



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



In the matter of:

)  
)  
) ISCR Case No: 17-02583  
)  
)  
)

Applicant for Security Clearance

For Government: Adrienne M. Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

10/22/2018  
\_\_\_\_\_  
  
Decision  
\_\_\_\_\_

DAM, Shari, Administrative Judge:

Applicant has a history of financial problems, including bankruptcies, failing to timely file Federal tax returns, and unpaid Federal and state income taxes. He did not mitigate the resulting financial security concerns. National security eligibility for access to classified information is denied.

**Statement of the Case**

On December 19, 2017, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR in writing on January 25, 2018, and requested that his case be decided by an administrative judge on the written record without a hearing (Answer). On March 23, 2018, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 13 Items, was mailed to Applicant on March 27, 2018, and received by him on April 16, 2018. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant timely submitted a response to the FORM, which included his letter and attachments. I marked that exhibit Applicant Exhibit (AE) A. In his response, he did not object to the Government's Items. Department Counsel did not object to Applicant's exhibit. Items 1 through 13, and AE A are admitted into evidence. DOHA assigned the case to me on July 30, 2018.

### **Findings of Fact**

Applicant admitted the eight allegations contained in the SOR. He provided some explanations. (Item 1)

Applicant is 56 years old and married to his second wife for many years. He has three adult children. He has held a security clearance for 18 years while working for defense contractors. In June 2014, Applicant submitted an electronic Questionnaires for Investigations Processing (e-QIP). In it he disclosed a 2008 mortgage problem and a 2008 automobile repossession. During an August 2014 interview with a government investigator, he attributed those problems to the loss of his wife's income around that time. (Item 1, Item 2, Item 3)

In April 2017, a government investigator interviewed Applicant to further discuss his finances. He said he relinquished his home to the bank and the car to the dealer, and had no further financial obligation for either. He discussed his tax audits, late income tax filings, unpaid Federal and state taxes, delinquent retail debts, and bankruptcies. (Item 5)

In December 2015, Applicant filed a Chapter 13 bankruptcy. (SOR ¶ 1.a) The bankruptcy included payments to the Internal Revenue Service (IRS) for unpaid Federal and state taxes as noted below, and other debts. Applicant made monthly payments of \$4,500 into the trustee's plan from January 2016 to August 2016. After Applicant's lawyer appealed for a reduction of that payment amount, the bankruptcy was dismissed. (Item 5; AE A)

In October 2016, Applicant filed another Chapter 13 bankruptcy. That proceeding remains active. (SOR ¶ 1.b) The total amount of claims included in the bankruptcy was \$286,812. His Federal and state tax liability was over \$177,000. Applicant has been making monthly payments of \$2,835 since November 2016. (Item 4)

In 2010, Applicant was audited by the Internal Revenue Service (IRS) for tax years 2006 and 2007. The IRS found that Applicant and his wife owed \$129,000 for unpaid taxes, interest and penalties for those years. (SOR ¶ 1.c) Applicant attributed the debt to

his wife's business and a tax preparer's errors on their returns. This debt is being paid through Applicant's Chapter 13 bankruptcy. As of May 2017, the balance on his Federal tax debt for 2006 and 2007 was \$22,955. (AE A)

Applicant failed to timely file Federal tax returns for years 2010 through 2016. (SOR ¶ 1.d) Based on IRS transcripts, Applicant filed his 2010 return in May 2012. He filed his 2011 return in June 2013; 2012 return in March 2014; 2013 return in April 2015; 2014 return in February 2016; and 2015 return in February 2017. He said he filed the returns late because his wife worked for a family business and did not receive the necessary documents on time. He timely filed his 2016 and 2017 Federal tax returns. (Item 5; AE A)

Applicant owes the IRS \$15,700 for tax year 2015. (SOR ¶ 1.e) This amount is included in the 2016 Chapter 13 bankruptcy. (Item 5)

Applicant owes the IRS \$14,000 for unpaid taxes for tax year 2016. (SOR ¶ 1.f) In his Answer, he stated the IRS recommended that payments be included in his bankruptcy plan. There is insufficient evidence to determine whether it is included or being resolved. (Item 1)

Applicant stated that he owes the IRS \$12,224 for tax year 2017. He also owes state taxes of \$3,499 for that year.<sup>1</sup> As of May 2018, that tax debt is not being resolved. (AE A)

Applicant owes his state \$2,300 for unpaid taxes for tax year 2015. (SOR ¶ 1.g) That amount is included in the 2016 Chapter 13 bankruptcy. He said his current state tax liability for all years through 2015 was \$3,341. (Item 5)

Applicant owes his state \$3,088 for unpaid taxes for tax year 2016. (SOR ¶ 1.h) As of May 2018, that tax is not being resolved. (Item 1; AE A)

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying and mitigating conditions, which are useful 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

---

<sup>1</sup>I have not considered for disqualifying purposes any derogatory information that was not alleged in the SOR. I may consider the information when making a credibility determination, in applying the mitigating conditions, and in analyzing the whole-person concept.

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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that 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 the applicant may deliberately or inadvertently fail to protect or 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.

Section 7 of Executive Order 10865 provides that an adverse decision 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

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

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18:

Failure or inability 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 information. Financial distress can also be caused by 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 to generate funds.

AG ¶ 19 sets out disqualifying conditions that could potentially raise security concerns. Two are potentially applicable in this case:

(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 file Federal income tax returns for 2010 through 2015. He is making payments to both the IRS and his state for unpaid taxes for some of those years. He is also making payments for Federal and state taxes owed for tax years 2006 and 2007. The evidence is sufficient to raise the above disqualifying conditions.

After the Government produced substantial evidence of the disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets out three conditions that could potentially mitigate financial security concerns under this guideline:

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances; 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 did not timely file Federal tax returns from 2010 to 2015. His failure to timely file for six years casts doubt on his current judgment and reliability. He continues to make payments to the bankruptcy court for unpaid Federal and state tax liabilities. He has not resolved or paid his 2016 and 2017 Federal and state tax liabilities. The fact that he timely filed tax returns for 2016 and 2017 is insufficient to outweigh his history of not timely filing Federal returns. AG ¶ 20(a) minimally applies.

Applicant did not provide a legitimate explanation for failing to timely file six years of Federal tax returns. He failed to establish mitigation under AG ¶ 20(b). There is

evidence that he has been making payments through a Chapter 13 bankruptcy on his delinquent tax debts since January 2016; however, there is no evidence that he is resolving his 2016 or 2017 tax debts. He established some evidence under AG ¶ 20(g).

### **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) 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 include 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 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.

Applicant is a 56-year-old man who has worked for defense contractors for a number of years. During several of those years, he failed to resolve a large amount of delinquent debts and taxes, resulting in his filing a Chapter 13 bankruptcy in 2015 and again in 2016. Although he has been making progress in addressing some unpaid Federal and state taxes, along with other debts, he has not sufficiently established a track record of responsibly managing his finances. His 2016 and 2017 tax debts remain unpaid. Applicant's history of non-compliance with a fundamental legal obligation to file tax returns and timely pay tax debts is concerning. The DOHA Appeal Board has held that:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with these things is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Someone who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant*

*Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960),  
*aff'd*, 367 U.S. 886 (1961).<sup>2</sup>

The record evidence leaves me with doubt as to Applicant's judgment and suitability for a security clearance. Applicant failed to mitigate the security concerns arising under the financial considerations guideline.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.h:	Against Applicant

### **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 a security clearance. National security eligibility for access to classified information is denied.

---

SHARI DAM  
Administrative Judge

---

<sup>2</sup> ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).