



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



In the matter of: )  
)  
) ISCR Case No. 17-03036  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Raashid S. Williams, Esq., Department Counsel  
For Applicant: *Pro se*

05/09/2019

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant’s financial problems could be attributed, in part, to circumstances beyond his control. He resolved one account and has been paying on the other. He filed both of his overdue returns, and intends to establish a payment agreement with the IRS and his state if he owes taxes. He has been acting responsibly under the circumstances. His financial problems are being resolved and are under control. Clearance granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on April 5, 2016, seeking a clearance required for his position with a federal contractor. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued him a Statement of Reasons (SOR) on October 27, 2017, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on December 16, 2017, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

DOHA assigned the case to me on July 19, 2018, and issued a notice of appearance on January 22, 2019, convening a hearing on February 13, 2019. At the

hearing, the Government offered four exhibits (GE 1 through 4). Applicant testified, presented the testimony of his wife, and submitted two exhibits (AE 1 and 2). After the hearing, Applicant timely submitted a set of documents (AE 3), which included a letter from his wife's psychologist, and documents from his tax preparer indicating that Applicant filed and the IRS accepted his income tax returns for tax years 2016 through 2018. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on February 26, 2019.

### **Procedural Issues**

After the hearing, I amended the SOR *sua sponte* by adding the following two paragraphs: "1.c. You failed to file federal and state income tax returns for tax years 2016 and 2017." and "1.d. You failed to pay federal and state taxes for tax years 2016 and 2017." (See Tr. 60-63, and Hearing Exhibit (HE) 1 (email to Applicant with the amended allegations.) The SOR was amended to conform it to the evidence admitted. (See Directive, Enclosure 3 (Additional Procedural Guidance), Paragraph E3.1.17.)

Applicant was given the option to request a hearing to address the new SOR allegations or to submit documentary evidence to mitigate or explain the allegations. He elected to submit additional documentary evidence (AE 3) and did not request a hearing (AE 4).

### **Findings of Fact**

The SOR alleged that Applicant was indebted to a bank in the amount of \$19,982 for an account that was charged-off (SOR ¶ 1.a), and that he was indebted in the amount of \$7,012 on an account placed for collection (SOR ¶ 1.b). Applicant denied both allegations because he was making payments on both accounts.

SOR ¶ 1.c alleged that Applicant failed to timely file federal and state income tax returns for tax years 2016 and 2017; and that he failed to pay federal and state income taxes for the same tax years (SOR ¶ 1.d). Applicant admitted both SOR tax allegations. (AE 4) His admissions to the SOR and at his hearing are incorporated herein as findings of fact. After a thorough review of the record evidence, including his testimony and all evidence admitted, I make the following additional findings of fact:

Applicant is a 60-year-old employee of a federal contractor. He did not complete high school and has no further formal education. He married his wife in 1990, and he has two sons, ages 26 and 23. (Tr. 18) His wife has been managing the family finances, including the filing of their joint income tax returns.

Applicant has worked for different federal contractors since 1997. His current employer and security sponsor hired him in July 2017. This is his first clearance application. Apparently, he held an interim secret clearance between July and October 2017.

Applicant's financial problems started when his wife was laid off in 2012, and she was unemployed or underemployed for two years. During that period, she held some part-time jobs as an independent contractor. Notwithstanding, their combined earnings were insufficient to pay for their accumulated debts and living expenses and many of their accounts became delinquent. (Tr. 12-13) Applicant's sister-in-law and friends helped them financially during this period of financial distress.

Applicant and his wife's main concern during this period of financial difficulty was not to lose their home, and paying their mortgage was their first priority. The remaining financial obligations were paid after the mortgage was paid based on their respective priorities. Applicant and his wife established payment agreements with their creditors to pay their delinquent debts. I note that the July 2017 credit report (GE 2), shows other charged-off or in collection accounts that were not alleged in the SOR. At least three of those accounts were paid by Applicant after they were charged off. The accounts were paid well before the issuance of the SOR.

Concerning SOR ¶ 1.a, the documentary evidence shows that Applicant and his wife had at least two accounts with the creditor. They established a payment agreement for one account in August 2014, and made consecutive payments until the debt was paid off in 2015. For the second account, it appears they established a payment agreement on or about April 2016, and have been making consecutive payments since. (See documents attached to SOR answer.)

Regarding SOR ¶ 1.b, Applicant and his spouse entered into a payment agreement with the creditor in December 2017. (See documents attached to SOR answer.) They credibly testified that they have been making \$50 monthly payments, and anticipate increasing their payments when other debts are satisfied.

In addition to his wife's unemployment period, Applicant identified other circumstances that hindered their ability to pay their debts in a more timely fashion. In January 2018, Applicant's wife withdrew \$10,000 from her retirement account to pay emergency expenses cause by a burst water heater and a subsequently flooded basement, and a burst sewage pipe that was also flooding the underneath of the house. Additionally, they had several vehicle repairs, and had to purchase a new refrigerator and a microwave oven because the old ones stopped working.

