



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



In the matter of: )  
 )  
 [Name Redacted] ) ISCR Case No. 17-00824  
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 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Liam Apostol, Esquire, Department Counsel  
For Applicant: *Pro se*  
05/28/2019

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**Decision**

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HOGAN, Erin C., Administrative Judge:

On July 5, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on June 8, 2017.

On July 18, 2017, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on December 13, 2017. The case was assigned to me on August 15, 2018. The hearing was initially scheduled for February 27, 2019. Applicant's request for a delay was granted. On February 26, 2019, a Notice of Hearing was issued scheduling the hearing for April 3, 2019. The hearing was held as scheduled. During the hearing, the Government offered ten exhibits which were admitted as Government Exhibits (Gov) 1 – 10. A File of Relevant Material, dated August 23, 2017, was not admitted as evidence, but was marked as HE II. Applicant testified and offered 16 exhibits which were admitted as Applicant Exhibits (AE) A - P. The transcript (Tr.) was received on April 15, 2019. Based

upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is a 43-year-old employee of a Department of Defense contractor seeking to maintain a security clearance. He has worked for his current employer since August 2017. He served on active duty in the U.S. Army from October 1994 to December 2003. He separated as an E-5 with an honorable discharge. Between December 2010 and December 2011, Applicant was unemployed. In 2010, he lost his job as a result of a reckless driving offense, which resulted in him serving 15 days in jail. During this period of unemployment, he lived off savings and took college courses. Between 2011 and 2018, he served in the Air National Guard. He has worked for various DoD contractors as well as other jobs. He is a high school graduate, has attended college courses, but does not have a degree. He is single and has no children. (Tr. 32- 38; Gov 1; Gov 2; Gov 9)

Applicant has held security clearances in the past. On February 4, 2000, the Army issued an SOR and notified Applicant of their intent to deny his access to sensitive compartmented information (SCI) and classified information for financial reasons. Applicant submitted a response to the SOR. Based on his answer, the Army Central Clearance Facility (CCF) reinstated his security clearance and access to SCI on June 7, 2000. The Army CCF warned Applicant that retention of his SCI access eligibility and security clearance was contingent upon Applicant not incurring any further financial mismanagement or other personal behavior that would render him ineligible. (Gov 8)

On February 14, 2016, Applicant submitted a security clearance application as part of a periodic reinvestigation. In "Section 26 – Financial Record" of the application, he disclosed a delinquent debt owed to a homeowner's association; delinquent student loans; a delinquent car loan; and a delinquent military exchange account. (Gov 1, section 26)

A subsequent security clearance background investigation resulted in the following SOR allegations: failure to file federal and state income tax returns for tax years 2012, 2013, 2014 and 2015 (SOR ¶¶ 1.a: Gov 2 at 10, 15); a delinquent federal tax debt in the amount of \$7,561 for tax year 2015 (SOR ¶ 1.b: Gov 2 at 10, 15, 19); a \$995 delinquent state income tax debt for tax year 2015 (SOR ¶ 1.c: AE A at 6, 13, 14, 36); a mortgage account that was delinquent in the amount of \$3,596, with an approximate total balance of \$287,763 (SOR ¶ 1.d: Gov 1 at 11; Gov 3 at 1; Gov 4 at 7); a \$5,065 judgment from a home owner's association filed in October 2014 (SOR ¶ 1.e: Gov 1 at 12; Gov 4 at 4); a \$2,830 judgment filed in May 2012 (SOR ¶ 1.f: Gov 1 at 10; Gov 4 at 4); a \$6,917 charged-off car loan (SOR ¶ 1.g: Gov 1 at 2; Gov 3 at 2); and a \$2,948 charged-off account motorcycle loan. (SOR ¶ 1.h: Gov 3 at 2).

