



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



In the matter of: )  
)  
) ISCR Case No. 18-02087  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*  
09/25/2019

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant failed to timely file his federal income tax returns for tax years 2012, 2015, 2017, and 2018. He also addressed most of his delinquent debts after he received the statement of reasons. 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 March 15, 2016, 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 December 17, 2018, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on January 22, 2019, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

DOHA assigned the case to me on March 4, 2019, and issued a notice of hearing on April 4, 2019, setting the hearing for May 1, 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 eight exhibits (AE 1 through 8). AE 6, 7, and 8 were received post-hearing. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on May 13, 2019.

### **Procedural Issue**

At the hearing, I amended SOR ¶ 1.j to read: “You failed to timely file, as required, Federal income tax returns for tax years 2012, 2015, 2017, and 2018.” The amendment was made to conform the SOR allegations to the evidence presented. No objections were raised, and Applicant admitted that he had not failed his 2018 income tax return. (Tr. 56-58)

### **Findings of Fact**

The amended SOR alleges that Applicant has nine delinquent debts totaling approximately \$56,000 including delinquent child support (¶ 1.a); two vehicle repossessions (¶¶ 1.b and 1.c); four charged-off accounts (¶¶ 1.d – 1.g), and two accounts in collection (¶¶ 1.h and 1.i). It also alleges Applicant failed to timely file federal tax returns for tax years 2012, 2015, 2017, and 2018 (¶ 1.j).

Applicant denied SOR ¶¶ 1.a, 1.c, 1.g, 1.h, and 1.j. He partially admitted SOR ¶ 1.b, and admitted all of the remaining allegations (¶¶ 1.d – 1.f, and 1.i). 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 45-year-old employee of a federal contractor. He graduated from high school in 1993, and shortly thereafter enlisted in the U.S. Navy. He served honorably on active duty until he was medically retired in 2007. He possessed a secret clearance during his service.

Applicant married in 1995 and divorced in 1996. He married his wife in 2001. He has a step-child age 22, and three children, ages 24, 19 and 18. Applicant has been attending college since 2007, and anticipates earning a bachelor's degree in December 2019.

Applicant's work history indicates that after his discharge from the service he was unemployed for about three months. He then worked full-time for different employers between February 2008 and August 2015. He was unemployed between August 2015 and February 2016. He was hired by the federal contractor currently sponsoring his clearance in February 2016. (GE 2)

In his response to Section 26 (Financial Record) of his 2016 SCA, Applicant disclosed that he had financial problems. Specifically, he stated that after losing his job in 2009 he became delinquent on his child support obligation. He disclosed no additional financial problems. Although not alleged, Applicant responded “NO” to questions asking whether he had any delinquent, in-collection, or charged-off accounts.

He failed to disclose the charged off, in collection, or delinquent accounts alleged in the SOR. He also failed to disclose that he did not timely file his federal income tax return for tax years 2012 and 2015.

Applicant filed his federal income tax return for tax year 2012 in March 2014. He was issued a \$2,563 refund. He timely filed his federal income tax returns for tax years 2013 and 2014. He was issued refunds for both tax years of \$1,592 and \$2,229, respectively. Applicant filed his federal income tax return for tax year 2015 in January 2017. He filed his federal income tax return for tax year 2016 in May 2017. The IRS considered his 2017 filing timely. Applicant filed his federal income tax return for tax year 2017 in July 2019. As of May 2019, Applicant had not filed his 2018 federal income tax return and he did not ask for an extension of time to file. (GE 3)

Concerning SOR ¶ 1.a (delinquent child support), Applicant's documentary evidence shows that he has been timely paying his child support obligation since December 2015. The original delinquent obligation was for \$32,968. Applicant has paid \$29,243 as of May 2019. Notwithstanding the payments made, Applicant intends to dispute the child support payments made and request reimbursement, because his son's mother had released him from his child support obligation for a period, and there were several periods during which the child was staying with him either because the mother was deployed or incarcerated.

Applicant intends to dispute the accounts alleged in SOR ¶¶ 1.b and 1.c (two vehicle repossessions). He explained that he refinanced two vehicles through the same credit union. One of the vehicles' engine seized while he was in the process of disputing the purchase with the seller and stopped paying the car note because the car was not working. The credit union repossessed both cars for lack of payments on the loan. Applicant believes the repossession of the second vehicle was unfair and that it was sold in auction for less than its fair value. Notwithstanding, he presented no evidence to show he has filed electronic or written disputes against the seller, financial institution, or the credit bureaus concerning the above accounts. Applicant stated that he is disputing the accounts, but understands that likely he will have to pay them.

