



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



In the matter of:	)	
	)	
	)	ISCR Case No. 18-01660
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

05/30/2019

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**Decision**

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GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guideline F (financial considerations). Applicant failed to file his federal and state tax returns, as required, for four years and owes taxes to the federal government. He has mitigated the security concerns raised by his past actions. Eligibility for access to classified information is granted.

**Statement of the Case**

On November 19, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (Exec. Or.); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

The SOR alleges that Applicant failed to file his 2009, 2010, 2016, and 2017 federal and state income tax returns as required and that he is indebted to the federal government in the amount of \$1,487 for taxes due for 2014. The SOR also alleges that he has a delinquent credit-card account that is in collection in the amount of \$1,624.

Applicant responded to the SOR on December 18, 2018 (SOR Response). In his response, he admitted each of the SOR allegations regarding his untimely federal tax filings. He also admitted his federal tax debt for 2014, but asserted that he has made some partial payments on this debt. As for his state tax filings, he admitted the SOR allegations regarding 2009, 2010, and 2016, but wrote that he filed his 2017 state tax return in November 2018. He denied the SOR allegation regarding credit-card debt and wrote that he had agreed to a payment plan with the creditor settling this debt and made the last payment on December 7, 2018. He requested a hearing before an administrative judge.

The case was assigned to me on February 13, 2019. On February 21, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing to be held on March 13, 2019. I convened the hearing as scheduled.

At the hearing, Department Counsel offered five documents into evidence, which were marked as Government Exhibits (GE) 1 through 5. These exhibits were admitted into the record without objection. Applicant testified and offered 17 exhibits, which were marked as Applicant's Exhibits (AE) A through Q and were admitted without objection. A character witness also testified. I left the record open until March 27, 2019, to give Applicant the opportunity to submit additional documentary evidence. At Applicant's request, I extended the time for him to submit additional evidence until April 22, 2014.

During the period March 16, 2019, through April 16, 2019, Applicant made several post-hearing submissions. On April 23, 2019, he requested an additional four months to provide additional evidence. I denied his request on the same day. That correspondence is marked as Hearing Exhibit (HE) I. In an attempt to avoid any miscommunication caused by Applicant's multiple and rather confusing post-hearing submissions, Department Counsel prepared a list of the exhibits that Applicant submitted. I have marked her May 3, 2019 list as HE II. In that list, Department Counsel described two documents that she had no record of receiving. I have marked her email identifying those documents as HE III. On May 13, 2019, I emailed Applicant and asked him to confirm the accuracy of Department Counsel's list, HE II, and to produce the two missing documents. He was unable to produce one of the documents. My email and Applicant's response are marked as HE IV.

On May 17, 2019, I received physical copies of all of Applicant's post-hearing exhibits and created a list of the documents, which I have marked as HE V. I marked these documents as AE R through MM. Absent objection, all of Applicant's post-hearing exhibits are admitted into the record. I also have marked an email thread regarding the accuracy and completeness of this list as HE VI. DOHA received the transcript of the hearing (Tr.) on March 27, 2019.

## Findings of Fact<sup>1</sup>

Based upon Applicant's admissions in his SOR Response, and after a careful review of his testimony, and that of his character witness, and the documentary evidence admitted into the record, I make the following findings of fact.

Applicant, age 30, is seeking a security clearance in connection with an employment with a federal contractor to work as a personnel security background investigator. He submitted his security clearance application on July 20, 2017, and began working in this position in October 2017. This is Applicant's first, full-time position as an adult. At the time of the hearing, he earned an hourly wage of \$17. After the hearing, he submitted a paystub showing that he had received a raise to \$23.50 per hour. He is also pursuing a part-time job to increase his income. (AE DD.)

During the period May 2015 to October 2017, Applicant worked 30 hours a week, and often less, in an hourly position for a public school district during the school year. He was unpaid for one and one half months each summer. During the school year, his income varied by the number of school days in each month. Some months, his monthly net pay was \$800 and in other months, his net pay was half that amount. His hourly rate was about \$13-\$14. He also maintained part-time employment on an "on-call" basis, which provided work on occasional weekends. His hourly rate at his second job started at about \$12 and was increased to \$15. His income in 2015 was approximately \$19,000, which included a premature withdrawal from his IRA. His income increased to \$30,000 to \$40,000 in 2016 and 2017,<sup>2</sup> but during the summer of 2016, his income dropped so low that he had to take out a loan from a car-title lender to pay his rent. He is still paying off that loan, which is current and is not the subject of an SOR allegation. (Tr. 28-32, 34, and 42-43; AE C-F, I, L, and P.)

