



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 18-00621

**Appearances**

For Government: Erin P. Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

07/30/2018

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**Decision**

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KILMARTIN, Robert J., Administrative Judge:

Applicant has not mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on November 21, 2016. On March 22, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted 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 (AGs) implemented by DOD on June 8, 2017.

Applicant answered the SOR in April 2018, admitting all of the SOR allegations except for SOR ¶ 1.c, with explanations. Applicant attached an installment agreement with the IRS entered into on April 6, 2018 requiring payments of \$840 per month starting on May 15, 2018. He also attached to his answer a March 15, 2018 letter from a federal credit union showing a balance owed of \$31,035 and proposing discounted pay off

amounts; and two letters from collection agents for banks proposing similar discounted pay-off amounts. He admitted to owing a federal income tax lien and delinquent student loans for his son, as alleged in SOR ¶¶ 1.i and 1.j. Applicant also requested a hearing before an administrative judge. The case was assigned to me on May 17, 2018. On May 24, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 13, 2018. I convened the hearing as scheduled.

Government Exhibits (GE) 1 through 3 were admitted into evidence without objection. At the hearing, Applicant testified and submitted several documents, which were marked as Applicant's Exhibits (AE) A through C, and admitted without objection. DOHA received the transcript (Tr.) on June 21, 2018. I granted Applicant's request to leave the record open until June 27, 2018, so that he could provide substantiating documentation. (Tr. 56) He provided IRS tax transcripts and documents from his Chapter 13 bankruptcy plan.

### **Findings of Fact<sup>1</sup>**

Applicant is 55 years old. He graduated from high school in 1982 and obtained a bachelor's degree in 2013. Applicant has been employed as an engineering analyst for a federal contractor since August 2003. He currently earns \$95,200 per year in salary. He served honorably in the U.S. Navy from 1982 until he retired in 2003 as a (E-6) petty officer first class. He earned three Naval Achievement Medals (NAM) and other awards. Applicant has been married for 32 years and he reports five adult children. He also reported previous security clearances while he was on active duty since 1984, with no security issues.

SOR ¶ 1.a alleges a charged-off debt to a bank in the amount of \$67,781. This was a home equity loan obtained in 2006 and it became delinquent in 2015. (GE 2) Applicant admitted this delinquency in his Answer and testified that his financial problems started when his wife was forced out of her senior executive position with a bank in 2015. (Tr. 27) She earned \$100,000 per year in salary plus yearly bonuses. (Tr. 41) She now earns approximately \$10,000 a year selling insurance. (Tr. 44) Her agency is struggling. In 2014, Applicant withdrew \$75,000 from a 401k account to pay his daughter's college tuition. (Tr. 28) It is unclear why. Subsequently, he was penalized for early withdrawal and the IRS sent him a letter imputing this amount as additional income for tax year (TY) 2014. (Tr. 28) Applicant was unable to pay the additional taxes and a federal tax lien was filed against him for \$51,212 in March 2016, as alleged in SOR ¶ 1.i. (Tr. 28, GE 3)

Applicant testified that his taxable income for TY 2014 jumped to \$255,000 instead of the \$184,000 that his tax preparer had mistakenly reported to the IRS. (Tr. 28) He stated ". . . and I had a payment plan with them and then something happened and they cancelled my payment plan." (Tr. 28) Applicant had a similar penalty for under

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<sup>1</sup> Unless stated otherwise, the source of the information in this section is Applicant's November 21, 2016 Security Clearance Application (SCA).

reporting his taxable income to State A, and he still owes \$500 to the state. (Tr. 30) The tax preparation agency that Applicant used to prepare his TY 2014 federal and state tax returns did not advise him of this issue of early withdrawal penalties. (Tr. 31) It is now defunct. Applicant had an earlier state tax lien filed against him in 2009, and released in 2014, long before his wife lost her job. (Tr. 49, GE 3)

SOR ¶¶ 1.c and 1.j allege delinquent student loans placed for collections in the amounts of \$17,285 and \$13,440 respectively. Applicant testified that he cosigned for his son's student loans. (Tr. 44-46) It is unclear why. His son quit the college football team and walked away from a scholarship. Once his son defaulted on the student loans, the creditors were not amenable to negotiating payments and wanted the whole balance due. (Tr. 46) Although it appears that one of the student loans was assumed by the Department of Education, these delinquent debts are substantiated in the credit reports and remain unresolved. (GE 2 and 3)