Applicant settled the accounts alleged in SOR ¶¶ 1.d and 1.f for less than what he owes on May 20, 2019. (AE 6) For SOR ¶ 1.d, he promised to make \$200 monthly payments in June, July, and August 2019. For SOR ¶ 1.f, he promised to make \$100 monthly payments in June, July, and August 2019. The record closed before any of the payments were made, so there is no documentary evidence in the record to confirm any payments were made.

Applicant settled the account alleged in SOR ¶ 1.e on May 14, 2019. He authorized the creditor to charge \$92 against his credit card for four consecutive months starting June 2019. The record closed before any of the payments were made, so there is no documentary evidence in the record to confirm the payments.

Applicant was not aware of the account alleged in SOR ¶ 1.g and he denied it. He testified that he contacted the creditor and the creditor does not know what the account was for, and does not have any information connecting Applicant to the account. (Tr. 42) Applicant initially denied the account alleged in SOR ¶ 1.h, but paid it in May 2019. (AE 6) He testified that he paid the account alleged in SOR ¶ 1.i. He believes that it was related to his son's cancer treatment when he was five years old. He presented no documentary evidence of this payment.

Applicant presented little documentary evidence to show that he had contact with his creditors, made payments, established payment arrangements, disputed accounts, or otherwise resolved any of the accounts alleged before the SOR was issued. He presented no evidence to show he has participated in financial counseling or that he has a working budget.

Concerning his delinquent taxes, Applicant did not explain why he did not timely file his 2012 and 2015 income tax returns. He did not file his 2017 and 2018 income tax returns because he intends to dispute his child support arrearages as soon as his son is emancipated. He was anticipating receiving refunds, and because of a garnishment filed against him, the refunds would have been given to the mother of his son for past-due child support. He believes that he is entitled to credit for the periods his son was living with him, for child support he paid, and for a period the mother waived the child support payments. He believes that if he had filed the tax returns and the mother was given the refunds, he would not be able to recover the money from her.

Applicant explained that his financial problems resulted from periods of unemployment and underemployment, and having to pay child support. 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 the hearing, Applicant highlighted that he has worked for the federal government for the last 25 years, basically doing the same job that he did while in the service. He believes his past behavior has proven that he is not a security risk. Applicant noted that his wife is about to graduate and he anticipates she will start working and contributing to the household finances in the near future. He believes that with their combined income, he will be able to pay his financial obligations and living expenses. He believes that he is doing the best he can do in his current circumstances. 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 had eight accounts delinquent, in collection, or charged off. He failed to timely file his federal income tax returns for tax years 2012, 2015, 2017, and 2018. 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 to mitigate the financial considerations concerns. AG ¶ 20(a) does not apply because Applicant's financial problems are frequent, recent, and ongoing. Additionally, he failed to timely file his 2012, 2015, 2017, and 2018 income tax returns.

Applicant established circumstances beyond his control that may have contributed to or aggravated his financial situation, such as his medical retirement from the service in 2007 and periods of unemployment or underemployment. 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 December 2018.

I give Applicant credit for filing his past-due income tax returns, except for tax year 2018. I also give Applicant credit for addressing his delinquent accounts after receipt of the SOR. He was able to pay, settle, and establish payment arrangements with most of his creditors. I further note Applicant's good track record paying his past-due child support. Notwithstanding, Applicant's documentary evidence is insufficient to show that he was financially responsible. Applicant presented little evidence of any payments made, payment arrangements established, disputes filed, or resolution of any of the accounts alleged until after receipt of the SOR. Furthermore, although he settled four SOR accounts, there is no documentary evidence to show he has made the agreed payments and that the accounts have been resolved.

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 accounts he intends to dispute. Additionally, Applicant neglected his legal obligation to timely file his income tax returns for four 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, 45, has about 25 years of active service in the Navy and working for federal contractors. He held a clearance while in the service. Notwithstanding, 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.d-1.i:	For Applicant
Subparagraphs 1.b, 1.c, 1.j:	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 interest 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