



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



In the matter of: )  
)  
) ISCR Case No. 18-01330  
)  
Applicant for Security Clearance )

**Appearances**

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

04/11/2019

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant was unable to mitigate the security concerns under Guideline F (Financial Considerations). Given the nature and seriousness of Applicant’s failure to timely file Federal and state income tax returns for three consecutive years, his significant outstanding state tax liens and other delinquencies, and the length of time they remained unresolved, Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On January 5, 2017, Applicant submitted a security clearance application (SCA). On June 20, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

On July 3, 2018, Applicant responded to the SOR, and requested a hearing. On October 29, 2018, the case was assigned to me. On December 31, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for January 15, 2019. Applicant’s hearing was held as scheduled.

During the hearing, Department Counsel offered five exhibits, Government Exhibit (GE) 1-5, and Applicant offered two exhibits, Applicant Exhibit (AE) A and B. There were no objections, and all proffered exhibits were admitted into evidence. I granted Applicant's request to leave the record open until February 15, 2019, in the event he wanted to provide additional documentation. On January 25, 2019, DOHA received the hearing transcript (Tr.). On February 12, 2019, Applicant requested additional time to obtain a state tax lien document, and he wanted additional time to file his 2013-2015 income tax returns. On February 13, 2019, I granted his request to hold the record open for an additional two-week period from the date of my ruling. On February 26, 2019, Applicant submitted two documents, which I labeled as (AE) C and D, and admitted into evidence without objection. The record closed on February 27, 2019.

### **Findings of Fact**

In Applicant's SOR response, he admitted SOR ¶¶ 1.a, 1.b, 1.d through 1.i, and 1.r. He denied SOR ¶¶ 1.c, and 1.j through 1.q. At the hearing, Applicant stated that his previous admission to SOR ¶ 1.i was a mistake, and denied owing this debt. (Tr. 25)

Applicant is 40 years old. He earned an associate's degree in 1998. He married in 2000 and divorced in 2001. He considered himself to be in a common-law marriage from 2003 to at least 2017. He legally married his common law spouse in 2018. He has three children, ages 4, 9, and 12. He is employed with a Federal contractor as a fire pump technician since October 2016. He does not currently possess a DOD security clearance. (Tr. 8-9; GE 1, GE 2)

### **Financial Considerations**

The SOR alleges that Applicant failed to timely file state and Federal income tax returns for 2013, 2014, and 2015.<sup>1</sup> He owes seven state tax liens totaling approximately \$14,323. He is also indebted for a deficiency balance from his mortgage, a delinquent student loan, a repossessed car deficiency balance, and various other forms of consumer debt. These debts total approximately \$55,000. Applicant attributed his financial problems to a failed business he opened in March 2013 and closed in September 2013.<sup>2</sup> He was then underemployed in 2013-2014, which provided a minimal amount of income. (Tr. 23)

The record established the status of Applicant's unpaid accounts and untimely filed tax returns as follows:

SOR ¶¶ 1.a and 1.b allege Applicant failed to file state and Federal income tax returns for tax years 2013, 2014, and 2015. He has not filed these tax returns because

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<sup>1</sup> Department Counsel asked to amend SOR ¶ 1.a to include tax year 2013, to conform to the testimony and evidence presented at the hearing, which I granted without objection.

<sup>2</sup> There is a discrepancy in dates when comparing the SCA with the dates provided in Applicant's testimony at the hearing. I used the dates of self-employment listed on the 2017 SCA. (GE 1)

he claimed his previous employer has not provided him with the necessary tax documentation. At the hearing, he admitted that he has not contacted the Internal Revenue Service or state tax agency to discuss these tax issues. On February 26, 2019, Applicant submitted two documents showing that he was continuing to have taxes assessed against him by the state for his business that closed in 2013. He also provided an agreement with a company he hired to help him resolve his state tax issue and assist him in filing his 2013-2015 state and Federal income tax returns. (Tr. 15-19, 33; AE C, AE D)

SOR ¶ 1.c<sup>3</sup> (SOR ¶ 1.p) alleges a mortgage deficiency in the amount of \$12,668, after Applicant's residence was sold via short sale in 2015. Applicant claimed that he could not recall if he received a 1099-C from the mortgage creditor to reflect the deficiency amount as income for his unfiled 2015 income tax return. Applicant admitted that he had not contacted this creditor to resolve this financial issue. (Tr. 29-33)

SOR ¶ 1.d alleges a deficiency balance of \$14,157, the amount due after a car was repossessed for failure to make timely payments. Applicant purchased a new car in late 2012, but it was repossessed approximately one year later. This account has not been resolved, and he has not contacted this creditor. (Tr. 22, 24)

SOR ¶ 1.e alleges a delinquent account in the amount of \$9,902, which Applicant used to purchase tools for his business he opened in 2013. At the time of his hearing, Applicant had not taken any action to resolve this debt. (Tr. 23-25)

SOR ¶ 1.f alleges an unpaid utility account in the amount of \$788. Applicant moved from state A to state B, and did not realize that he had an outstanding utility bill. He has not made any payments on this account, but stated he hopes to pay this account in full in the near future. As of the date of the hearing, he had not made any contact with the creditor. (Tr. 24-25)