At his hearing, Applicant testified that he and his wife had not filed his 2016 and 2017 income tax returns (SOR ¶ 1.c). They did not file their 2016 income tax return because his wife was in charge of the household finances, including completing and filing their income tax returns, and she procrastinated. Applicant's wife struggles with a trauma history and related anxiety symptoms that impede her ability to focus and cause her to use avoidance as a coping mechanism. Apparently, their financial problems cause anxiety to her, because they owed taxes and did not have the money to pay the tax owed. Applicant's wife has been participating in weekly counseling since 2013. In her psychologist's opinion, it is likely that her anxiety was a significant contributing factor to her not completing her taxes on time. (AE 3) Concerning their 2017 income tax

return, they did not file it because they believed they needed to file his 2016 return first to avoid raising an IRS audit flag.

This being Applicant's first clearance application, he was not aware of the security concerns raised by his financial problems and by not filing his tax returns on time. After the hearing, Applicant submitted documentary evidence showing that he and his wife filed their 2016, 2017, and 2018 income tax returns in March 2019. It is undetermined from the evidence submitted the extent of Applicant's past-due taxes (SOR ¶ 1.d). However, he credibly promised to work with the IRS and establish a payment agreement. I gave Applicant's promise weight and credence because he and his wife established payment agreements and paid off a number of accounts after they were charged off.

Applicant does not consider himself to be a risk to the U.S. Government. He believes himself to be honest, reliable, hardworking, and a good employee. He believes he will be devastated if he was to lose his clearance eligibility because he would likely lose his job, and at his age, it would be difficult to get a new job. Applicant likes and values his job and loves the United States. He stated that he would never do anything to hurt his country or jeopardize his family. He tries to be a stand-up person, works hard, and his clearance eligibility means everything to him.

Applicant acknowledged that he made a mistake when he failed to timely file his federal and state income tax returns. He acknowledged that he and his wife should have been more diligent about filing their income tax returns. He believes that he has learned a valuable lesson. As a result of his hearing and the clearance process, he now understands the seriousness of the concerns raised by his financial and tax problems.

Applicant highlighted his 22 years of employment with federal contractors. He believes that his financial situation is now stable because both he and his wife are working full time. He promised to timely file and pay his taxes in the future. Applicant also promised to be more proactive ensuring that his tax returns are timely filed and any taxes owed paid.

## **Policies**

The SOR was issued under Executive Order (Exec. Or.) 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 for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), implemented by the DOD on June 8, 2017.

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, § 2. 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 SEAD 4, App. A ¶¶ 2(d) and 2(f). 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; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 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**

### **Financial Considerations**

AG ¶ 18 articulates the security concern for financial problems:

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. 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.

Applicant's wife was laid off in 2012 and was unemployed and underemployed for a period of two years. During that period, some of their debts became delinquent and others were charged-off. He also failed to timely file federal and state income tax returns for tax years 2016 and 2017, and acquired an undetermined tax debt.

AG ¶ 19 provides disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(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 . . . income tax as required." The record established the disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

The following mitigating conditions under AG ¶ 20 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving 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; 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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The

standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Most of the above financial considerations mitigating conditions are raised by the facts in this case and mitigate the security concerns. Applicant’s financial problems are ongoing and recent because he is still paying one of the SOR debts and it is unknown whether he owes taxes. Notwithstanding, his financial problems could be attributed to, or were aggravated by, circumstances beyond his control (his wife’s unemployment and underemployment period, and her medical condition). Also, his financial problems occurred under circumstances unlikely to recur and they do not cast doubt on his current reliability, trustworthiness, or judgment.

Applicant has filed his income tax returns for tax years 2016 and 2017, and intends to establish a payment arrangement with the IRS if he owes any back taxes. Applicant acknowledged he made a mistake by not timely filing his tax returns and believing his wife had taken care of filing the taxes. He now understands that he should have been more diligent filing and paying his taxes. Applicant became aware of the security concerns raised by his failure to file his income tax returns at his hearing. He then quickly made arrangements with a tax preparer to help him resolve his tax problems.

Applicant’s efforts to timely file and pay his taxes are not ideal, but he has made a good effort to resolve his tax problems. I note that Applicant has paid most of the delinquent or charged-off debts resulting from his wife’s period of unemployment. Taken as a whole, his actions show diligence and responsibility in the handling of his tax obligations.

Considering the evidence as a whole, and including his recent actions, Applicant has demonstrated financial responsibility under the circumstances. His financial situation is improving and there are clear indications that his financial problems are being resolved and under control.

### **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. SEAD 4, App. A, ¶¶ 2(a) and 2(d). I have incorporated my comments under Guideline F in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant is a 60-year-old employee of a federal contractor. He has worked for different federal contractors since 1997. His current employer and security sponsor

hired him in July 2017. This is his first clearance application. The record evidence is sufficient to establish that his financial problems were caused, in part, by circumstances beyond his control. Moreover, Applicant is resolving his financial problems and they are under control. He is fully aware of the security concerns raised by his failure to timely file and pay his taxes. He promised to maintain financial responsibility to ensure that he continues to be eligible for a clearance. The financial considerations security concerns are 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: FOR APPLICANT

Subparagraphs 1.a - 1.d: For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest of the United States to grant eligibility for a security clearance to Applicant. Clearance is granted.

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JUAN J. RIVERA  
Administrative Judge