During the period 2006 through 2012, Applicant attended college and graduated with a bachelor's degree. In 2017, he earned a master's in business administration. He worked multiple part-time jobs while earning his degrees. He attended graduate school full time over a two-year period while working for the public school district. He has never married and has no children. He lived with his father until January 2015 and has lived on his own since then. In January 2016, Applicant's monthly rent increased to \$795 and by January 2019, his rent for the same apartment had increased to \$1,200. These significant rent increases caused Applicant financial stress and difficulty living on his limited income. (AE G and H.)

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<sup>1</sup> Applicant's personal information is extracted from his security clearance application, dated July 20, 2017, (GE 1), unless otherwise indicated by a parenthetical citation to the record.

<sup>2</sup> He also withdrew funds from his IRA in both 2016 and 2017. (AE J and K.)

In his SOR Response, Applicant admitted that he failed to file his federal tax returns for 2009 and 2010, when he was 20 and 21 years old, respectively (SOR ¶¶ 1.a and 1.b).<sup>3</sup> He was a college student at that time. He filed his 2009 tax return after the hearing. The return reflects an adjusted gross income of \$12,751, but the return is incomplete and does not show if he owed any taxes. The Form 1040A that he filed for 2009 indicates that he was entitled to a single exemption worth \$3,650 and a standard deduction of \$5,700, which would result in taxable income of \$3,401. According to the 2009 wage and income tax transcript he submitted after the hearing, his total income tax withholding from the wages he earned working at three jobs that year was \$691, or 29% of his taxable income. There is no evidence in the record that he owes any taxes for 2009, and it is unlikely that he has any residual tax liability for that year. (AE LL and FF.)

As noted above, Applicant admitted in his SOR Response that he failed to file his 2010 federal tax return, however, this was erroneous. After the hearing, he provided an IRS Account Transcript for 2010, which shows that he filed his tax return on April 15, 2011, and paid on that date the balance of the taxes due in the amount of \$289. (AE GG.)

In response to the Government's interrogatories, Applicant provided transcripts for tax years 2011 through 2015, which reflect that he filed his tax returns on time each year<sup>4</sup> and owed no taxes, with the exception of 2014. He owes \$1,486 in back taxes for 2014, which is the subject of the SOR ¶ 1.e. Initially, the IRS calculated that he was due a refund of \$1,996, but then it recalculated his taxes and determined he owed \$1,866, plus interest of \$97. Applicant established an installment agreement in October 2016 and made seven payments of \$100 each. He then defaulted, and the IRS terminated the installment agreement in April 2017. (GE 2 at 10, GE 3 at 9-15.)

Applicant failed to file his 2016 and 2017 federal income tax returns, as required. Although not alleged, he also owes back taxes for those years. He filed these returns after the hearing. In September or October of 2018, he made a \$40 payment. In October 2018, he filed a request with the IRS to establish an installment payment plan, which provided for monthly payments of \$60. The IRS rejected his proposed payment plan as insufficient. On January 10, 2019, he submitted a second proposal to pay \$100 per month. As of the hearing date, he was waiting for the IRS to respond. After the hearing, the IRS responded and agreed to an installment payment plan pursuant to which Applicant pays \$100 per month by automatic electronic payment on the 15<sup>th</sup> of each month. By email dated May 15, 2019, Applicant advised that the IRS received its first payment of \$100 under the payment plan. In addition, the IRS notified Applicant that he owed \$1,573 for

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<sup>3</sup> In response to the Government interrogatories, Applicant provided an IRS Account Transcript for 2008, which shows that he had an adjusted gross income of \$5,907 and was due a refund of \$172. According to this IRS document, he filed the return on June 1, 2009. (GE 3 at 7.)

<sup>4</sup> His 2011 tax transcript shows a filing date of April 30, 2012, which was about 15 days late. He received a refund that year, as well as in 2012 and 2013. (GE 3 at 12.)

2014 and that he owes \$2,802 for 2016 and \$2,668 for 2017.<sup>5</sup> (Tr. 27-28, 37, 40-41, and 44-45; AE J, K, O, S, T, U, V, W, and AA; HE VI at 1-2.)

With the help of a tax professional, Applicant filed his 2018 federal tax return on time and was due to receive a small refund. He under withheld on his taxes in 2016 and 2017 due to his limited income while working two jobs and by incurring a tax penalty for premature withdrawals from his IRA.<sup>6</sup> In 2018, he corrected his error with the advice of a tax professional. His inability to pay his taxes in those years is the reason for his failure to file his tax returns in a timely manner. (AE HH.)

