



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



In the matter of: )  
)  
) ISCR Case No. 18-01976  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*  
09/20/2019

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant failed to timely file his federal income tax returns for tax years 2016 and 2017. He also failed to pay his taxes as required, and failed to pay 16 other debts. His recent efforts are insufficient to establish a track record of financial responsibility. He failed to demonstrate good judgment, reliability, and willingness to comply with the law. The financial considerations security concerns are not mitigated. Clearance is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on February 23, 2017, seeking clearance eligibility required for his position with a federal contractor. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) on October 19, 2018, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on November 13, 2018, and initially requested a decision based on the administrative record, without a hearing. On a later date, Applicant requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

DOHA assigned the case to me on February 28, 2019, and issued a notice of hearing on April 3, 2019, setting the hearing for April 30, 2019. At the hearing, the

Government offered five exhibits (GE 2 through 6). GE 1 is the discovery letter that was marked for the record, but it is not evidence. Applicant testified and submitted ten exhibits (AE 1 through 12). AE 11 and 12 were received post-hearing. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on May 13, 2019.

### **Findings of Fact**

The SOR alleges that Applicant has 16 charged-off, in-collection, or delinquent accounts (§§ 1.a – 1.p) totaling about \$36,000; that he failed to timely file his federal income tax returns for tax years 2016 and 2017 (§ 1.q); and that he owes \$6,295 in past-due federal taxes for tax year 2015 (§ 1.r), and \$2,492 for tax year 2017 (§ 1.s). Applicant denied SOR §§ 1.k, 1.l, and 1.n, and admitted all of the remaining allegations. His SOR admissions, and those at the hearing, are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 36-year-old employee of a federal contractor. He is a 2002 high school graduate, and he enlisted in the U.S. Navy in October 2002, where he served honorably until his discharge as an E-4 in November 2010. He believes that he possessed a clearance during his service, but is not sure. Applicant married in 2003 and divorced in 2014. He has four children, ages 19, 18, 7, and 2. Applicant attended college between 2007 and 2010, and earned a bachelor's degree. His student loans were in forbearance as of April 2018. (GE 3)

Applicant's work history (2017 SCA) indicates that after his discharge from the service he worked part-time between November 2010 and March 2013; was employed as a transportation driver between March 2013 and October 2016; and was hired by the federal contractor currently sponsoring his clearance in October 2016. His interim clearance was withdrawn pending the adjudication of the financial concerns in the SOR, and he was laid off. Thereafter, he has been working for different companies for less income.

In his response to Section 26 (Financial Record) of his 2017 SCA, Applicant denied having financial problems and responded "NO" to questions asking whether he had any delinquent, in-collection, or charged-off accounts. He also failed to disclose that he did not timely file his federal income tax return for tax years 2016 and 2017 and that he owe federal taxes for tax years 2015 and 2017.

Applicant timely filed his federal income tax returns for tax year 2015. He requested an extension to file his tax year 2016 federal income tax return, but failed to file it on time. He filed his 2016 and 2017 federal and state income tax returns in August 1, 2018, and was assessed penalties and interest for not pre-paying his taxes and for filing late. (AE 4, GE 4, AE 7) Applicant received a \$2,991 refund for tax year 2018 that was applied to taxes owed for tax year 2015.

Concerning the SOR accounts that he denied, Applicant is disputing SOR ¶ 1.k because he believes this is a credit card opened by his ex-wife in his name, but without his consent. In his April 2018 interview, Applicant claimed that the creditor promised not to hold him responsible for the delinquent account if he submitted documentary evidence of his divorce. Applicant presented no documentary evidence at the hearing to show he disputed this account through the credit bureaus or with the creditor; that he was released from responsibility by the creditor; or that the account belonged to his wife.

Applicant is disputing SOR ¶ 1.l because he believes that the Department of Veterans Affairs (VA) was required to pay for his college tuition under the GI Bill education benefits program. However, Applicant failed to complete the semester. Thus, the VA will not likely pay for this tuition expense. Applicant denied SOR ¶ 1.n, and initially stated he disputed it. However, at his hearing he admitted that this was his account and it is delinquent. (Tr. 46)

Applicant retained the services of a debt relief company seeking help to pay off his debts on November 8, 2018. He stated his intention to pay off his delinquent debts through this program. He testified that all of the SOR accounts were included in the debt relief program, except for his tax debts. However, only the accounts alleged in SOR ¶¶ 1.a, 1.b, 1.d, 1.g, 1.h, and 1.m were enrolled in the program. Applicant apparently made two payments into the program and stopped. He presented no documentary evidence to show how much and how frequently he has been contributing into the program, and whether any accounts have been paid through it. Applicant presented little documentary evidence to show that he has many any payments, established payment arrangements, disputed any accounts, or otherwise resolved any of the accounts alleged in the SOR. (Tr. 42) He documented a one-time payment to the debt alleged in SOR 1.h.

Applicant is not interested in addressing his delinquent accounts promptly. He believes that the longer he waits to address them the better settlement offers he will receive from his creditors. (Tr. 43) His seven delinquent medical accounts resulted from periods of unemployment or when he did not have insurance.

Concerning his delinquent taxes, Applicant explained that in 2015 he was working as an independent contractor for the first time and he did not understand his tax responsibilities. He failed to pay estimated taxes, and when he filed for tax year 2015, he realized he did not have the documents he needed. As a result, he was assessed a large tax liability. The problem was aggravated when he failed to timely file his income tax returns for tax years 2016 and 2017 because he was afraid of his possible tax liability.