SOR ¶ 1.b states that Applicant is indebted to a federal credit union in the approximate amount of \$31,035. Applicant admitted to this delinquency in his Answer and testified that he has not arranged a payment plan with this creditor or made any progress. (Tr. 63) It remains unresolved. Similarly, Applicant admitted to the delinquent credit card and consumer debts alleged in SOR ¶¶ 1.d through 1.h, in his Answer. The record was left open for two weeks specifically so that Applicant could produce documentary evidence of payment plans, or payments on his delinquent debts. (Tr. 59, 63) He has made no progress on payments, and presented only a Chapter 13 bankruptcy plan in post-hearing submissions. Applicant had financial counseling on May 11, 2018. (AE B) He provided a budget based on that counseling session, which was a prerequisite to filing for bankruptcy protection. (AE C)

Applicant has provided post-hearing documents including: IRS tax transcripts for TY 2010 through 2017; and documents from Applicant's Chapter 13 bankruptcy case filed on June 20, 2018, after the hearing. (AE D) The transcripts reflect a history of penalties for late filing of tax returns, inaccuracies, and average adjusted gross income (AGI) of \$159,500 per year during those years. The Chapter 13 bankruptcy plan requires Applicant to pay \$1,300 for 60 months to the trustee. It includes a payment of \$966 per month to the IRS for the federal tax lien from TY 2014. (AE D) It also includes payment of \$121 per month to the federal credit union. The transcripts also show sporadic payments of \$120 and \$68 in April 2016, and a series of \$240 payments for 15 successive months from late 2012 to early 2014 to the IRS. No explanation has been provided why these payments stopped on his tax debt, or why the IRS had to obtain a lien.

### **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, the adjudicative guidelines list potentially disqualifying

conditions and mitigating conditions, which are 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, these guidelines are applied 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, Appendix A, ¶ 2(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is 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, Appendix A, ¶ 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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 EO 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."

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to 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 abuse, 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 . . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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 taxes as required.

Applicant's delinquent debts alleged in the SOR are confirmed by his answer to the SOR and the credit reports. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(b), 19(c), and 19(f), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.<sup>2</sup> Applicant has not met that burden. He exercised poor judgment in withdrawing \$75,000 from a 401k account to pay his daughter's tuition. His wife was a bank executive. It would not have been difficult to get accurate advice about early withdrawal penalties. Similarly, he demonstrated poor judgment in cosigning his son's student loans. He has demonstrated tax problems going back to at least 2009, preceding his wife's job loss, and he earned average AGI of \$159,500 during TY 2010 to 2017. It is inexplicable why he could not pay his taxes before now.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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;

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<sup>2</sup> Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . , 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 appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant relied on a commercial service to prepare his tax returns in 2014-2015. Apparently, that reliance was misplaced and the tax preparer is defunct. Applicant's wife lost her lucrative position in 2015. To some extent, these conditions were beyond his control. However, he has not produced relevant and responsive documentation demonstrating that he acted responsibly under the circumstances. He was aware of tax problems going back to 2009, and the federal tax lien was entered in March 2016. Yet, more than two years later, he has not resolved the tax issues. His tax issues are longstanding and recurring.

Applicant has now filed a Chapter 13 bankruptcy case after his hearing. While this is evidence of a repayment plan, it is too recent for Applicant to have demonstrated compliance with that plan. A promise to pay the trustee is not a substitute for a documented track record of payments. Applicant has not met his burden to provide sufficient evidence to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur. He has made some modest progress pursuant to payment plans with state A and the IRS. However, these efforts only commenced in June 2018 when he filed the Chapter 13 bankruptcy plan. He still owes over \$50,000 to the IRS and \$500 to state A for delinquent taxes owed for many years. In short, his response has been too little, too late. He produced scant substantiating documents even after he was specifically requested to do so at the hearing. The delinquent tax debts alleged in the SOR have not been resolved. AG ¶¶ 20(a),(b),(d), and (g) apply only partially.

### **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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG, Appendix A, ¶ 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, Appendix A, ¶ 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 my whole-person analysis. Some of the factors in AG, Appendix A, ¶ 2(d) were addressed under that guideline. Applicant had a commendable military career of over 21 years, including multiple deployments. He received numerous medals and awards including three Navy Achievement Medals. As a contractor, he has made significant contributions to DOD for over the last 14 years. He has been married over 32 years and raised five children. Most importantly, Applicant has not addressed the specific allegations in the SOR and taken affirmative measures to resolve them. He has not met his burden of production.

Applicant's finances remain a security concern. There is insufficient evidence to conclude that Applicant's financial problems are under control. The record evidence leaves me with questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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 through 1.j:	Against Applicant

### **Conclusion**

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

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Robert J. Kilmartin  
Administrative Judge