



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



In the matter of:	)	
	)	
	)	ISCR Case No. 15-02073
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

06/29/2016

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his eligibility for a security clearance to work in the defense industry. Applicant failed to meet his burden to mitigate the financial concerns raised by a \$40,000 federal tax lien filed against him in December 2011. Clearance is denied.

**Statement of the Case**

On October 31, 2015, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance.

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<sup>1</sup> This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR and requested a decision without a hearing.<sup>2</sup> The Government submitted its written case on January 20, 2016. Applicant received a complete copy of the file of relevant material (FORM) and the Directive was provided to Applicant on February 1, 2016. Applicant responded with a short statement. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 2, and 4 through 6 without objection. The document marked for identification as GE 3, is excluded for the reasons explained below. The document provided by Applicant is admitted as Applicant's Exhibits (AE) A. The case was assigned to me on April 22, 2016.

### **Procedural Matters**

GE 3 is a report of investigation (ROI) summarizing the interview Applicant had with a background investigator during his June 2014 investigation. The interview, which contains adverse information, is not authenticated as required under ¶ E3.1.20 of the Directive. Footnote 1 of the FORM advises Applicant of that fact and further cautions Applicant that if he fails to object to the admission of the interview summary in his response to the FORM that his failure may be taken as a waiver of the authentication requirement. Applicant's failure to respond to Footnote 1 in the FORM does not demonstrate that he understands the concepts of authentication, or waiver and admissibility. It also does not establish that he understands the implications of waiving an objection to the admissibility of the interview. Accordingly, GE 3 is inadmissible and I have not considered it.

### **Findings of Fact**

Applicant, 50, has worked for his employer, a federal contractor since July 2013. This is his first application for a security clearance. On his security clearance application, dated April 2014, Applicant disclosed his failure to pay federal taxes in 1996 and 1997. The ensuing investigation revealed that Applicant had tax liens filed against him in September 2007 and in December 2011, as well as two delinquent accounts totaling \$396. In addition to the 2011 federal tax lien (\$40,976, SOR ¶ 1.a) and the two delinquent accounts (\$211 SOR ¶ 1.b, \$185 SOR ¶ 1.c), the SOR alleges that Applicant failed to file federal income tax returns for 2006, 2007, 2008, 2011, and 2013 (SOR ¶ 1.d). Applicant admits owing the December 2011 tax lien, but disputes the amount owed. He denies that he failed to file his federal tax returns as alleged, explaining that his filings were returned because of a missing signature. Applicant claims that he corrected the deficiencies on each return and refiled them. He admits owing the two delinquent accounts, which he promises to resolve.<sup>3</sup>

Applicant blames his financial issues on his divorce. Applicant married his ex-wife in 1999. The couple divorced in March 2010. During his marriage, Applicant was self-employed. He shuttered his company in September 2008, after 11 years of business. Applicant explains that he also had financial problems related to his business.

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<sup>2</sup> GE 2.

<sup>3</sup> GE 1-2, 4-6.

A review of Applicant's credit reports shows that in 2007, the IRS filed two liens against him for \$10,900 and \$3,200, respectively. Both liens were released in 2008. He admits having owed the \$40,976 in past-due taxes, but claims that he has been in a payment plan and the balance is now \$4,426. Applicant believes that after the IRS intercepts his income tax refund for 2015, the balance will be under \$3,000. He did not provide any corroborating documentation about the IRS payment plan or show any proof of ongoing payment.<sup>4</sup>

To date, Applicant has not resolved the two other delinquent accounts alleged in the SOR. Both accounts are for medical bills. Applicant claims that the bill alleged in SOR ¶ 1.b. belongs to his ex-wife and he is disputing it. He takes responsibility for the debt alleged in ¶ 1.c and reiterates his promise to pay the debt, which he hopes to do by the end of the year.<sup>5</sup>

### **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 used in evaluating an Applicant's eligibility for access to classified information.

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 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 protect 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 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).

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<sup>4</sup> GE 1-2,4; AE A.

<sup>5</sup> GE 1; AE A.

## Analysis

### Financial Considerations

Unresolved delinquent debt is a serious security concern because failure to “satisfy debts [or] 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.”<sup>6</sup>

The SOR alleges that Applicant failed to file federal income tax returns for 2006, 2007, 2008, 2011, and 2013. Applicant denies the allegation, which shifts the burden to the Government to establish the now-controverted fact.<sup>7</sup> The Government failed to present any information to establish a good-faith basis for the allegation or any evidence to substantiate it. Accordingly, SOR ¶ 1.d. is decided in Applicant’s favor. However, the record does support a finding against Applicant on the remaining SOR allegations. Applicant’s admissions and the three credit reports in the record establish that the IRS filed a \$40,976 lien against Applicant in December 2011 and that he owes two unpaid medical accounts. The Government has established its *prima facie* case that Applicant has a history of not paying his bills, and that he had an inability to do so.<sup>8</sup>

Although Applicant’s financial problems may have been caused by financial issues from the business he ran from 1997 to 2008 and the dissolution of his marriage, he has not provided any evidence to show that he has acted responsibly in light of his circumstances, that he is making a good-faith effort to address his delinquent debt, or that his finances are otherwise under control. Accordingly, none of the financial mitigating conditions apply.

Applicant failed to meet his burdens of production and persuasion. In requesting an administrative determination, Applicant chose to rely on the written record. In doing so, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, mitigate the financial concerns, or establish evidence of financial rehabilitation. The security concerns raised in the SOR remain. Following *Egan*<sup>9</sup> and the clearly-consistent standard, I resolve these doubts in favor of protecting national security.

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<sup>6</sup> AG ¶ 18.

<sup>7</sup> DOD Directive ¶ E3.1.14.

<sup>8</sup> AG ¶¶ 19(a), (c), and (g).

<sup>9</sup> *Navy v. Egan*, 484 U.S. 518 (1988).

### **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, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 1.a – 1.c:	Against Applicant
Subparagraph 1.d:	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. Clearance is denied.

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Nichole L. Noel  
Administrative Judge