In January 2019, Applicant paid the two outstanding medical bills alleged in SOR ¶¶ 1.g and 1.h, in the combined amount of \$130. These debts are resolved. (Tr. 25; AE A, AE B)

SOR ¶¶ 1.i -1.o allege seven state tax liens filed in the total amount of \$14,323. Applicant claimed the state tax liens were related to his 2013 self-employment. During the time he operated his business, he did not file or report quarterly earnings to the state. The state then filed the maximum amount of taxes for each quarter. The seven tax liens are for seven quarters, and include taxes assessed against Applicant long after he closed the business in September 2013. Applicant admitted that he failed to notify the state when he closed his business. In about August 2018, Applicant filed a form through the state website providing notice that he had closed his business in September 2013. He admitted that he had not called the state tax agency directly to discuss the seven tax liens filed against him. On February 26, 2019, Applicant provided a document showing that the state

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<sup>3</sup> Note SOR allegations ¶¶ 1.c and 1.p are duplicate allegations with the same creditor, which is actually a mortgage creditor and not a student loan creditor, as mistakenly alleged in SOR ¶ 1.c. (Tr. 29-31)

continued to assess taxes against him in at least 2017. He also submitted a signed agreement dated February 2019 with a tax resolution company to provide assistance with his current tax issues. (Tr. 25-29; AE C, AE D)

SOR ¶ 1.q alleges a delinquent student loan in the amount of \$16,577. Applicant stated that he has only had one student loan account, and his tax refunds for tax years 2016 and 2017 were intercepted to pay this outstanding debt. He claimed that the balance of his unpaid student loan is approximately \$11,439. He failed to provide documentation with his SOR response and at the hearing. On February 27, 2019, Applicant stated that he had called the student loan servicer and claimed his current outstanding student loan balance was \$11,276. He asked that his 2018 tax refund be voluntarily intercepted to pay this account. Applicant failed to provide any supporting documentation with his e-mail to show the current student loan balance, or whether this account has been fully resolved. (Tr. 34-35, e-mail dated February 27, 2019.)

SOR ¶ 1.r alleges a \$750 debt owed to a bank. Applicant claimed this amount was for a safety deposit box he had closed with the bank, but he did not provide the bank with the safety deposit box key, as required. He admitted at the hearing that this debt had not been paid and he had not yet made contact with the bank to resolve this account. (Tr. 36-37)

On the January 2017 SCA, Applicant listed that he had not filed his tax returns for 2013, 2014, and 2015. He listed that he disputed the state taxes for 2013, and was seeking the help of a tax attorney. For tax years 2014 and 2015, he listed that he had not filed his tax returns due to negligence. He was currently working with a tax preparation company to resolve his tax issues. During his background interview in October 2017, Applicant admitted that he had not filed his state and Federal income tax returns for 2013, 2014, and 2015, but it was his intention to file these tax returns. During his January 2019 hearing, he had not filed these state and Federal tax returns.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s

overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Adverse clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely based on whether the applicant has met the strict guidelines the President, Secretary of Defense, and Security Executive Agent have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Guideline F: Financial Considerations**

AG ¶ 18 articulates the security concern for financial problems:

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. . . . 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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following are potentially applicable:

- (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.

The evidence shows that Applicant did not timely file his Federal and state income tax returns for tax years 2013, 2014, and 2015. There are seven unreleased state tax liens in the amount of \$14,323, and other unresolved delinquent debts in the total approximate amount of \$55,000. The above disqualifying conditions apply.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012), as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

- (a) the behavior happened so long ago,<sup>4</sup> 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;

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<sup>4</sup> A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

(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.

Applicant has not filed his 2013, 2014, and 2015 state and Federal income tax returns; nor has he paid, settled, or resolved the seven state tax liens that were filed against him. Two weeks before this hearing, he paid two medical accounts in the total amount of \$130. He currently has approximately \$55,000 of outstanding delinquent debt. He has not contacted creditors to resolve or settle these accounts, nor has he made any payments on these accounts. Although he provided mitigating evidence of a failed business and subsequent underemployment, which were circumstances beyond his control, he does not have a reasonable explanation as to why he has been unable to file these state and Federal income tax returns over the past several years. His failure to give priority to such an important obligation as filing tax returns required by law causes lingering doubt about his reliability and security worthiness. I cannot conclude that he has mitigated the financial considerations security concerns. There are no indications that his tax problems and other financial difficulties are under control. Mitigation under AG ¶¶ 20(a), (b), (c), (d) and 20(g) was not established.

### **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 national security eligibility must be an overall common sense judgment based upon careful consideration of the guidelines and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Given the nature and seriousness of Applicant's failure to timely file Federal and state income tax returns for three consecutive years, his significant outstanding state tax liens and debt with multiple creditors, and the length of time they have been unresolved, I conclude Applicant has not mitigated the financial considerations security concerns.

### **Formal Findings**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.f:	Against Applicant
Subparagraphs 1.g, 1.h and 1.p:	For Applicant
Subparagraphs 1.i - 1.o, 1.q and 1.r:	Against 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 or reinstate Applicant's eligibility for a security clearance. National security eligibility for access to classified information is denied.

PAMELA C. BENSON  
Administrative Judge