



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

)  
)  
)  
)  
)

ISCR Case No. 17-02372

Applicant for Security Clearance

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel

For Applicant: *Pro se*

07/06/2018

**Decision**

MASON, Paul J., Administrative Judge:

Before April 2002 and March 2015, Applicant was unemployed 19 times for periods between one and six months. Since March 2015, he has worked for one employer. In August 2017, he mailed proposed payment agreements to 37 creditors or collection agencies. He established a repayment plan with the Internal Revenue Service (IRS) to begin repaying two federal tax liens in October 2017. A second payment plan with the IRS was established on November 2, 2017, to include additional unlisted tax years. Applicant furnished no documentation showing payments made under either IRS plan or payments under the agreements he established with the other listed creditors. The financial considerations guideline is unmitigated. Eligibility for security clearance access is denied.

**Statement of the Case**

On September 22, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) (Item 3) to retain a security clearance required for a position with a defense contractor. He provided summary interviews (PSIs) (Item 6) to

an investigator from the Office of Personnel Management (OPM) on December 1, 2016; December 15, 2016, and January 30, 2017. On July 14, 2017, DOD issued a Statement of Reasons (SOR) to Applicant detailing security reasons under the financial considerations guideline (Guideline F). The action was taken under Executive Order (E.O.) 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 4, establishing *National Security Adjudicative Guidelines for Determining Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs). The AGs became applicable on June 8, 2017, to all individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position.

Applicant provided his notarized answer to the SOR on August 15, 2017. He elected to have his case decided on a written record instead of a hearing. The Government sent Applicant a copy of the File of Relevant Material (FORM), the Government's evidence in support of the allegations in the SOR, to Applicant on October 19, 2017. Applicant received the FORM on November 7, 2017. The Government advised Applicant that he could either file objections, furnish explanations, submit additional material, or take advantage of all three options within 30 days of receiving the FORM. Applicant's response was due on October 14, 2017. The Defense Office of Hearings and Appeals (DOHA) received a two-page response from Applicant on November 13, 2017; this exhibit was admitted into evidence. DOHA assigned the case file to me on March 16, 2018.

## **Rulings on Procedure**

In a footnote on the first page of the FORM, Department Counsel advised Applicant that the PSIs would be excluded from evidence if he objected to them. Alternatively, Department counsel advised him that he could correct, update, or modify the exhibit to improve the exhibits' clarity or accuracy. Applicant did not object, and the PSIs are admitted into evidence. See, E3.1.20. of DOD Directive 5220.6, page 52.

## **Findings of Fact**

The SOR alleges a federal tax lien for 2010, a federal tax lien for 2011, and 38 delinquent debts. The debts became delinquent between April 2009 and April 2016. Applicant answered affirmatively to all allegations. Attached to his answer is a one-page statement explaining that the delinquencies were caused by periodic unemployment and the lack of financial counseling. He contacted all creditors and established payment plans. He was confident that these remedial steps would improve his financial responsibility to an acceptable level.

Applicant is 51 years old and lives with his girlfriend. He has been divorced twice. He has a 26-year-old son. He received technical training at a military school between

January and June 1982. He collected additional college credits between August 1982 and April 1985, between March 2013 and May 2014, and between June 2014 and August 2014, but did not attain a degree. Applicant is an avionics technician. He served in the United States Air Force from 1981 to 1985, and was discharged under general conditions. Between April 2002 and March 2015, Applicant was laid off or unemployed 19 times, with layoff periods lasting from one month to six months. He has held a security clearance since September 1982.

In response to the two federal tax liens (SOR 1.a, 1.b), in August 11, 2017, Applicant signed an installment agreement request (Form 9465) to repay the IRS in payments of \$535 a month until the balance of \$38,269 was paid in full.<sup>1</sup> Payments were to be made by automatic deduction from his bank account. No documentation was provided showing that payments were made. In his November 9, 2017 response to the FORM, he provided a two-page letter from the IRS dated November 2, 2017, increasing the tax years with unpaid tax balances from 2010 and 2011, to 1999, 2000, 2001, 2002, 2004, 2005, 2006, 2008, 2009, 2012, 2013, 2015, 2016. Applicant was instructed to begin paying the IRS \$100 a month on December 20, 2017, and continue the monthly payments until the unpaid balance was paid or his financial situation changed. Since the November 2, 2017 letter from the IRS does not include tax years 2010 and 2011, he must have been or still is in two payment plans with the IRS. In the middle of August 2017, Applicant sent the remaining listed creditors proposed payment plans to begin in September or October 2017. For September 2017, Applicant promised partial payments of \$1,360 to the remaining creditors. Regarding the smaller debts below \$100, he promised to pay off the entire amounts of SOR 1.mm (\$64) and SOR 1.nn (\$51) in September 2017. The record contains no proof that payments were made to any creditors. Applicant was advised by letter dated August 14, 2017, that the SOR 1.z collection agency had stopped collection activity and returned the account to the SOR 1.i creditor. SOR 1.z is withdrawn.