Applicant admits that he did not file his federal and state income tax returns for tax years 2012, 2013, 2014, and 2015. Applicant states that he got into tax problems because of financial problems from being unemployed, trying to maintain his mortgage payments, and the stress from his mother and his guardian both suffering from terminal illnesses at the same time. Applicant testified he was stressed out about his mother's illness. He focused on his mother, forgot about paying bills, and did not pay attention to the mail. His mother passed away in 2016. (Tr. 39-40; Gov 2)

Applicant's federal income tax returns for tax years 2013, 2014, and 2015 were filed on March 11, 2017, a few days before submitting his answer to DOHA interrogatories on March 13, 2017. In his answer to interrogatories, Applicant stated: "I do intend to pay all the monies owed to the IRS with the payment plan, as discussed with the IRS. I plan on filing on time this year for my 2016 taxes. Please allow me to remedy these issues; I will be able to do so. I can provide the payment agreement once I receive it." (Gov 2 at 15)

Applicant is still attempting to file his 2012 federal tax return. He obtained his W-2 forms for tax years 2013-2015 online. The Internal Revenue Service (IRS) did not post the 2012 W-2 online. Applicant has to contact the IRS directly in order to get his W-2 for 2012. Applicant received refunds for tax years 2013 and 2014. He owes federal income taxes for tax year 2015. He originally owed around \$7,561. The balance is now \$3,324. He was on a payment agreement for a period of time. The IRS did not allow him to continue with the payment agreement because he did not timely file his 2016 and 2017 income tax returns. (Tr. 41-44; AE A; AE B)

Applicant's federal tax returns for tax years 2016 and 2017 were filed approximately one week before the hearing. He owes about \$4,651 for tax year 2016 and is expecting a refund for tax year 2017 of \$2,723. He also expects a refund for tax year 2018 of 5,252. The IRS will apply the refunds towards the taxes he owes for 2015 and 2016. Applicant did not timely file his federal tax returns for 2016 and 2017 because he was dealing with issues with his mortgage and was attending school. His house payment increased from \$1,600 to \$2,200 and he was trying to keep his house. (Tr. 45-47; AE L; AE M; AE N)

Applicant's 2010 reckless driving offense, his previous financial issues that raised a security concern in 2000, his failure to timely file his 2016 and 2017 federal income tax returns, and his \$4,651 federal tax debt for tax year 2016 were not alleged in the SOR as disqualifying conduct. I considered these facts when evaluating evidence of extenuation, mitigation, or changed circumstances, to consider whether an applicant has demonstrated successful rehabilitation, or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct 26, 2016)

Regarding the state income tax returns, Applicant filed his state income tax returns for tax years 2013, 2014, and 2015 in March 2017. He has not filed his 2012 state income tax return. His 2016, 2017 and 2018 state tax returns were filed with his federal tax returns in early April 2019. Applicant owes \$955 in state income taxes for tax

year 2015. He owes \$453 in state income taxes for tax year 2016. He anticipates receiving a refund of \$862 for tax year 2017 and a refund of \$1,285 for tax year 2018. He anticipates the refunds will be applied towards his state tax debt. He anticipates that all state and federal taxes owed will be paid by the end of 2019. (Tr. 48-51; AE A; AE C; AEL; AE M; AE N)

The status of the SOR debts other than the tax debts are:

SOR ¶ 1.d: \$3,596 delinquent home mortgage account: Applicant purchased the house in January 2010. He tried to keep up with his mortgage payments, but the mortgage went to foreclosure in August 2018. Applicant claims he owes nothing because the house sold for more than the mortgage balance. (Tr. 51-52, 77; AE A at 16-17; AE C)

SOR ¶ 1.e: \$5,065 judgment owed to a homeowner's association (HOA): Applicant failed to pay the monthly HOA fees of \$95. The HOA would add a \$25 late fee each month that he was late. The balance of the judgment includes attorney's fees. Applicant's paycheck was garnished \$194.37. In total, approximately \$2,493 was garnished. The remaining balance is around \$3,400. In March 2019, Applicant agreed to pay \$500 monthly towards the debt. He did not provide proof of payments made in April 2019 in accordance with the payment plan. (Tr. 54-58; AE A at 19-23; AE F)

SOR ¶ 1.f: \$2,830 judgment entered in 2012: Applicant testified that this was for a watch that he bought on credit for \$3,000 in 2010. Applicant satisfied this judgment. (Tr. 59-61; AE A at 25-26; AE H at 22-23)

SOR ¶ 1.g: \$6,917 car loan that was charged off: Applicant purchased this car in late 2009. Applicant reduced the balance to \$3,416. He is still attempting to settle this account. He last contacted the debtor in 2017 in an attempt to settle the account. Status remains unpaid. (Tr. 63-65; AE A at 28-29)

