



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



In the matter of:	)	
	)	
	)	ISCR Case No. 18-00221
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Michelle P. Tilford, Esq., Department Counsel  
For Applicant: *Pro se*

12/11/2018

\_\_\_\_\_

**Decision**

\_\_\_\_\_

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On February 8, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on April 23, 2018, and requested a hearing before an administrative judge.

The case was assigned to another administrative judge on July 13, 2018, and reassigned to me on July 26, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 13, 2018, scheduling the hearing for August 14, 2018. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) A through E, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted AE F through O, which were admitted without objection.

## Findings of Fact

Applicant is a 53-year-old employee of a defense contractor. He has worked for his current employer since 2005. He served on active duty in the U.S. military from 1983 until he was honorably discharged in 1987. He has worked for defense contractors for about 30 years. He seeks to retain a security clearance, which he has held for many years. He attended college for a period without earning a degree. He is married with two children, ages 23 and 17.<sup>1</sup>

Applicant has a history of financial problems, which he attributed primarily to his wife losing her job in 2013. His mother and a sibling both passed away within the last four years. He also admitted that he “was not watching the shop as closely as [he] should have and things got out of hand.”<sup>2</sup>

The SOR alleges a \$29,231 federal tax lien; two unpaid judgments totaling \$17,233; and eight delinquent debts. However, the \$15,621 delinquent debt alleged in SOR ¶ 1.e is the underlying debt for the \$16,621 judgment in SOR ¶ 1.c. Additionally, the debts in SOR ¶¶ 1.h and 1.k are duplicate accounts. The six non-duplicate debts total about \$38,700.

The IRS filed a \$29,231 tax lien against Applicant in 2016.<sup>3</sup> IRS tax transcripts obtained in November 2018 show the following:

<b>Tax Year</b>	<b>Adjusted Gross Income</b>	<b>Balance (with interest and penalties)</b>
2010	\$190,872	\$6,154
2011	\$190,324	\$4,965
2012	\$212,065	\$22,122
2013	\$189,183	\$11,926
2014	\$180,249	\$23,819
2015	\$181,062	\$47,619
2016	\$67,815	\$0
2017	\$73,406	\$0
		<b>Total:</b> \$116,606 <sup>4</sup>

Applicant would have received refunds from tax years 2016 and 2017, but \$1,713 from tax year 2016 and \$1,231 from tax year 2017 were withheld and transferred to his

---

<sup>1</sup> Tr. at 17, 20-21, 47; Applicant's response to SOR; GE 1.

<sup>2</sup> Tr. at 17-19; Applicant's response to SOR; GE 3.

<sup>3</sup> Applicant's response to SOR; GE 3, 4; AE L.

<sup>4</sup> AE L. The SOR alleges the tax lien was filed in 2016, but it does not specify the tax years. The above table includes amounts owed for years that were not included in the tax lien and therefore not alleged in the SOR. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered when assessing Applicant's overall financial situation, in the application of mitigating conditions, and during the whole-person analysis.

liability for tax year 2010. The amount owed of \$6,154 for tax year 2010 is after the credits for tax years 2016 and 2017 and a \$1,162 payment made on May 18, 2018. Except for the taxes withheld from his paycheck, those are the only payments made to the IRS for tax years 2010 through 2015 since 2013.<sup>5</sup>

All of the non-tax debts are in payment plans or otherwise resolved. Since March 2017, Applicant has paid \$5,473 to the creditor for the \$16,621 judgment in SOR ¶ 1.c, reducing the amount owed to \$10,667. He paid \$400 to the creditor for the debt in SOR ¶ 1.j, reducing the amount owed to \$1,340. The \$18,887 defaulted student loan has been reduced to \$16,985. He paid \$406 to the creditor for the debt in SOR ¶ 1.k, reducing the amount owed to \$2,620.<sup>6</sup>

Applicant's wife is working again. He testified that he planned to resolve his financial problems. His wife filed a lawsuit. They hope to use part of the settlement or judgment to pay their debts. He also considered using a home-equity loan. He has not received formal financial counseling, but he has hired tax professionals to help him address his tax problems.<sup>7</sup>

### **Policies**

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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.

---

<sup>5</sup> Tr. at 23-27; AE L.

<sup>6</sup> Tr. at 27-46; Applicant's response to SOR; GE 2, 4; AE A-K, M-O.

<sup>7</sup> Tr. at 17-19, 45; Applicant's response to SOR; GE 3; AE F.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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 the 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 safeguard 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 EO 10865 provides that adverse 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).

## **Analysis**

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

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (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, including unpaid taxes, judgments, and delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

SOR ¶¶ 1.c and 1.e are duplicate accounts. SOR ¶¶ 1.h and 1.k are also duplicate accounts. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR ¶¶ 1.e and 1.h are concluded for Applicant.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (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; 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.

Applicant attributed his financial problems primarily to his wife losing her job in 2013. His mother and a sibling both passed away within the last four years. He also admitted that he “was not watching the shop as closely as [he] should have and things got out of hand.”

All of the non-tax debts are in payment plans or otherwise resolved. While he still owes an extensive amount on all of those debts, I believe he will continue to address those debts, and they are mitigated. However, his tax problems precede his wife losing her job and the tragic loss of his mother and sibling. He owes the IRS more than \$116,000 for tax years 2010 through 2015.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018).

There is insufficient evidence for a determination that Applicant’s tax problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that the security concerns arising out of Applicant’s unpaid taxes are not mitigated.

### **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 relevant 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 have incorporated my comments under

Guideline F in my whole-person analysis. I also considered Applicant's honorable military service and his long tenure as an employee of defense contractors.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

### **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:	Against Applicant
Subparagraphs 1.a-1.k:	For Applicant

### **Conclusion**

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.

---

Edward W. Loughran  
Administrative Judge