



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-03209  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

05/18/2018

**Decision**

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Clearance is denied.

**Statement of the Case**

On September 27, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken 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) implemented by the DOD on June 8, 2017.

Applicant responded to the SOR on October 28, 2017, and elected to have his case decided on the written record in lieu of a hearing. The Government's written case was submitted on December 21, 2017. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant

received the FORM on January 8, 2018. He responded on February 8, 2018, with documentation I have marked collectively as Applicant's Exhibit (AE) A. I admitted the Government's documents identified as Items 1 through 8 and AE A in evidence without objection. The case was assigned to me on April 13, 2018.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.d, 1.g, 1.h, and 1.k. He denied SOR ¶¶ 1.e., 1.f, 1.i, and 1.j. He is 59 years old, married, and he has two adult children and one adult stepchild. He obtained his high school diploma in 1977, a bachelor's degree in 1986, and a master's degree in 2011. He has worked as an engineer for a defense contractor since 1981. He has held a security clearance since 1988. He has owned his home since 2000.<sup>1</sup>

The SOR alleges that Applicant failed to file his federal and state income tax returns for tax year 2015, as required (SOR ¶¶ 1.i and 1.j). It alleges that he owed \$6,500 in delinquent federal taxes for tax year 2009 (SOR ¶ 1.k). It alleges that his wages were garnished in July 2017 for a \$4,196 judgment, and the garnishment order was still in effect as of the date of the SOR (SOR ¶ 1.h). Finally, it alleges four delinquent consumer accounts for \$28,761 (SOR ¶¶ 1.a to 1.c and 1.g) and three delinquent medical accounts for \$6,206 (SOR ¶¶ 1.d through 1.f).

The July 2016 credit report verifies all of Applicant's delinquent debts. Only SOR ¶¶ 1.a through 1.c are listed in the July 2017 credit report, and only SOR ¶¶ 1.a and 1.b are listed in the December 2017 credit report. Applicant also listed and discussed his failure to file his income tax returns and his delinquent debts in his June 2016 security clearance application (SCA) and during his October 2016 background interview. The wage garnishment alleged in SOR ¶ 1.h is also established by a July 2017 incident history report printed from the Joint Personnel Adjudication System (JPAS) database.<sup>2</sup>

Applicant attributes his delinquent debts to being a single-income household since the birth of their youngest child in 1993, as his wife's chronic medical issues prevented her from working. Her condition was compounded after she sustained injuries in a multi-car accident in 2010, and only some of her medical expenses were covered by insurance. At a date not in the record, Applicant paid a settlement for a minor car accident involving one of his children, as the expense was not covered by insurance. Applicant obtained loans, refinanced his home, and used credit cards to pay for household expenses and assist his two children with their college expenses. He attributed his failure to timely file his 2015 federal and state income tax returns to his pending receipt from the IRS of an electronic filing PIN for his spouse, as discussed below. Finally, he attributed his delinquent taxes for 2009 to taxes not being withheld

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<sup>1</sup> Items 1, 3, 4, 9; AE A.

<sup>2</sup> Items 1, 4-9.

from his wife's wages when she provided in-home health care for her father, also as discussed below.<sup>3</sup>

SOR ¶ 1.a is for a \$16,608 charged-off debt to a federal credit union. Applicant's credit union extended him a line of credit that he used towards his spouse's medical bills, his children's college expenses, and daily living expenses. He made payments in the past to keep the account active. When he was no longer able to make payments, the account was charged off. Though he continued to bank with the credit union as of the date of his Answer, he acknowledged that he had not taken any action to resolve the account.<sup>4</sup>

SOR ¶ 1.b is for a \$4,149 credit card placed in collection. Applicant indicated in his SCA and background interview that this as an old, unsecured debt that he listed in his 1990 bankruptcy. He stated in his Answer that he was working on settling it. In October 2016, he entered into a payment plan to resolve this debt. The plan provided for payments of \$100 monthly from October 2017 to February 2018, followed by 37 additional payments totaling \$3,648. He did not provide documentation to show that he made any payments in accordance with the plan.<sup>5</sup>

SOR ¶ 1.c is for a \$1,974 charged-off store credit card. SOR ¶ 1.h is for the garnishment of Applicant's wages in July 2017 for a \$4,196 judgment brought against him by the same creditor as SOR ¶ 1.c. Applicant indicated in his SCA that he used this credit card for household expenses and he acknowledged that he paid it through the garnishment of his wages. In his Answer, he stated that he settled this account before the enforcement of the garnishment order. While the JPAS incident history report reflects that his wages were set to be garnished in July 2017, Applicant provided documentation to show that the garnishment order was terminated in March 2017, prior to the issuance of the SOR.<sup>6</sup>

SOR ¶¶ 1.d, 1.e, and 1.f are for delinquent medical debts totaling \$6,206. In his SCA and Answer, Applicant stated that he disputed SOR ¶ 1.d, which was for his wife's emergency room bill, because it should have been covered by his medical insurance. He did not provide documentation to show that he disputed this debt or that it was otherwise resolved. Though he denied in his Answer that the debts in SOR ¶¶ 1.e and 1.f were his, he also listed both of them in his SCA and stated that he was also disputing them because they were for his wife's emergency room bills that should have been covered by his medical insurance. He did not provide documentation to support his claim.<sup>7</sup>

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<sup>3</sup> Items 3, 4, 9.

