



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



In the matter of:

ISCR Case No. 17-03211

Applicant for Security Clearance

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: *Pro se*

07/30/2018

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant was alleged to be delinquent on a Federal tax lien entered against him in November 2010, in the amount of \$17,180. He was also alleged to have filed Chapter 7 bankruptcy in January 2012. He is resolving his Federal tax debt and has no other delinquent accounts. Eligibility for access to classified information is granted.

**Statement of the Case**

On October 3, 2017, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on October 26, 2017, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on January 25, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on

February 6, 2018, scheduling the hearing for March 14, 2018. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified on his own behalf, and presented six documents, which I marked as Applicant's Exhibits (AE) A through C. They were admitted into evidence without objection. The record was left open for receipt of additional documentation until April 16, 2018. On March 25, 2018, Applicant timely submitted one additional document, which was marked and admitted without objection as AE D. DOHA received the transcript of the hearing (Tr.) on March 23, 2018.

### **Findings of Fact**

Applicant admitted the allegation in SOR ¶ 1.a, and denied the allegation in SOR ¶ 1.b. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 44-year-old employee of a defense contractor. He has been employed with the defense contractor since October 2014. He served in the Army National Guard from 1991 to 1994. He is married and has two minor sons. (GE 1; Tr. 26-30.)

Applicant attributed his financial difficulties to a business downturn. He purchased a 50% ownership share in a karate studio franchise in 2007. Due to unforeseen circumstances including the nationwide recession, the student enrollment at the studio declined and the business began losing money. His net income was gradually reduced to only \$400 per month. He started taking on credit card debt to make ends meet. He left the business franchise in January 2012. (GE 2; Tr. 21-43.)

Applicant felt burdened by his growing debt and spoke to a neighbor, who was an attorney about his situation. The attorney suggested he file for bankruptcy. In January 2012, Applicant filed Chapter 7 bankruptcy. He listed liabilities of \$278,053, which included dischargeable debt like a business loan of \$175,000, credit card debt, and medical debt, as well as non-dischargeable debt including his wife's student loans and \$18,964 debt owed to the IRS. He was granted a discharge in April 2012. (GE 3; Tr. 21-43.)

Applicant was alleged to be indebted on a Federal tax lien filed against him in November 2010 in the amount of \$17,180. This debt was the result of unpaid income taxes from 2007, 2008, and 2010. Applicant explained that when he first acquired the 50% business share in the karate studio in 2007, the franchise changed from paying him as an employee to paying him as a contractor and unbeknownst to him, stopped deducting payroll taxes from his checks. That led to an unexpected tax debt that Applicant could not afford to pay when he timely filed his 2007 Federal income tax return. As the financial problems with the business grew, Applicant also experienced difficulties paying his income taxes for 2008 and 2010. He had an installment plan with the IRS to resolve the 2007 tax delinquency, but with the business in trouble, he defaulted on that agreement. (Tr. 19-47.)

Applicant testified he has had an active installment agreement with the IRS since at least 2015. He makes monthly payments of \$278. IRS records reflect he reduced his Federal income tax debt to: \$740 for 2010; \$1,823 for 2008; and \$1,621 for 2007. He is current on his payment agreement. Applicant intends to continue making monthly payments until the debt is fully resolved. (GE 4; AE A; AE B; AE D; Tr. 50-54.)

Applicant's most recent credit report, dated September 8, 2017, reflected all consumer accounts were in good standing. He testified he files his Federal and state tax returns as required by law. He has sufficient withholdings deducted from his paycheck to resolve his annual income tax obligations. (GE 4; Tr. 54-58.)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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.

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.

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 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 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 relating to the guideline 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. Three 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.

A Federal tax lien was entered against Applicant in 2010 for unpaid income taxes, from 2007, 2008, and 2010, in the amount of \$17,180. He also availed himself of the protections of Chapter 7 bankruptcy in 2012, after experiencing significant financial difficulties due to a failed business. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (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; 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 were the result of a business downturn. That decline led Applicant to close his business and incur debt. He was unable to resolve his Federal tax debt and delinquent consumer debts at the time of the business' failure. He did his best to address the Federal tax debt, as it arose, but was unable to do so. He has been repaying his Federal tax delinquencies since at least 2015. He has reduced his debt from \$17,180 to \$4,184, through monthly payments of \$278. He has an established track record of making his monthly payments as agreed upon. He has no delinquent consumer debt. Under the circumstances, Applicant has acted responsibly. He made a good faith effort to repay his debts. Future financial problems are unlikely. All of the above mitigating conditions 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 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 those guidelines, but some warrant additional comment. Applicant has acted reasonable and responsibly in resolving his Federal tax debt and by discharging debt through the Chapter 7 bankruptcy, given the circumstances with his failed business. He now works as a full time employee and has sufficient income to cover his expenses. Future financial problems are unlikely. Overall, the record evidence leaves me without questions or doubts as to 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 ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	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.

---

Jennifer I. Goldstein  
Administrative Judge