



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 15-03205
	)	
Applicant for Security Clearance	)	

**Appearances**

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

05/25/2016

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant did not mitigate security concerns raised by his longstanding financial problems. Over the past decade, while employed as a defense contractor, he disregarded his financial obligations, including failing to timely file and pay his federal and state income taxes. His past-due federal tax debt totals approximately \$24,000. Notwithstanding the matters beyond Applicant’s control that contributed to his financial situation, he failed to provide sufficient information to mitigate security concerns raised by his financial circumstances. Clearance is denied.

**History of the Case**

On October 25, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that his circumstances raised security concerns under the financial considerations guideline.<sup>1</sup> Applicant answered the SOR and requested a determination based on the administrative (written) record.

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<sup>1</sup> This action was taken under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial*

On December 9, 2015, Department Counsel prepared his written case, a file of relevant material (FORM), and sent it to Applicant. The FORM contains the pleadings, Applicant's security clearance application (SCA), a summary of his security clearance background interview, and credit reports from 2012 and 2015. These items were admitted into the record, without objection, as Exhibits 1 – 5.

On December 13, 2015, Applicant filed his response to the FORM (Response). The Response was marked Exhibit (Ex.) 6 and, without objection, admitted into the record.<sup>2</sup> On March 3, 2016, I was assigned Applicant's case.

### **Findings of Fact**

Applicant, who is in his late thirties, is married. He has been with his current employer since 2006. He has held a security clearance since 2011.

Applicant's financial problems date back to around 1999 when his grandmother, who was living with his mother and paying about half of the family's household expenses, passed away. Applicant left college and found work to help support his mother. His mother was unemployed from 2003 to 2007. Applicant was employed at a low-paying retail job from 2002 to 2005, and then was unemployed for about five months before securing his current job in 2006. At about the same time, Applicant's mother filed for Chapter 13 bankruptcy to save the family home from foreclosure. Applicant helped his mother pay the \$1,200 monthly bankruptcy payments and the bankruptcy was completed in approximately 2012. (Ex. 2; Ex. 3 at 5-9; Ex. 6.E.)

Applicant, while financially assisting his mother from 2006 to 2012, disregarded his own financial obligations. Notably, he did not file his federal or state income tax returns from 2007 to 2011, incurring a combined federal and state tax debt for those years totaling approximately \$24,000. He disclosed this adverse financial information on his 2012 SCA. During the course of his background interview, Applicant stated that, after his mother's Chapter 13 bankruptcy case was completed, he contacted the IRS and the state and entered into an installment agreement to resolve his past-due federal and state taxes. Applicant notes in his Answer that he also owes federal taxes for 2012 and 2013, but worked out a payment arrangement with the IRS to resolve this additional federal tax debt. (Ex. 1 – Ex. 3.)

Applicant submitted documents with his Response reflecting payments to the IRS to resolve past-due federal taxes. Applicant also submitted notices from the IRS, noting that he owed a combined total of nearly \$24,000 for tax years 2009 – 2013. (Ex. 6.A; Ex. 6.B.) He did not submit documentation to corroborate his past assertions that he

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*Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

<sup>2</sup> With the Response, Applicant submitted seven attachments, which have been marked Ex. 6.A – Ex. 6.G and are admitted into the record without objection. Department Counsel's memorandum noting the Government had no objection to the Response is included in the record as Appellate Exhibit I.

addressed his state tax situation. Applicant's failure to timely file and pay his federal and state income taxes are referenced at SOR 1.a through 1.c.<sup>3</sup>

Applicant also incurred a number of other past-due debts, including defaulting on his federal student loans. In 2011, Applicant contacted the creditors holding his student loans and agreed to a repayment plan. He provided documentation detailing student loan payments. Notwithstanding these payments, Applicant's student loan balance has increased from the approximate \$12,000, alleged in the SOR, to about \$14,000. Applicant's federal student loans remain in collection status. He hopes to consolidate and rehabilitate his student loans in the near future. (Ex. 1; Ex. 5; Ex. 6.C; Ex. 6.D) Applicant's delinquent federal student loans are referenced at SOR 1.d through 1.g.

The SOR also alleges at 1.h and 1.i two judgments filed against Applicant in 2009 and 2006, respectively. Applicant denies these judgments, stating he settled and paid both judgments. He provided letters from 2011 addressed to both judgment creditors and copies of the cashier's checks drawn on his mother's bank account. He admits the \$748 collection account referenced in SOR 1.j and claims it is paid, but did not provide documentation to substantiate his claim. He denies the \$300 medical collection account referenced in SOR 1.k. Applicant's 2015 credit report does not reflect the debts referenced in SOR 1.h – 1.k.