In his SOR Response, Applicant admitted the SOR allegations in ¶¶ 1.f, 1.g, and 1.h that he failed to file his 2009, 2010, and 2016 state tax returns, as required. As noted above, he denied the allegation in SOR ¶ 1.i regarding his 2017 state tax return, claiming that he filed this return in November 2018. That return was actually due in April 2018. After the hearing, he submitted a 2009 state tax return, dated April 15, 2019, and a 2010 state tax return, dated April 8, 2019. In addition, he submitted after the hearing copies of his 2016 and 2017 state tax returns, which were prepared by a tax professional and are undated. They reflect that he owes his state \$463 and \$662 for 2016 and 2017, respectively. In an email sent after the hearing, Applicant wrote that he had determined that he had also failed to file his 2015 state tax return. He submitted a copy of this return, which was prepared by a tax professional and is undated. The return reflects a tax due of \$69. He also provided a letter from the state which indicates that he has a zero balance for 2015. In December 2018, he made a payment of \$847 to the state for tax year 2017 to avoid the state's threatened garnishment of his pay. After the hearing, he provided documentation that reflected that he has a zero balance with the state for that year. It appears that he has no tax liability to the state for tax year 2017 and earlier.<sup>7</sup> A tax professional prepared his 2018 state tax return, which was filed in a timely manner. (Tr. 30 and 37-37; AE N at 1-2, S, U, W, BB, CC, JJ, and MM)

The SOR also alleges one credit-card debt owed to a bank in the amount of \$1,624. (SOR ¶ 1.j.) This account became delinquent in April 2017 and was settled in November 2018. He wrote in an exhibit that he paid this debt with six monthly payments of \$117. He

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<sup>5</sup> The IRS also calculated that he owed \$147 for 2015, which is inconsistent with its July 29, 2018 Account Transcript for that year, which reflects a \$0 balance. (AE Y; GE 3 at 14.)

<sup>6</sup> Applicant testified that his tax error was related to his graduate school, which he described as "an up-and-coming vocational school," not a regular graduate school program. He also admitted that he under withheld on his payroll taxes. (Tr. 27-28; AE B.) On a related matter, AE B reflects Applicant's enrollment in June 2015 in this graduate program, but the exhibit does not show that he earned any credits or graduated. I accept Applicant's assertion in his SCA that he graduated from this educational program as credible because I found Applicant's testimony on all subjects to be honest and forthcoming, though with occasional confusion regarding certain issues. (GE 1 at 10.)

<sup>7</sup> Applicant attached to his interrogatory responses an August 2018 document that reflects he owes no state taxes for the years 2010 through 2015 and a separate document, dated August 2018, acknowledging that he filed his 2016 return as requested by the state and that he owed nothing further for 2016. (GE 2.)

also provided a December 11, 2018 letter from the credit-card issuer stating that this debt was satisfied. (AE A and M; GE 5 at 2.)

## Policies

“[N]o 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 applicants 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 § 2.

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, an administrative judge applies these guidelines 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 and 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 that 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense 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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 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 (App. Bd. Sep. 22, 2005).

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). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

## Analysis

### Guideline F, Financial Considerations

The SOR contains ten allegations under Guideline F. The security concern under this guideline is set out in AG ¶ 18, as follows:

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. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person’s self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant’s admissions, testimony, and the documentary evidence in the record establish the following potentially disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”), AG ¶ 19(c) (“a history of not meeting financial obligations”), and AG ¶ 19(f) (“failure to file . . . annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required”).

The following mitigating conditions are potentially applicable:

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(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay creditors or otherwise resolve debts; and

AG ¶ 20(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.

Adjudicative Guideline ¶ 20(a) has been partially established. Applicant failed to file his 2009, 2016, and 2017 federal tax returns and his 2009, 2010, 2016, and 2017 state tax returns, as required, and he failed to pay all of his 2014 federal taxes.<sup>8</sup> These deficiencies, however, occurred under somewhat unusual circumstances, are unlikely to recur, and do not cast doubt on his current reliability, trustworthiness, or good judgment. In 2009 and 2010, he was a young college student, who literally worked his way through college employed in as many as three jobs in one year. His income was minimal, and he paid all of his federal and state taxes through his tax withholding. His failure to file his tax returns was merely the result of his young age, his lack of experience in the adult world, and an absence of adult supervision.

Applicant's failure to file his federal and state tax returns in 2016 and 2017 in a timely manner is more problematic because he was older, though he was working his way through graduate school at the time. He was underemployed in low-wage, hourly positions, and he was trying to live on his own at a time when he was not financially capable of doing so. Something had to give, and he made the poor choice that it would be his tax filing and payment responsibilities.