<sup>4</sup> Items 3, 4.

<sup>5</sup> Items 3, 4, 9; AE A.

<sup>6</sup> Items 3, 4, 5, 6, 7, 9; AE A.

<sup>7</sup> Items 3, 4, 9.

SOR ¶ 1.g is for a \$6,030 account placed in collection. Applicant stated in his SCA and Answer that he disputed this debt because he believed he listed it in his prior bankruptcy, or it was for medical expenses that were supposed to be covered by his medical insurance. However, he stated in his background interview that he was in the process of repaying it and he did not think it was listed in his prior bankruptcy. He did not provide documentation to show that he disputed this debt, or that it was otherwise resolved.<sup>8</sup>

SOR ¶¶ 1.i and 1.j allege that Applicant failed to file, as required, his 2015 federal and state income tax returns. While Applicant denied such failure in his Answer, he acknowledged it in his SCA. He attributed his failure to do so to his pending receipt from the IRS of an electronic filing PIN for his spouse, who is legally blind and unable to read. Upon receipt of the PIN, he expected to file and pay his outstanding 2015 taxes. In his background interview, he stated that the PIN he received did not work so he expected to file his 2015 income tax returns by paper and have his spouse's signature notarized. He also expected that he would owe \$800, and he intended to pay it simultaneously with his filing.<sup>9</sup>

Applicant provided an unsigned copy of a self-prepared 2015 federal and state income tax return, reflecting that he owed the IRS \$872 and was due a \$2,293 state refund. An IRS Form 1040-V Payment Voucher for the \$872 balance was attached to the return. He did not provide documentation to show that he filed the return or paid the outstanding balance. Applicant also admitted in his Answer that he untimely filed his 2016 federal and state taxes in July 2017, for which he expected a federal refund of \$1,055 and a state refund of \$2,093.<sup>10</sup>

SOR ¶ 1.k alleges that Applicant owed \$6,500 in delinquent federal taxes for tax year 2009. He admitted in his Answer that he had unpaid federal taxes for tax years 2009 as well as 2010. For tax year 2009, he stated in his background interview that he owed \$6,500 after the IRS discovered that his wife had been paid and issued a Form W-2 by the state for providing in-home health care for her father, for which taxes were not withheld. For tax year 2010, he indicated in his SCA that he owed \$6,500 due to an errant filing by his spouse, which caused his marital status to change and consequently required him to refile in 2012 or 2013. He stated in his Answer that he resolved the unpaid taxes for tax year 2009 through an installment agreement of \$93 monthly, and he was continuing to pay the outstanding balance for tax year 2010 in accordance with the agreement. He provided a 16-month payment history with the IRS reflecting that he made payments of \$93 monthly from November 2017 to January 2018, for a total of \$1,488. He stated in his Answer that he expected that his \$1,055 federal refund for his 2016 federal income taxes would be applied towards his outstanding 2010 taxes. He also expected to use his \$2,093 state refund to pay his bills. He did not provide

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<sup>8</sup> Items 3, 4, 9.

<sup>9</sup> Items 3, 4, 9; AE A.

<sup>10</sup> Items 3, 4, 9; AE A.

documentation to corroborate his claim that he resolved the unpaid taxes for tax year 2009.<sup>11</sup>

Applicant indicated in his background interview that he would contact a debt-consolidation service to assist him with resolving his delinquent debts. There is no evidence in the record of any financial counseling.<sup>12</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 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.

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<sup>11</sup> Items 3, 4, 9; AE A.

<sup>12</sup> Item 9; AE A.

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. 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 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 was unable to pay his debts. He also failed to timely file his 2015 federal and state tax returns and pay his federal taxes for tax year 2009. The evidence is sufficient to raise AG ¶¶ 19(a), 19(c), and 19(f) as 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;

(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's financial problems resulted from conditions beyond his control. However, he is required to show that he acted responsibly under his circumstances. The evidence in the record demonstrates that the garnishment order in SOR ¶ 1.h was issued to satisfy a judgment brought by the same creditor as SOR ¶ 1.c, and the order was terminated in March 2017, prior to the SOR. Neither debts are listed on the most recent credit report from December 2017. I therefore find SOR ¶¶ 1.c and 1.h for Applicant.

Applicant did not provide documentation to show that he has taken action to resolve, resolved, or disputed SOR ¶¶ 1.a, 1.b, 1.d, 1.e, 1.f, 1.g, or 1.k. The documentation he provided failed to show that he filed his federal and state tax returns for tax year 2015, as alleged in SOR ¶¶ 1.i and 1.j. At this time, there is insufficient evidence to conclude that his financial problems are unlikely to recur, and they continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(b) only partially applies. AG ¶¶ 20(a), 20(d), 20(e), and 20(g) do not apply.

### **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 this whole-person analysis.

The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant did not mitigate the security concerns arising under Guideline F, financial considerations.

### **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.b, 1.d - 1.g, 1.i - 1.k:	Against Applicant
Subparagraphs 1.c, 1.h:	For Applicant

### **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Candace Le'i Garcia  
Administrative Judge