SOR ¶¶ 1.h: \$2,948 motorcycle loan that was charged off: Applicant purchased this motorcycle in February 2010. He paid this account in April 2017. (Tr. 63-64; AE A at 30-31; AE G; AE H at 20)

Although not alleged in the SOR, Applicant also has a delinquent military exchange debt. He currently is making payments towards this debt. (Tr. 66; AE 10)

Applicant is currently staying with a friend. He has been paying his debts for about a year. He does not owe any other debts. He has not made any major purchases. His net monthly income is \$3,500. Applicant applies most of his income to his debts. He timely pays \$349 towards his student loan debt. He has not attended recent financial counseling. When he encountered finance-related security clearance issues in early 2000, his command sent him to financial counseling. The financial counseling helped him organize his bills. Applicant has not vacationed in years. He intends to make

payments towards all of his remaining debts monthly until they are paid in full. (Tr. 68-76)

## **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 useful 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 over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(a), 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 for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 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 the applicant may deliberately or inadvertently fail to protect or 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **GUIDELINE F: Financial Considerations**

The security concern relating to the guideline for 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 misuse, 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (a) inability to satisfy debts;
- (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 tax as required.

Applicant has a history of financial problems since around 2011. He failed to timely file his state and federal income tax returns from 2012 to 2015. He owes state and federal taxes from tax year 2015. He was unable to pay his mortgage resulting in foreclosure in August 2018. He incurred a significant debt to his HOA resulting in a \$5,065 judgment entered against him in 2012. Another \$2,830 judgment was entered against him for failure to make payments towards a loan to purchase an expensive watch. Finally, two loans he took out to purchase an automobile in late 2009 and a motorcycle in February 2010, resulted in charged-off accounts, in the amounts of \$6,917 and \$2,948. The total approximate amount of the debts alleged in the SOR including the 2015 state and federal tax debts, but not including the mortgage, is \$26,316. AG ¶¶ 19(a), 19(c), and 19(f) apply to Applicant's case.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until

evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5)

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control:

(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 the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) does not apply because Applicant's financial problems are ongoing. While Applicant has filed his federal and state tax returns for tax years 2013, 2014 and 2015, he still owes taxes for 2015. He has not filed his tax returns for 2012. Applicant still owes a significant debt to his HOA, and to a bank for an automobile loan. Considering Applicant's history of financial problems, it is too soon to conclude that his financial problems are unlikely to recur. His conduct towards resolving his tax debts was not proactive. As a contract employee entrusted with a security clearance, Applicant

should have been aware of his duty to file and pay his federal and state income taxes in a timely manner. He almost lost his security clearance in 2000 because of financial issues. He was given another chance, but continued to have financial issues. Applicant's history of financial irresponsibility and his failure to file state and federal tax returns in a timely manner over a six-year period raises questions about his reliability, trustworthiness, and good judgment.

AG ¶ 20(b) partially applies because Applicant's financial situation was adversely affected by his under-employment while a full-time student and his one year period of unemployment between late 2010 to 2011. However, Applicant's job loss was the result of his reckless driving offense in May 2010. This mitigating condition is given less weight. I considered that Applicant dealt with the added stress of his mother's terminal illness and the death of his guardian. Despite these challenges, one must still follow through with one's financial obligations. This mitigating condition is given less weight because I cannot conclude Applicant acted responsibly under the circumstances. Applicant has been continuously employed since 2012, yet he did not timely file his federal and state income tax returns from 2012 to 2017. (The 2016 and 2017 federal and state income tax returns can be considered under matters of mitigation, even though they were not alleged in the SOR.) I cannot conclude Applicant acted responsibly under the circumstances with regard to his delinquent debts and his tax issues.

AG ¶ 20(c) does not apply. Applicant attended financial counseling around 2000, when he encountered financial issues when he served in the Air National Guard. He was notified that he was about to lose his security clearance and access to SCI. His command gave him a chance and sent him to financial counseling. His security clearance and SCI access were reinstated on the condition that he keep his financial issues under control. Applicant did not take this warning to heart and has continued to encounter financial problems.