At the time of his December 1, 2016 PSI, Applicant was working and living at a location in the United States not listed in his September 2015 e-QIP. He explained that as an avionics technician, he worked on employment contracts on an as-needed basis. When the contract was completed, he was laid off. While working for his current employer, he worked at one location from September to November 2015; he worked at another location in December 2015, and another location in January 2016.

In his December 15, 2016 PSI, Applicant stated that he incurred delinquent federal taxes in 2010 and 2011 (SOR 1.a, 1.b) for not taking out sufficient withholdings from his income. In December 2016, Applicant's total unpaid federal taxes for the two years were about \$37,300. He stated that he fell below the poverty level between 2010 and 2013, and was placed on a non-collection status by the IRS. Applicant recalled paying \$800 a month for a period in 2015 to resolve the federal tax debt. He stopped

---

<sup>1</sup> The figure represents the total amount of the two liens plus interest. See attachment to Applicant's answer explaining lien amounts and corresponding interest.

the payments, but provided no explanation. He planned to include the delinquent federal taxes in his bankruptcy.

Attached to his August 17, 2017 answer to the SOR is documented proof that Applicant received online credit counseling from a certified credit counseling agency. He stated that the counseling helped him “implement better payment, budgeting and saving methods and how to stay in contact with all creditors keeping them informed of any and all financial changes that might occur.” However, he did not specify how the counseling helped him improve his financial practices. The only documented contact with the creditors occurred in August 2017 when he offered the terms of his repayment agreements.

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are flexible rules of law, are applied together with common sense and the general factors of 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(d) 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 applicant or proven by Department Counsel. . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

### **Analysis**

#### **Financial Considerations**

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.

Applicant incurred 37 delinquent debts between April 2009 and April 2016. He owes over \$28,000 in delinquent federal taxes for two federal tax liens that were filed in 2010 and 2011. The delinquent debts and federal tax liens support the application of the following disqualifying conditions under AG ¶ 19:

- (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.

AG ¶ 20. Conditions that could mitigate security concerns include:

- (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 developed a seven-year history of not meeting financial obligations. The debts and federal tax liens are still delinquent. His financial difficulties, which are likely to continue in the future, continue to cast doubt on his trustworthiness and judgment. AG ¶ 20(a) does not apply.

Unemployment is recognized as a condition that results in financial problems beyond the person's control. Between 2002 and March 2015, Applicant's September 2015 e-QIP shows that he was unemployed 19 times for periods of one month to six months. The 2015 e-QIP also reflects that he was aware of at least the two federal tax liens and 11 delinquent debts. He confirmed all the listed delinquent debts in his December 2016 PSIs. But he did not submit documented action to address the liens and debts until almost two years later in August 2017. He receives some mitigation under the first prong of AG ¶ 20(b) because of his periodic unemployment between 2002 and March 2015, but no mitigation under the second prong of the condition for not acting reasonably and responsibly to focus on his indebtedness in 2015 or 2016.

Though there is documented evidence showing that Applicant received online credit counseling, there is no evidence to support a conclusion that his debts are under control. Establishing payment plans without a track record of regular and sustained payments to the listed creditors or collection agencies does not qualify as a good-faith effort to satisfy debts. AG ¶¶ 20(c) and 20(d) are inapplicable. I reach the same conclusion under AG ¶ 20(g) as Applicant furnished no evidence of confirmed payments under his repayment plan with the IRS to resolve SOR 1.a and 1.b.

### **Whole-Person Concept**

I have examined the evidence under the financial considerations guideline in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant, 51 years old, lives with his girlfriend. He has a 26-year-old son. He served in the U.S. Air Force from 1981 to 1985. He has held a security clearance since 1982. He received technical training at a military school in 1982. He earned college credits from 1982 to 1985, from March 2013 to May 2014, and from June to August 2014.

Between April 2009 and April 2016, Applicant accumulated a significant amount of debt to the IRS and to commercial creditors. Though he contacted the IRS and the

listed creditors and set up payment plans, he provided no documentation showing that he made the promised partial payments, even for the listed debts under \$100. Having weighed and balanced all the evidence under the specific conditions in light of the record as a whole, Applicant has not mitigated the lingering security concerns arising from the financial considerations guideline.

### **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.y, 1.aa-1.nn:	Against Applicant
Subparagraph 1.z:	Withdrawn

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

---

Paul J. Mason  
Administrative Judge