



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



In the matter of: )  
)  
) ISCR Case No. 18-02248  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*  
03/15/2019

**Decision**

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

On October 29, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. Applicant timely answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government’s file of relevant material (FORM) on December 28, 2018. Applicant received the FORM on January 8, 2019, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government’s evidence, and he provided a response on February 4, 2019, with several attached documents indicating that several smaller debts, not alleged in the SOR, were paid off. He provided a follow-up email response to the FORM dated February 18, 2019. The Government’s evidence, identified as Items 1 through 7, is admitted into evidence without objection. The case was assigned to me on March 1, 2019.

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

Applicant is 40 years old. He served honorably in the U.S. Air Force (USAF) from 1997 – 2011. He has been employed as a logistics analyst by a federal contractor since December 2016. He was unemployed briefly between contract assignments since leaving active duty. He has held a second job as a fitness trainer since June 2016. Applicant reported a previous security clearance in 1997 from his time on active duty, with no incidents. Applicant has been married and divorced three times: from 2001 to 2006; from 2006 to 2009; and again from 2010 to 2014. He has two adult children.

Applicant reported his failure to timely file a federal income tax return, and pay income taxes for tax year (TY) 2015 in section 26 of his security clearance application (SCA).<sup>2</sup> There, he stated that he relied on a tax-preparation service, which was eventually shut down by the Internal Revenue Service (IRS) for filing fraudulent returns. Consequently, he owed the IRS \$14,000. Applicant claimed that he previously established a payment plan with the IRS making installment payments of \$250 per month. He provided no substantiating documentation.

Applicant provided a detailed answer to the SOR on November 28, 2018 (Answer). In his Answer, Applicant admitted the allegation that he owes the IRS \$14,000 in overdue federal income taxes at SOR ¶ 1.i. He also admitted the alleged charged-off and delinquent debts placed for collection alleged in SOR ¶¶ 1.a -1.h. In section 26 of his SCA, he also disclosed consumer debts, which accrued during his marital separation when he used his credit-card to make ends meet. He exhausted his savings waiting for a promised job with a federal contractor in early 2016, but the contract and the job did not materialize.<sup>3</sup> The delinquent debts alleged in the SOR amount to \$76,265.

The mortgage account that is past-due in the amount of \$32,761 at SOR ¶ 1.a resulted when his ex-wife occupied their home after they divorced. She did not make payments on this joint mortgage and he claims he has been unable to contact her. (Answer) The charged-off debt in the amount of \$11,748 at SOR ¶ 1.b was for a vehicle that Applicant could no longer afford after his divorce. He voluntarily surrendered it. (Answer) He provided no information about the deficiency owed, or what he did to satisfy it.

The charged-off debt in the amount of \$9,596 at SOR ¶ 1.c resulted when Applicant was unemployed for several months after resigning from one job with the expectation that another job would commence once a contract was awarded. His

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<sup>1</sup> Unless stated otherwise, the source of the information in this section is Applicant's August 1, 2017, security clearance application (SCA) (Item 4), or his personal security interview (PSI) on May 17, 2018. (Item 5)

<sup>2</sup> Item 4.

<sup>3</sup> Item 4, p. 46.

putative employer lost the contract and the job never materialized. He exhausted his savings in the interim. He was unable to pay the delinquent debts at SOR ¶¶ 1.d and 1.e for the same reasons, and stated that he would enter a payment plan or pay these debts. (Answer) No documentation corroborating these claims has been provided.

SOR ¶ 1.f alleges a debt in the amount of \$472 placed for collection by a telecommunications company for a cable box and modem that Applicant says he returned. Applicant disputes the alleged debt in the amount of \$489 at SOR ¶ 1.g. He provided no dispute letter or other evidence. SOR ¶ 1.h alleges an account placed for collection in the amount of \$795. Applicant claims, without substantiation, that he made the final payment in July 2018 and the account is closed. (Answer)

Applicant claims to have made arrangements with the IRS to pay \$250 a month to settle his federal tax debt alleged in SOR ¶ 1.i. This was being deducted by automatic debit from his previous bank account. (Response to Form) Yet, he provided no bank statement or evidence of payments. It is unclear why he stopped making the payments in the first instance. He provided no evidence that he received financial counseling or debt consolidation assistance.<sup>4</sup> He provided no budget showing income against expenses, or other documentation to show progress on his delinquent debts. He professed his intentions to pay his overdue income taxes and repay his delinquent debts in his SCA in January 2016, and in his PSI in May 2018. He produced no documentary evidence that he has done so.

### **Policies**

This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Administrative Guidelines (AGs) promulgated in Security Executive Agent Directive 4 (SEAD 4), effective within the DOD on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines recognize the complexities of human behavior, and are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known

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<sup>4</sup> Personal Subject Interview of May 17, 2018, Item 5.

as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to financial considerations is set out in 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 abuse, 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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.

Applicant's failure to pay overdue federal income taxes and the delinquent debts alleged in the SOR are confirmed by his credit reports and answer to the SOR. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b), 19(c), and 19(f), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.<sup>5</sup> Applicant has not met that burden.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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 . . . , and the individual acted responsibly under the circumstances;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

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<sup>5</sup> Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant endured several divorces and short periods of unemployment. He has been assigned overseas for extensive periods of time since leaving active duty. Arguably, these conditions were beyond his control. Yet, despite his knowledge over two years ago that his tax delinquency and debts might affect his eligibility for a security clearance when he completed his SCA, and then reinforcing his intention to make payment arrangements in his PSI, he has done very little to resolve these delinquent accounts. He has produced no relevant or responsive documentation either with his Answer to the SOR, or in response to the FORM. He has not demonstrated that he acted responsibly under the circumstances. Applicant has the burden to provide sufficient evidence to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur.

None of the mitigating conditions fully apply. He admitted his financial mistakes and overdue federal income taxes. Applicant's credit reports and SOR list the delinquent tax, credit-card, and consumer debts totaling \$76,265. Applicant did not provide enough details with documentary corroboration about what he did to address his SOR debts. He did not provide documentation relating to any of the SOR debts: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditors; (2) correspondence to or from the creditors to establish maintenance of contact; (3) credible debt disputes indicating he did not believe he was responsible for the debts and why he held such a belief; (4) more evidence of attempts to negotiate payment plans, such as settlement offers or agreements to show that he was attempting to resolve these debts; or (5) other evidence of progress or resolution.

In the FORM, Department Counsel informed Applicant that it was important for him to provide corroborating or supporting documentation of resolution of the debt in the SOR. (FORM at 3) Aside from Applicant's uncorroborated statements, there is no documentary evidence that Applicant paid, arranged to pay, disputed, compromised, or otherwise resolved the SOR debts. He did not describe financial counseling or provide his budget. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for his financial problems and other mitigating information.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable

participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines. Applicant has served on active duty, or as a civilian contractor, in support of DOD and U.S. interests for most of his adult life. Notably, Applicant has derived his income primarily from taxpayer-funded federal contractors since leaving active duty. Yet, he has not adequately explained his failure to pay federal income taxes owed. He has gone through divorce and an unexpected loss of household income, but he has been employed most of his adult life. Most importantly, Applicant has not addressed the specific allegations in the SOR.

Applicant's finances remain a security concern. There is insufficient evidence to conclude that Applicant's financial problems are under control. He has not met his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under Guideline F, financial considerations.

### **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
Subparagraph 1.a – 1.i:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Robert J. Kilmartin  
Administrative Judge