AG ¶ 20(d) partially applies towards the allegations in SOR ¶ 1.a, 1.d, 1.f and 1.h. Applicant filed his late federal and state income tax returns for tax years 2013, 2014, and 2015. Credit is also given to Applicant regarding his mortgage and the accounts that he has paid and settled. However, he has not filed his federal and state tax returns for 2012, still owes a balance on his state and federal tax returns for tax years 2015 and 2016, and continued to be late filing his federal and state income tax returns for 2016 and 2017, filing them one week before the hearing with no reasonable explanation for the delay. I cannot conclude that Applicant has made a good-faith effort regarding his tax debts. His state and federal tax debts remain unresolved.

AG ¶ 20(g) does not apply. With regard to Applicant's federal tax debts, the recent emphasis of the DOHA Appeal Board on security concerns arising from tax cases is instructive. ISCR Case No. 17-01807 (App. Bd. Mar. 7, 2018) states:

The mere filing of delinquent tax returns . . . does not compel a Judge to issue a favorable decision. As with the application of any mitigating



condition, the Judge must examine the record evidence and decide whether the favorable evidence outweighs the unfavorable evidence or *vice versa*. The timing of corrective action is an appropriate factor for the Judge to consider in the application of mitigating condition 20(g) as well as in considering aspects of other overlapping mitigating condition[s].

See also ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016) (reversing grant of security clearance and stating, “His delay in taking action to resolve his tax deficiency for years and then taking action only after his security clearance was in jeopardy undercuts a determination that Applicant has rehabilitated himself and does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation’s secrets.”); ISCR Case No. 14-01894 at 2-6 (App. Bd. Aug. 18, 2015) (reversing grant of a security clearance and emphasizing the applicant’s failure to timely file and pay taxes); ISCR Case No. 12-05053 at 4 (App. Bd. Oct. 30, 2014) (reversing grant of a security clearance, noting not all tax returns filed). See also ISCR Case No. 14-03358 at 3, 5 (App. Bd. Oct. 9, 2015) (reversing grant of a security clearance, and stating “A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly, failure to honor other obligations to the Government has a direct bearing on an applicant’s reliability, trustworthiness, and ability to protect classified information.”).

At the close of the record, Applicant had not filed his state and federal tax returns for 2012, even though he had sufficient time to do so. He did not consistently make payments towards his 2015 federal and state tax debts. He failed to timely file his federal and state tax returns for tax years 2016 and 2017. Applicant claims that his state and federal tax debts will be resolved by applying refunds and possible payments if needed by the end of 2019. A promise to pay or resolve an issue in the future does not mitigate the security concerns raised by Applicant’s tax situation. Applicant’s history of consistently failing to timely file his federal and state tax returns over a six-year period is given more weight than his last minute attempts to resolve his tax issues and other debts.

### **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 ¶ 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 ¶ 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 considered Applicant's career with federal contractors. I considered his honorable service in the United States Army from 1994 to 2003, and his service in the Air National Guard from 2011 to 2018.

I considered Applicant's one year period of unemployment from 2010 to 2011 and several years of under-employment adversely affected his household finances. I also considered Applicant was laid off because of his own misconduct. He continued to ignore his financial obligations by failing to timely file his state and federal income tax returns for tax years 2012 – 2015. Despite Applicant's expressed intentions to timely file his income tax returns for tax year 2016, he did not do so. He also failed to timely file his 2017 income tax returns. While Applicant filed all of his federal and state tax returns (with the exception of tax year 2012) a few weeks before the hearing, significant tax debt remained at the close of the record. Applicant was not proactive in bringing his state and federal tax situation under control. He has resolved several of his debts, but several of the debts remain unresolved at the close of the record. While not alleged in the SOR, during the hearing, it was discovered that Applicant encountered financial issues in the past which adversely affected his security clearance. He was given another chance with the warning that he should keep his financial situation under control. Despite this warning, Applicant continued to demonstrate a pattern of financial irresponsibility. Security concerns under financial considerations are not mitigated.

### **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 -1.c, 1.e, and 1.g:	Against Applicant
Subparagraphs 1.d, 1.f, and 1.h:	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 security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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ERIN C. HOGAN  
Administrative Judge