



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-04687
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

11/15/2015

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns and mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On February 5, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and 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 September 1, 2006.

Applicant responded to the SOR on May 4, 2015, and requested a hearing before an administrative judge. The case was assigned to me on July 13, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 23, 2015, scheduling the hearing for August 20, 2015. The hearing was convened as

scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through F, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted an e-mail and documents that were marked AE G through I and admitted without objection. DOHA received the hearing transcript (Tr.) on August 31, 2015.

### **Findings of Fact**

Applicant is a 48-year-old employee of a defense contractor. He has worked for his current employer since December 2012. He is applying for a security clearance for the first time. He attended college for a period, but he did not earn a degree. He is married with two minor children.<sup>1</sup>

Applicant had periods of unemployment and underemployment. He fell behind on his federal taxes, but he paid them, and they are now current. He had an operation in about 2012 when he did not have medical insurance. He was unable to pay all his medical expenses.<sup>2</sup>

The SOR alleges three state tax liens totaling \$4,016, four defaulted student loans totaling \$3,460, and nine delinquent medical debts totaling \$32,357. Applicant admitted owing state income taxes, but he denied owing the amount listed in the liens. He admitted owing student loans, but he stated that he was paying the loans and the amount owed was much less than alleged in the SOR. He admitted owing the medical debts. Credit reports from February 2014, January 2015, and August 2015 also substantiate the debts.<sup>3</sup>

Applicant lived and worked in State A before he moved to a neighboring state (State B) in 2005. He has lived and worked in State B since he moved. State A filed tax liens against him in 2008 (\$1,418), 2009 (\$1,543), and 2010 (\$1,055). He thought that State A was indicating that he owed taxes for 2008, 2009, and 2010, years that he did not live or work in State A.<sup>4</sup>

Applicant submitted a notice dated February 20, 2015, from the State A tax authority indicating that he owed \$1,762 for tax year 2005, the last year he lived and worked in State A. The amount consisted of \$811 in taxes, and the remainder in penalties, interest, and collection fees. Post-hearing, he submitted an installment-agreement request and electronic-funds-transfer-authorization document from State A. The installment agreement called for monthly payments of \$75.<sup>5</sup>

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<sup>1</sup> Tr. at 70; GE 1, 2.

<sup>2</sup> Tr. at 44-45, 58, 68; GE 1, 2; AE A.

<sup>3</sup> Applicant's response to SOR; GE 2-4; AE F.

<sup>4</sup> Tr. at 32-44; Applicant's response to SOR; GE 1-4.

<sup>5</sup> AE B, H.

A credit report from February 2014 listed four delinquent student loans with balances totaling \$8,057. A January 2015 credit report listed the same four student loans (SOR ¶¶ 1.d-1.g) with balances totaling \$3,460. A credit report from August 2015 listed the same four student loans with balances totaling \$291. The accounts are almost paid.<sup>6</sup>

Applicant's initial plan to address his financial problems was to file bankruptcy. When he learned that his student loans would not be discharged, he decided to put the bankruptcy on hold until his student loans were paid. His income tax refunds have been withheld to pay his student loans. With his student loans paid or about to be paid, his next priority is his state taxes. He stated that he only owes State A for 2005, and that he will fully comply with his \$75 per month payment plan. He still plans to file bankruptcy to address his medical debts. He has not received formal financial counseling.<sup>7</sup>

Applicant submitted a Questionnaire for National Security Positions (SF 86) in January 2014. He used a blank form as a draft copy in which he handwrote his responses. He provided the form to his facility security officer (FSO) who typed the information into the electronic version of the SF 86. Applicant signed a written copy of the SF 86 without closely checking its accuracy.<sup>8</sup>

Applicant wrote in the draft copy that he had filed a Chapter 7 bankruptcy petition, and that it was "[i]n progress. Hasn't gone to court yet. Paying lawyer fees to proceed." What was typed into the actual SF 86 was that the bankruptcy was filed in "01/2013 (Estimated)" and "Bankruptcy in Progress, but will be fully discharged of all debts when it is completed." Applicant did not report the tax liens on the draft or completed SF 86.<sup>9</sup>

Applicant credibly denied intentionally falsifying the SF 86. He attempted to be honest about the bankruptcy. The incorrect answers were due to his misunderstanding of the process and the FSO inaccurately transcribing his handwritten responses. He informed his FSO that he owed federal taxes in the past, but they were paid. The FSO did not transfer that information to the SF 86. The FSO verified what occurred. Applicant did not report the state tax liens because he was unaware of them at the time.<sup>10</sup> After considering all the evidence, I find that Applicant did not intentionally provide false information on his SF 86.

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<sup>6</sup> Tr. at 30-32, 58-69; GE 2-4; AE C, D, F, I.

<sup>7</sup> Tr. at 29-32, 45-46, 68-71; GE 2-4; GE G.

<sup>8</sup> Tr. at 23-29, 46-58; GE 1; AE A, E.

<sup>9</sup> GE 1; AE A, E.

<sup>10</sup> Tr. at 23-29, 33, 46-58; GE ; AE A, E.

## 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 access to classified information will be resolved in favor of 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.

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 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had delinquent debts that he was unable to pay. The evidence is sufficient to raise the above 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's unemployment, underemployment, and surgery were events beyond his control. He paid the IRS his back taxes, and his student loans are almost paid. I found Applicant to be honest, but a bit confused about his finances. He thought that the

state tax liens indicated that he owed taxes for 2008, 2009, and 2010, years that he did not live or work in State A. I am satisfied that he is now on the right track, and that he will pay his back taxes and remaining student loans. He will likely resolve his medical debts through bankruptcy.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I find that Applicant established a plan to resolve his financial problems, and he has taken significant action to implement that plan. He acted responsibly and made a good-faith effort to pay his debts. There are clear indications that his financial problems are being resolved. They occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(b), 20(c), and 20(d) are applicable. AG ¶ 20(a) is not yet completely applicable because Applicant is still in the process of resolving his debts.

#### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not intentionally provide false information on his SF 86. AG ¶ 16(a) is not applicable. SOR ¶¶ 2.a, 2.b, and 2.c are concluded for Applicant.

## 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(a):

(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 Guidelines E and F in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns and 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a-1.p:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a-2.c:	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.

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Edward W. Loughran  
Administrative Judge