Applicant did not provide information regarding his current finances or job performance. He also did not provide information regarding whether he has received financial counseling but, as of the 2012 background interview, he had not received such counseling. His mother moved in with him following a natural disaster that resulted in the loss of her home.

## **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

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<sup>3</sup> The SOR allegations cover the period of 2007 – 2009, and not the additional federal tax debt for 2012 and 2013. This additional federal tax debt is only being considered in assessing Applicant's mitigation case and whole-person factors.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. 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 an 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.

## **Analysis**

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

The security concern under this guideline is explained at 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.

Applicant’s failure to timely file and pay his federal and state taxes from 2007 to 2011 and his delinquent federal student loans raise the financial considerations security concern.<sup>4</sup> The record evidence also establishes the disqualifying conditions at:

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<sup>4</sup> The record evidence tends to indicate that the debts listed at 1.h – 1.i were resolved in the past and, in any case, the security concerns raised by these debts is relatively minor when compared to the concerns raised by the other SOR allegations.

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(g): failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant bears the burden of mitigating the security concerns raised by the evidence. The financial considerations guideline lists a number of conditions that could mitigate the concern. The following mitigating conditions are most relevant:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's finances were impacted by his own unemployment and underemployment, and his mother's unemployment. His decision after gaining full-time employment to financially assist his mother is both understandable and commendable. Notwithstanding this favorable information, Applicant's repeated failure to file and pay his taxes raises serious security concerns. He did contact the IRS four years ago to resolve his tax situation and has resolved his past-due taxes for 2007 and 2008. Yet, his overall tax debt has remained the same, as he did not pay his federal income taxes for 2012 and 2013. He provided no documentation to corroborate his past statements that he addressed his state tax situation. In short, Applicant's tax debts are substantial and remain an ongoing security concern.<sup>5</sup> Furthermore, in light of Applicant's failure to pay his 2012 and 2013 federal taxes when due, he failed to establish that similar security-significant issues are unlikely to recur. See, e.g., ISCR Case No. 14-02694 (App. Bd.

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<sup>5</sup> ISCR Case 12-09545 at 3 (App. Bd. Dec. 21, 2015) ("A person who fails repeatedly to fulfill his or her legal obligations, such as filing and paying taxes, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information."). See also, ISCR Case No. 14-04752 at 2 (App. Bd. May 17, 2016) ("Failure to comply with Federal and/or state tax laws suggests that an applicant has a problem with abiding by well-established Government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information.").

Dec. 9, 2015) (notwithstanding installment agreement to resolve taxes owed for prior years, adverse decision sustained, in part, because applicant failed to timely pay federal taxes in subsequent years).

Additionally, despite full-time employment for the past 10 years, Applicant's federal student loan accounts remain in collection. Applicant provided no information regarding his current finances and the record is silent as to whether he has received financial counseling. On the basis of this record, Applicant failed to clearly establish that his financial situation is under control.

Individuals applying for a security clearance are not required to be debt free, nor are they required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present documentation to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of delinquent debt. Moreover, they bear the burden of showing that they manage their finances in a manner expected of those granted access to classified information.<sup>6</sup> Applicant failed to meet his burden of persuasion. Specifically, I find that AG ¶¶ 20(a) and 20(b) partially apply and 20(d) fully applies, but are insufficient to mitigate the financial considerations security concern.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of all the relevant circumstances, to include the factors listed at AG ¶ 2(a). I hereby incorporate my comments under Guideline F and highlight some additional whole-person factors.

I gave due consideration to all the favorable and extenuating factors in this case, including Applicant's honesty about his financial situation throughout the course of the security clearance process and that he has held a clearance for at least five years without apparent issue except for those set forth in the SOR. Furthermore, his finances were heavily impacted by his decision to assist his mother, which raises favorable inferences regarding his overall character.

On the other hand, Applicant's decision to neglect his own financial responsibilities and obligations, notably, his obligation to file and pay his taxes and federal student loan obligation, raises unresolved questions about his reliability and the other pertinent character traits required of those granted access to classified information. Accordingly, notwithstanding the favorable information in the record, the security concerns raised by Applicant's finances remain. Overall, the record evidence leaves me with doubts about his present eligibility for access to classified information.

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<sup>6</sup> ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

### **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 (Financial Considerations)	AGAINST APPLICANT
Subparagraphs 1.a – 1.g:	Against Applicant
Subparagraphs 1.h – 1.i:	For Applicant

### **Conclusion**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge