments on his second mortgage (SOR creditor 1.a) between 2010 and 2018, except for a couple of payments. (Tr. 27, 39-40) Still, he continues to receive daily phone calls from SOR creditor 1.a seeking to enlist him to pay the balance owing. (Tr. 40) While creditor 1.a has offered to settle its mortgage debt for \$99,000 in 2017, and more recently for \$130,000, Applicant has to date declined the offer and is currently exploring opportunities to sell the home (currently valued at \$600,000) to provide the proceeds to pay off the second mortgage with a lump-sum payment. (AE A; Tr. 22-23, 32-36, 41-43)

In an interview with an investigator from the Office of Personnel Management (OPM) in May 2016, Applicant promised to address his mortgage delinquencies, but to date, he has made no substantive progress. Results from his efforts to consolidate his loan or sell his home to satisfy his mortgage debt have not materialized. (AE B)

Besides his second mortgage debt, Applicant incurred a delinquent credit card debt on a line-of-credit he obtained from the lender in August 2006. (GEs 3-4) Creditor 1.b closed this account for non-payment in July 2013, and the account remains unpaid and unresolved.

Records confirm that Applicant failed to file his federal income tax returns for tax years 2013-2015, as required. (GE 2; Tr. 51-52) He attributed his filing failures to concerns he could not cover any tax amounts owed at the time and procrastinated in establishing communications with the IRS. (GE 2) Applicant has been working with tax professionals for the past two years to file his tax returns for tax years 2013-2015, but to date, he has not provided any proof of substantive progress in filing tax returns for the tax years in question. (GE 2 and AE B; Tr. 56-57) Records also confirm that Applicant failed to pay his federal taxes owed for tax years 2013-2014, as required. (GE 2) He has no knowledge at this time as to how much he owes in back taxes for 2013-2014. (Tr. 51-52) He attributed his tax payment problems to the financial support he has had to provide to his eldest daughter, who only recently returned to work. (Tr. 47-48) Altogether, Applicant pays out \$1,900 a month for her house payments and \$900 a month for her car payments. (Tr. 55)

Applicant maintains a monthly adjusted gross income of \$11,000, inclusive of his military retirement. (Tr. 28-34, 57-58) Although he currently has a \$1,000 monthly remainder, he has no money set aside to pay his mortgage delinquency and back taxes and needs to sell his house to clear enough equity to repay the balances owing on his second mortgage and whatever might be owing on his federal taxes. (Tr. 40-44)

### **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 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 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 accumulation of delinquent mortgage and consumer debts, his failure to file his federal tax returns for tax years 2013-2015, and his accrual of delinquent taxes due for tax years 2013-2014.

### **Financial Concerns**

Applicant's accumulation of delinquent mortgage and consumer debts, his failure to file federal tax returns for multiple years (2013-2015), and his accruing of delinquent federal taxes for tax years of 2013-2014 warrant the application of three of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), "inability to satisfy debts"; 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."

Between 2010 and 2018, Applicant accumulated over \$50,000 in delinquent mortgage debt on his second mortgage. (SOR debt ¶ 1.a) He incurred an additional debt on a line of credit with SOR debt ¶ 1.b, and the creditor charged off the debt in 2013. Neither of these debts have been addressed or resolved by Applicant, and they remain outstanding. Further, Applicant's acknowledged failure to file federal tax returns for tax years 2013-2015 and pay or otherwise resolve owed taxes for tax years 2013-2014 have not been addressed by Applicant.

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 failed tax filing and debt cases

Historically, the timing of filing federal tax returns and resolving federal and state tax delinquencies 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., medical issues affecting both his wife and daughter) provide the basis of some mitigation credit for his failure to file his federal tax returns and address owed federal taxes, as well as his delinquent mortgage and consumer debts. Based on his cited circumstances, 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," has some application to Applicant's situation

Based on Applicant's cited circumstances, however, the "acting responsibly" prong of MC ¶ 20(b) has only limited application and cannot excuse his past failures to timely file his tax returns and address his delinquent tax, mortgage, and consumer debts. Applicant's failure or inability to file his federal tax returns for tax years 2013-2015, address his delinquent tax, mortgage, and consumer debts, and demonstrate a good track record for managing his finances precludes him from fully availing himself of the benefits 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 delinquencies (still unresolved) and other debts over an extended number of years.

Whether Applicant is entitled to the full 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 demonstrated commitments to address his tax filing and payment delinquencies, as well as his mortgage and consumer debts with the resources currently available to him. 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 failure to address his federal tax filing failures and his tax, mortgage, and consumer

debts with the resources currently available to him preclude him from taking full advantage of any of the mitigating conditions potentially available to him under Guideline F.

### **Whole-Person Assessment**

Whole-person assessment is unfavorable to Applicant. He has shown insufficient progress to date in addressing his federal tax returns for tax years 2013-2015, or in paying or otherwise resolving his outstanding tax, mortgage, and consumer debts. Applicant's general contributions to the U.S. defense effort through his many years of Air Force service and his work in the defense industry are considerable and merit a good deal of respect and appreciation.

Applicant's positive credits are insufficient, though to surmount historical trust and judgment issues associated with his failure to file his federal tax returns over the course of several years (i.e., 2013-2015, as referenced in the SOR) and failure or inability to better address his major federal tax, mortgage, and consumer debt delinquencies with more timely and sustained filing and payment efforts to establish a strong track record of responsible financial management. 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 or occupy a sensitive position. 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. 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.d:

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





