



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



In the matter of: )  
)  
) ISCR Case No. 14-04700  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel  
For Applicant: *Pro se*

06/23/2015

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant’s periods of unemployment contributed to his financial problems. Notwithstanding, he failed to establish a track record of financial responsibility and clear indications that he does not have a current financial problem, or that his financial problem is being resolved, or is under control. Financial considerations security concerns are not mitigated. He did not intentionally fail to disclose his failure to timely file his income tax return for 2012. Personal conduct security concerns are mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on April 8, 2014. On October 27, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) and Guideline E (personal conduct).<sup>1</sup> Applicant answered the SOR on December 15, 2014, and requested a hearing before an administrative judge. The case was assigned to me on April 3, 2015.

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<sup>1</sup> DOD acted 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines*

On April 17, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, scheduling Applicant's hearing for May 8, 2015. Applicant's hearing was held as scheduled. Department Counsel offered five exhibits into evidence (GE 1-5), and Applicant offered one exhibit into evidence (AE 1). All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on May 15, 2015.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in SOR ¶¶ 1.b through 1.h, and provided extenuating and mitigating information. He denied the remaining SOR allegations. His admissions are incorporated as findings of fact. After a thorough review of all the evidence, I make the following additional findings of fact:

Applicant is a 40-year-old electrician working for a federal contractor. He served on active duty from 1992 to 1995, and then for one year in the Army National Guard. He received a general discharge under honorable conditions because he missed some duty days while in the Army National Guard. While on active duty, he received an Army Service Ribbon and the National Defense Service Medal as well as several weapons qualification badges.

Applicant married in 1993 and divorced in 1995. He has four children, ages 12, 14, 16, and 22. The two youngest live with Applicant. He pays \$1,000 monthly in child support for the other two children.

From 2004 to 2011, Applicant earned about \$50,000 annually working for a city. In 2011, he worked as an electrician's apprentice for four months, and then he was unemployed for about five months. He was employed for another five months, and then unemployed until February 2013. (Tr. 27-28; GE 1)<sup>2</sup> He was hired in February 2013 by his current employer, a federal contractor. He has earned about \$36,000 annually.

Applicant disclosed in his 2014 SCA, Section 26, that he had financial problems, which included a car loan and a delinquent medical debt for his children. The subsequent background investigation revealed the nine charged-off or collection accounts alleged in the SOR, totaling \$1,999, and tax issues relating to his 2012 and 2013 federal and state tax returns. His history of financial problems is documented in his 2014 SCA; his April 2014 and March 2015 credit reports; and in his SOR response. The status of his SOR allegations is as follows:

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*for Determining Eligibility for Access to Classified Information (AG)*, implemented by the DOD on September 1, 2006.

<sup>2</sup> Applicant said he was unemployed for five months. Then he said he was unemployed from about June 2011 to February 2013, as indicated in his 2014 SCA. He later clarified that he worked four months and was laid off. He then worked five months for a different employer and was laid off for five months. (Tr. 42-43) He owed taxes for tax year 2012, so he must have had some income for that tax year.

SOR ¶ 1.a alleges the Internal Revenue Service (IRS) filed a tax lien in 2012 against Applicant for \$21,698. Applicant believes that the lien was filed because he did not timely file his 2012 federal tax return; however, it was probably for a previous tax year. Nevertheless, on May 14, 2013, the lien was released. Applicant is not sure about the amount owed to the IRS for tax year 2012; however, he believes it is less than \$1,000. He also owes about \$200 in state taxes for 2012.

Applicant failed to file his federal and state income tax returns for tax years 2012 and 2013. He testified that he had no particular reason for his failure to file his taxes, that he just lost track of time. In April 2013, Applicant filed his state and federal income tax returns for 2012. In October 2014, Applicant filed his federal and state income tax returns for 2013. He also owes some amount for his 2013 federal taxes; however, he believes it is less than \$1,000. He owes about \$200 in state taxes for the 2013 tax year. Applicant is not making payments to address his 2012 and 2013 federal and state income tax debt. He has not filed his 2014 federal income tax return because he has an extension until October 2015. Applicant made no efforts to contact the IRS or state tax office to establish a payment plan.

SOR ¶ 1.b is a vehicle repossession debt for \$402. Applicant purchased a vehicle in 2010, and in 2012, he was laid off and unable to afford the \$475 monthly payments. He redeemed the vehicle, and then it was repossessed again a month before his hearing. He was unsure about the amount of the debt. SOR ¶ 1.c is a charged-off debt for \$488. SOR ¶ 1.d is a collection debt owed on a credit card for \$262. SOR ¶ 1.e is a telecommunications-collection debt for \$498. SOR ¶ 1.f is a collection debt for \$160. SOR ¶ 1.g is an insurance-collection debt for \$103. SOR ¶ 1.h is a medical-collection debt for \$103.

Applicant claimed that these debts became delinquent during his periods of unemployment. Applicant has not made any payments to address these debts. He presented no evidence of contacts with creditors or of any other efforts to resolve the debts since he acquired them. He testified that he lacked the income to pay them. (Tr. 40-44)

In 1998, Applicant had a kidney infection. He went to an emergency room, and received treatment, resulting in a bill for \$1,700 that went to judgment. The judgment was renewed in December 2011. Applicant claimed that he was unaware of this debt, and he did not make any efforts to address this debt since 1998.

Applicant's SOR response indicated that he would pay or resolve the debts in SOR ¶¶ 1.c through 1.h by the end of December 2014. He testified that he failed to do so, because he lacked the income to pay these debts.