Prior to the hearing, Applicant did not appreciate that he had to address his tax filing and payment delinquencies, but it is quite evident from his flurry of activity after the hearing that he undertook responsible, mature steps to address his tax responsibilities. He filed all of his federal tax returns and negotiated a payment plan with the IRS that he could afford to pay and has begun paying off his total federal tax delinquency of about \$7,000, which includes the \$1,500 alleged in SOR ¶ 1.e for 2014. He also filed his 2018 federal and state tax returns and paid all amounts due, as required.

With respect to his state returns, Applicant filed the delinquent returns after the hearing and had paid his overdue taxes prior to the hearing. He also paid off an outstanding credit-card account over a six-month period prior to the hearing in a mature, responsible manner. The fact that his remedial steps took place after his receipt of the SOR, and in some instances, after the hearing, prevents me from applying this mitigating condition fully, but I give weight to my conclusion that now that he is employed in his first

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<sup>8</sup> The record evidence established that Applicant filed his 2010 tax return and paid his taxes, as required.



adult job earning a proper wage for a person with his education, I strongly believe that his past conduct will not recur.

Adjudicative Guideline ¶ 20(c) has been established because Applicant has received tax counseling from a tax professional and has addressed and corrected the mistakes in his management of his tax responsibilities. Although many of Applicant's mitigating actions took place after the hearing, there is a clear indication that his tax problems are being resolved and are under control.

Adjudicative Guideline ¶ 20(d) has been partially established. The evidence shows that Applicant has initiated an effort to pay his delinquent taxes and resolve his past-due taxes and one credit-card account. The fact that his actions post-date his receipt of the SOR, however, undercuts a finding of "good faith" and prevents full application of this mitigating condition.

Adjudicative Guideline ¶ 20(g) is also partially established. Applicant has filed all of his delinquent tax returns and has paid his state tax debt. The fact that he made his first payment to the IRS under a new installment payment plan after the close of the record does not have the same mitigation value as evidence of a series of regular payments that demonstrate a significant track record of compliance. Having said that, however, I am convinced that Applicant is committed to paying his federal tax debt and will continue to do so over the coming months and years.

### **Whole-Person Concept**

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. In applying the whole-person concept, an 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 and applying the adjudicative factors in AG ¶ 2(d).<sup>9</sup>

I have incorporated my comments under Guideline F in my whole-person analysis. Some adjudicative factors deserve further discussion. I have taken into consideration Applicant's young age in 2009 and 2010 and his minimal income and tax liability at that time. Any errors he made then were due to his lack of maturity in dealing with adult responsibilities related to his tax-filing obligations. I have also taken into account his personal situation in the period 2014 to 2017. He had just moved out of his father's home in 2015 and was attending graduate school full-time to improve his employment and

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<sup>9</sup> The factors are: (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.

income opportunities. During that period, he worked two part-time, low-paying jobs trying to be independent. He had difficulty paying his rent, especially in the summer, when he lost the income from his primary job with the public school district. It appears that he could not pay his 2014 taxes in 2015 and that he under withheld on his federal and state taxes in 2016 and 2017 due to his lack of sufficient net income to pay for his basic needs. With net incomes from his primary job of \$400-\$800 per month, he was clearly underemployed as a college graduate. His failure to file his federal and state tax returns on time in those two years, as alleged in the SOR is problematic, but not surprising, again considering his age and his likely discovery that he owed taxes in those years that he could not pay.

In October 2017, Applicant finally obtained employment that gave him sufficient hours and pay to begin to act like a responsible adult. He filed his 2017 tax return in November, which was a little after the automatic extension date, and he owes a modest amount of taxes. He filed his 2018 federal and state tax returns, as required, with the help of a tax professional and owes nothing. Moreover, he has taken a mature approach to dealing with his past tax debts dating back to 2014. He has set up an installment payment plan with the IRS, and he has paid off his state tax obligations.

Applicant presently works in the personnel security environment and is very aware of the importance of financial responsibility and why it is important to an evaluation of one's security worthiness. Applicant's character witness, who has known Applicant his entire life, testified that he was proud of Applicant's development and maturity. I respect his opinion, and I am convinced that Applicant will responsibly address his relatively small federal tax debt, as he has with his one delinquent credit-card debt. Applicant lived a number of years on the edge of financial insecurity and now he has the opportunity to use his educational credentials to work at his first, responsible adult job and earn an income worthy of a well-educated adult. He has worked too long and too hard to get to where he is today to risk losing everything by acting irresponsibly.

After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all of the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his financial considerations.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1. Guideline F:                      FOR APPLICANT

Subparagraphs 1.a through 1.j:   For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

John Bayard Glendon  
Administrative Judge