



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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)  
[NAME REDACTED] ) ISCR Case No. 18-01771  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

09/23/2019

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant has not filed his federal or state income tax returns since 2013. He also owes at least \$18,000 in unpaid federal income taxes, and accrued several delinquent or past-due debts since 2013. Although he experienced significant medical and personal problems in 2013 and 2016, he did not establish that he has acted responsibly in the wake of those unforeseen circumstances. Applicant’s inaction regarding his taxes and his other debts precludes a conclusion that the security concerns about his finances are mitigated. His request for security clearance eligibility is denied.

**Statement of the Case**

On May 23, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for a security clearance required for his employment with a federal contractor. Based on the results of the ensuing background

investigation, Department of Defense (DOD) adjudicators could not determine that it would be clearly consistent with the interests of national security for Applicant to have a security clearance, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2.

On August 31, 2018, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing. I received the case on April 5, 2019, and convened the requested hearing on May 21, 2019. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 – 5, which were admitted without objection. Applicant testified but did not present any documentary evidence. I left the record open after the hearing to receive from Applicant additional relevant information. I received a transcript of the hearing (Tr.) on June 3, 2019. The record closed on June 6, 2019, when I received Applicant's timely post-hearing submissions, identified as Applicant Exhibits (AX) A – I, and Department Counsel's waiver of objection to the admissibility of Applicant's exhibits.

### **Findings of Fact**

Under Guideline F, the Government alleged Applicant did not file his federal income tax returns or pay his federal income taxes for the 2013 through 2017 tax years (SOR 1.a); that he did not file his state income tax returns or pay his state income taxes for the 2013 through 2017 tax years (SOR 1.b); and that he owed the IRS \$18,461 in unpaid federal income taxes (SOR 1.c). It was further alleged that Applicant filed a Chapter 13 bankruptcy petition in November 2010 that was dismissed before completion in October 2012 (SOR 1.d); and that he owed five other delinquent or past-due debts totaling \$10,237 (SOR 1.e – 1.i).

In response, Applicant admitted the allegations at SOR 1.a, 1.b, 1.d, and 1.e; he denied the remaining allegations. (Answer) Additionally, at the hearing, Department Counsel acknowledged that the debt at SOR 1.h was a duplicate of SOR 1.g and withdrew the allegation at SOR 1.h. Accordingly, the total debt at issue in this case is \$27,971. (Tr. 43 – 44, 52, 62 – 63)

In addition to the facts established by Applicant's admissions, I make the following additional findings of fact. Applicant is 53 years old and has been employed by a defense contractor in State A since March 2017. Between September 2016 and March 2017, he worked for a different defense contractor in State B, where he had lived since at least May 1990. Applicant and his wife have been married since September 1988 and have one adult child together. This is Applicant's first application for a security clearance. (GX 1; Tr. 6)

As alleged in SOR 1.d, Applicant and his wife filed for Chapter 13 bankruptcy. They did so to address their outstanding debts and to save their home in State B from foreclosure. Applicant had fallen behind on his mortgage, in part, due to mounting medical

bills and an income reduction when he changed jobs in 2010 to avoid a lay off. As to the mortgage, it was a 15-year note that Applicant tried unsuccessfully to have modified to a 30-year obligation for the lower monthly payments that would result. After almost two years of paying off debts through the bankruptcy trustee, Applicant's only remaining delinquent debt was the mortgage. Absent a mortgage modification, Applicant decided, on advice of his bankruptcy attorney, to withdraw his bankruptcy petition and let the mortgage go to foreclosure. The bankruptcy was voluntarily dismissed in October 2012. Applicant has no remaining obligation from that mortgage because the house was sold at auction for more than the remaining balance on the loan. Thereafter, Applicant and his wife remained in State B until March 2017, when they moved to State A so he could take his current defense contractor position. (Answer; GX 2; GX 5; Tr. 53 – 55)

Applicant's bankruptcy petition showed that Applicant and his wife's assets exceeded their liabilities by \$10,318. They also declared in their petition that they had a monthly net cash flow of \$944. (GX 5)

In 2013, Applicant suffered an injury at work that resulted in over six months of unemployment before and after surgery for a total hip replacement. In April 2014, Applicant did not file his federal or state income tax returns for the 2013 tax year. He mistakenly believed that he did not have to file if he knew he would receive a refund, and he claims he did not file because he was overwhelmed with his health issues. Thereafter, Applicant did not file any of his federal or state income tax returns because he knew he was behind and he did not know what to do about his situation. Further complicating matters, he and his wife separated for about 18 months after his hip surgery. In 2016, after they reconciled, Applicant's wife was diagnosed with cancer. Applicant has had medical insurance at all times that has covered at least 80 percent of his hip surgery and his wife's cancer treatment. Applicant is usually responsible for the remaining 20 percent of the costs. Those medical bills have strained his finances, and as a result, he incurred the debts alleged at SOR 1.e – 1.g, and 1.i. (Answer; GX 1; GX 2; Tr. 29 – 31, 37)

The \$7,673 debt at SOR 1.e is the remainder after resale of a car that was repossessed from Applicant in March 2017. Applicant had purchased the car in 2002 for about \$17,000, but in 2016 started missing his monthly payments. He has been in contact with the creditor collecting this debt, but Applicant has not yet made any documented payments on this debt. (Answer; GX 2 – 4; Tr. 40 – 42)

The unpaid cable television and internet bill for \$990 at SOR 1.f arose when Applicant moved from State B to State A in 2017 and did not return the provider's equipment. Just before his hearing, he received boxes and labels with which to mail the equipment to the creditor but had not yet resolved this matter. (Answer; GX 2 – 4; Tr. 42 – 43)