Applicant entered into a payment agreement with the IRS to pay his delinquent taxes for tax years 2015, 2016, and 2017 on November 8, 2018. He agreed to pay \$112 on the first of each month. He submitted documentary evidence showing he made two payments. Applicant testified that he had to stop making the payments because his earnings were insufficient to pay for his debts and living expenses. He claimed he told

the IRS to suspend the payment agreement until he was making more money. (Tr. 50-51)

Applicant noted that he has made substantial progress paying his delinquent taxes. The IRS has been applying his refunds to his tax debt. He owed \$3,686 for tax year 2015. In 2016, he received a \$1,255 refund that was applied to his debt. In 2017, he was assessed a tax liability of \$2,575. In 2018, he received a refund of \$2,991 that also was applied to his debt. As of his hearing date, Applicant owed federal taxes in the amount of \$2,215 for tax years 2015 and 2017. (AE 9) Applicant believes that if he had timely filed his income tax returns he would not have had any problems, but since “[he] let it go so far it became a problem.”

Applicant explained that when he was discharged in 2010, he was working, going to school, and had his own security business. Then his wife had a baby, they divorced in 2014, and within a year everything went haywire. His ex-wife went her own separate way and money was just pouring out of his pockets. During that time, he was only thinking about his survival, paying child support, helping out his ex-wife, while at the same time trying to keep a roof over his head, and his financial situation became unbearable. (Tr. 47)

Applicant expressed remorse for not filing his income tax returns on time. He claimed that he has learned a hard lesson and promised to timely file his income tax returns and to pay his taxes in the future.

At hearing, Applicant stated: “I have been in this process for my security clearance for over two years and it really made me take a look at how I’m handling my finances. These are my problems and they are something that I have to fix.” He believes that he is doing the best he can do in his current circumstances. He noted that he has not been consistently employed since he was in the service. He is concerned about not getting his clearance and losing his job.

## **Policies**

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; and DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended. The case will be adjudicated under the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. 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 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 . . . .

Applicant's history of financial problems is documented in the record. He has 16 accounts delinquent, in collection, or charged off: seven of the accounts are for delinquent medical services from periods when he had no medical insurance, two are for repossessed vehicles, three are for utilities, and one is for tuition fees. He failed to timely file his federal income tax returns for tax years 2016 and 2017, and he owes \$2,215 in taxes for tax years 2015 and 2017. AG ¶ 19 provides disqualifying conditions that raise a security concern and may be disqualifying 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." The record established the disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

Six 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, 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.

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

Considering the evidence as a whole, I find that none of the mitigating conditions are sufficiently raised by the evidence and are not applicable. AG ¶ 20(a) does not apply because Applicant's financial problems are frequent, recent, and ongoing. Additionally, he failed to timely file his 2016 and 2017 income tax returns and owes past-due taxes for tax years 2015 and 2017.

Applicant established circumstances beyond his control that may have contributed to or aggravated his financial situation, such as his discharge from the service in 2010, periods of unemployment or underemployment, and his 2014 divorce. Notwithstanding, I find that Applicant failed to establish that he was financially responsible under the circumstances. He presented little evidence of reasonable efforts to pay, settle, dispute, or otherwise resolve his delinquent accounts until after he was served with the SOR in October 2018.

I give Applicant credit for filing his 2016 and 2017 income tax returns in August 2018, and for establishing a payment arrangement with the IRS in November 2018. Notwithstanding, Applicant failed to comply with the terms of his payment arrangement with the IRS and only made two payments. I also give Applicant credit for hiring a debt relief company to help him pay, settle, and resolve his delinquent accounts in November 8, 2018. However, Applicant's documentary evidence is insufficient to show that he continued making contributions to the debt relief company program, or that any of his accounts were paid, settled, or resolved. Applicant presented little evidence of any payments made, payment arrangements established, disputes filed, or resolution of any of the accounts alleged in the SOR, except as indicated above.

Considering the evidence as a whole, I find that Applicant's financial problems are not under control. He failed to establish a good-faith effort to resolve his debts, and to establish a reasonable basis to dispute the legitimacy of the two disputed debts. Additionally, Applicant neglected his legal obligation to timely file his income tax returns over two years. "Failure to comply with federal and state tax laws suggests that an applicant has a problem with abiding to well-established Government rules and

regulations. Voluntary compliance with rules and regulations is essential for protecting classified information.” ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). This is true even if the returns have been filed. See, ISCR Case No. 15-03481 at 5 (App. Bd. Sep. 27, 2016).

Applicant’s failure to file his federal income tax returns in a timely manner, and his failure to pay his debts does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information. See, ISCR Case No. 14-01894 at 5 (App. Bd. Sept. 27, 2016). Applicant failed to demonstrate financial responsibility. The financial considerations security concerns are not mitigated.

### **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. Security Executive Agent Directive (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, 36, has about 10 years of active service in the Navy and working for federal contractors. He apparently held a clearance while in the service. He failed to demonstrate good judgment and reliability. His failure to timely file his tax returns and to pay his debts shows that he has a problem complying with well-established rules. At this time, his evidence is insufficient to establish a track record of financial responsibility.

### **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
Subparagraphs 1.a – 1.s:	Against Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to continue Applicant’s eligibility for a security clearance. Clearance is denied.

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JUAN J. RIVERA  
Administrative Judge