Applicant presented no evidence to show he participated in credit counseling. Although, he retained the services of an accountant to help him file his 2012 and 2013 income tax returns. Applicant has about \$230 available at the end of the month after paying his expenses. He has a commercial driver's license, and he is seeking a part-time driver's job to generate additional income to pay his debts. As of his hearing date,

he did not have a part-time job. He stated that he works long hours, and there are not many job opportunities because of the state of the U.S. economy.

Section 26 (Financial Record) of Applicant's April 8, 2014 SCA asked Applicant to disclose whether in the past seven years he had failed to file or pay Federal, state, or other taxes when required by law or ordinance. Applicant answered "No," and failed to disclose that he did not timely file his 2012 federal and state income tax returns and owed taxes. Applicant explained that he made "a clerical error" or a mistake. (Tr. 50) Applicant was aware that he had not timely filed his income tax returns for 2012 when he completed his 2014 SCA.

## **Policies**

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has

or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

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

Under Guideline F, the security concern is that 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. (AG ¶ 18)

Applicant's failure to timely file his federal and state 2012 and 2013 income tax returns, and his history of financial problems (established by his answer to the SOR, his testimony, and credit reports) raise the applicability of the following financial considerations disqualifying conditions: AG ¶ 19(a) "inability or unwillingness to satisfy debts," AG ¶ 19(c) "a history of not meeting financial obligations," and AG ¶ (g) "failure to file annual federal, state, or local income tax returns as required or the fraudulent filing of the same."

AG ¶ 20 lists five conditions that could mitigate the financial considerations security concerns:

- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.

None of the financial considerations mitigating conditions apply. Applicant's financial problems are recent and ongoing. I considered Applicant's periods of unemployment, which could have resulted in, or contributed to, his delinquent debts. These are circumstances that adversely affected his finances, and they were largely beyond his control. Notwithstanding, Applicant presented little evidence of any payments made, contacts with creditors, or of efforts to resolve his financial problems. Applicant's evidence failed to show that he was financially responsible under the circumstances.

Furthermore, Applicant provided no valid reason for his failure to timely file his 2012 and 2013 federal and state income tax returns. He stated that he just lost track of time. Additionally, he provided no documentary evidence to show that he made any payments to the IRS, or of any efforts to establish a payment plan. He also failed to submit documentary evidence of the extent of his debt to the IRS.

Applicant did not meet his burden of showing that for tax years 2012 and 2013 his income was below the IRS threshold for requiring a tax payer to file a tax return. In 2012, for example, the threshold for requiring filing of a tax return for a head of household under age 65 was \$13,050. See IRS website, <http://www.efile.com/tax/do-i-need-to-file-a-tax-return/>.

There is insufficient evidence to show that his financial problems "occurred under such circumstances that it is unlikely to recur and does not cast doubt on the [Applicant's] current reliability, trustworthiness, or good judgment" under AG ¶ 20(a). When Applicant filed his December 2013 SOR response, he said that he had made payments arrangements with some creditors and that he intended to pay some of his debts by the end of December 2014. Applicant has \$230 available monthly after paying his expenses to address his delinquent debt; however, he did not make any payments to any of the SOR creditors. He did not persuasively explain why he failed to make greater progress resolving his delinquent debts.

Applicant provided no information to show that he participated in financial counseling or that he follows a budget. The available information is insufficient to establish clear indications that he does not have a current financial problem, or that his financial problem is being resolved, or is under control. Financial considerations concerns are not mitigated.

SOR ¶ 1.a alleges the IRS filed a lien for \$21,698 against Applicant in November 2012. The lien was released on May 14, 2013. I have credited Applicant with mitigating SOR ¶ 1.a.

## **Personal Conduct**

AG ¶ 15 explains why personal conduct is a security concern stating:

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.

Applicant did not disclose in his 2014 SCA that he failed to timely file his 2012 federal and state income tax returns. (His period to file his 2013 income tax returned had not lapsed at the time he submitted the April 8, 2014 SCA.) AG ¶ 16 describes one condition that could raise a security concern and may be disqualifying in this case, "(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . ."

Applicant was candid and forthcoming discussing his financial problems during his security clearance hearing. He appears to be a disorganized person. He had difficulty explaining his financial history and current situation. Applicant credibly explained that he made "a clerical error" or a mistake. He did not intentionally attempt to mislead security officials about his taxes. Personal conduct concerns are mitigated.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guidelines F and E in my whole-person analysis.

Applicant is a 40-year-old electrician, who has worked for a federal contractor since February 2013. He served on active duty in the Army from 1992 to 1995 and then for one year in the Army National Guard. He received an Army Service Ribbon and the National Defense Service Medal as well as several weapons qualification badges.

Applicant's periods of unemployment contributed to his financial problems. Notwithstanding, he failed to establish that he acted responsibly under the circumstances and that he has a track record of financial responsibility. He provided no information to show that he participated in financial counseling. His evidence is insufficient to establish clear indications that he does not have a current financial problem, or that his financial problem is being resolved, or is under control.

Once a security concern arises regarding an Applicant's eligibility for a security clearance, there is a strong presumption against the grant or renewal of a security clearance. Unmitigated financial considerations concerns lead me to conclude that grant or reinstatement of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary to justify the award of a security clearance in the future. With more effort towards resolving his past-due debts and a track record of financial responsibility, he may well be able to demonstrate his eligibility for access to classified information.

Applicant's personal conduct security concerns are mitigated; however, financial considerations concerns are not mitigated. Access to classified information is denied.

### **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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b through 1.j:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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JUAN J. RIVERA  
Administrative Judge