While he admitted he owes a debt for an unpaid cell phone bill as alleged at SOR 1.g arose, Applicant disputes the \$727 balance due listed in the SOR. This debt remains

unpaid and Applicant is still trying to communicate with the creditor to resolve his dispute. (Answer; GX 2 – 4; Tr. 43 – 44)

According to Applicant's bankruptcy petition, he owes the IRS \$18,461 for unpaid income taxes. Applicant avers he owes only about \$3,000, but he did not present any information to support his claim. Applicant declared in his e-QIP that he had not filed his income tax returns, as alleged in SOR 1.a and 1.b, since 2013. During a subject interview with a government investigator on February 7, 2018, Applicant discussed his unfiled taxes and indicated he would hire an accountant to help him resolve the matter. On July 3, 2018, Applicant answered interrogatories from DOHA Department Counsel about his unfiled taxes, indicating he was trying to get help in bringing his taxes up to date and to resolve his other debts. In his February 4, 2019, response to the SOR, Applicant stated that he had contacted the IRS to get his returns filed and that he was seeking help to file his state returns. At his hearing, Applicant testified he had contacted an accountant in State A and had a pending appointment to begin the process of filing all of his past-due tax returns. As of the hearing, Applicant had also not yet filed his 2018 return because the accountant advised he would be filing all of his past-due tax returns at the same time. (Answer; GX 1; GX 2; GX 5; Tr. 31 – 36, 59 – 64)

The IRS documents Applicant provided post-hearing as AX C – H are his W-2 Wage and Tax Statements for the tax years 2013 through 2018. They do not establish that he has filed any of the federal or state income tax returns addressed in SOR 1.a and 1.b, or that he has addressed the tax debt alleged in SOR 1.c. The debt calculator he provided as AX A is from an IRS web page and shows that he also owes at least \$2,668 in unpaid taxes for the 2007 tax year. Applicant has also averred that his efforts to resolve his IRS debts have been hampered by inaccurate personal information contained in his Social Security Administration (SSA) records. A week after his hearing, he went to a local SSA office to correct that information. As of the close of this record, Applicant was awaiting a new Social Security card. (Answer; GX 2; AX I; Tr. 32 – 33)

Applicant and his wife have sufficient monthly net income to meet all of their current expenses. He testified that after moving to State A, his cost of living is greatly reduced. Applicant's wife has or is recovering from cancer, but she is unable to work and receives monthly disability payments. After all of their expenses, they have about \$500 remaining each month; however, they sometimes incur large medical co-payments associated with ongoing monitoring of his wife's cancer recovery. Applicant and his wife manage their finances together through a monthly budget. After the hearing, Applicant also presented a letter of recommendation from the government division chief of the organization Applicant supports in his work. The author has known Applicant for the past six years and speaks highly of Applicant's diligence, professionalism, and trustworthiness. (AX A; Tr. 37, 44 – 49)

## Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those 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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest for an applicant to either receive or continue to have access to classified information. (*Department of the Navy v. Egan*, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion. (See *Egan*, 484 U.S. at 528, 531) A person who has access to classified information enters 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 one who will protect the national interests as his or her 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. (See *Egan*; AG ¶ 2(b))

## Analysis

### Financial Considerations

Applicant has not filed his federal or state income taxes since 2013. He also incurred several unpaid debts since 2013 despite having previously resorted to federal bankruptcy protection between 2010 and 2012 because of previous financial problems, including a mortgage foreclosure. This information reasonably raised a security concern about Applicant's finances that is articulated at 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.

More specifically, available information requires application of the following disqualifying conditions under AG ¶ 19:

- (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.

I also have considered the following AG ¶ 20 mitigating conditions:

- (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;

(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.

As shown by his 2010 bankruptcy petition and the subsequent loss of a house to foreclosure, Applicant's financial problems predate his claims that his current debts and failure to file his income tax returns are tied to his 2013 hip surgery and his wife's 2016 cancer diagnosis. Although those events adversely impacted his finances, available information also shows that Applicant has not acted responsibly in the face of those circumstances. As to his taxes, Applicant initially relied on an erroneous assumption that he did not have to file a return if he knew he would receive a tax refund; however, after failing to file for the 2013 tax year, he did not file because he knew he was behind and may have been unsure of how to proceed in resolving his filing deficiencies. Neither explanation is acceptable. Further, he has yet to take any tangible action to resolve his tax problems. He did nothing after submitting his May 2017 e-QIP, or after being interviewed by a government investigator in early 2018, or after responding to interrogatories in July 2018, or after responding to the SOR in February 2019. As of this hearing, Applicant had a pending appointment with an accountant to begin the process of filing all of his past-due returns.

As to Applicant's debt for unpaid taxes, the record supports the SOR 1.c allegation that he owes the IRS more than \$18,000. Although not alleged, Applicant's AX B shows he also owes the IRS for unpaid 2007 taxes. Applicant did not support his claim that his IRS debt is actually about \$3,000. Either way, he has not acted to resolve his tax debt or any of the other debts alleged in the SOR.

All of the foregoing precludes application of any of the pertinent mitigating conditions under this guideline. On balance, Applicant did not produce information sufficient to mitigate the security concerns about his finances.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Applicant has a good reputation in the workplace; however, that information is not enough to overcome the doubts about his judgment and reliability that reasonably ensue from an examination of his financial problems and his failure to comply with his tax obligations. Because protection of the interests of national security is the principal focus of these adjudications, any remaining doubts must be resolved by denying eligibility for access to sensitive information.

### **Formal Findings**

Formal findings 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.g, 1.i:	Against Applicant
Subparagraph 1.h:	Withdrawn

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE  
Administrative Judge