



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



In the matter of: )  
)  
) ISCR Case No. 18-02873  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel O' Reilly, Esq., Department Counsel  
For Applicant: *Pro se*

11/20/2019

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**Decision**

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LYNCH, Noreen A., Administrative Judge:

Applicant has not mitigated the security concerns under the financial considerations guideline. He did not meet his burden to mitigate the financial considerations concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 18, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Adjudicative Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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 adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on April 10, 2019, and requested a hearing. The case was assigned to me on July 12, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 24, 2019, scheduling the hearing for October 1, 2019. I convened the hearing as scheduled.

I marked the Government's discovery letter and exhibit list as Hearing Exhibits (HE) I and II. Government Exhibits (GE) 1 through 8 were admitted into evidence without objection. Applicant testified, but submitted no exhibits. I held the record open until October 22, 2019, and he submitted Applicant's Exhibits (AE) A-E, which were admitted in evidence without objection. DOHA received the transcript (Tr.) on October 11, 2019.

### **Findings of Fact**

In response to the SOR, Applicant admitted all allegations with the exception of SOR 1.i, stating that he paid that account. He generally denied that he is financially irresponsible or lives beyond his means. He is 51 years old. While he served in the United States Air Force Reserve from 1988 until 2012, he held a security clearance. He received an honorable discharge. In 1991, he obtained his undergraduate degree and in 2015, he received his master's degree. He is married and has three children. Two of his children are young adults and the youngest lives with him. Applicant completed his latest security clearance application in September 2017. He obtained a public trust position in 2016. (GE 1) He has worked for his current employer as a teacher for about one month earning \$48,480. (Tr.16, 27) He is sponsored by his former employer for a security clearance. (Tr. 16)

### **Financial**

The SOR ¶¶ 1.a-1.d alleged failure to timely file Federal income tax returns for tax years 2014, 2015, and 2017; delinquent federal tax debt in the amount of \$19,776 for tax year 2014; delinquent federal tax debt in the amount of \$53,379 for tax year 2015; and delinquent federal tax debt in the amount of \$6,821 for tax year 2017. SOR ¶ 1.e alleged an indebtedness for a state tax lien entered in January 2019 in the amount of \$3,157; and the remaining allegations include five collection accounts for an approximate total of \$109,000. (SOR ¶¶ 1.f-1.i) Applicant admitted that there are financial issues of immediate concern and he and his wife are working diligently to get things on track. (Answer)

Applicant explained that he was unemployed from January 2019 until August 2019. (Tr. 19) At his last job, he was earning \$38 an hour. (Tr. 19) He received unemployment benefits in the amount of \$357 a week. (Tr. 33) He paid some household bills with this money and his wife paid the core of the bills. (Tr. 33) His wife earns an annual salary of \$79,900. (Tr. 34) He was also unemployed in April 2015 to September 2016. (GE 1)

As to SOR ¶ 1.a-1.d, Applicant attributed his failure to file the federal income tax returns for 2014, 2015, and 2017 timely, in part due to his prior use of alcohol and a PTSD problem, which added strain to his marriage. He was candid in that his wife was reluctant to help him financially. (Tr. 37) He acknowledged that he paid some bills and let the taxes be paid later. (Tr. 37) He has been dealing with his problem and is acting

responsibly. He understands that he has to work through his financial problems. His wife usually handled the money issues, as he was never that great with them. His paycheck is deposited to her account. She gives him certain amounts of money. He admits that he owes about \$80,000 to the Federal government for delinquent taxes. (Answer)

Applicant explained that his wife usually filed the income tax returns as filing jointly. However, for 2014, the income tax was filed in September 2015, and there was an account balance of \$19,776 as of March 11, 2019. (GE 4) His wife filed jointly without telling Applicant that she claimed three exemptions and he filed jointly as well. No taxes were paid to the IRS. He established an installment agreement in November 2017 with the IRS, which ended March 2018 because new tax debt arose. That agreement or plan stops and a new one must begin with the IRS according to a tax consultant. (Tr. 44)

For tax year 2015, the Federal income tax return was not filed until July 2, 2018 and a delinquent tax balance of \$53,379 was owed as of March 11, 2019. (GE 4) Applicant thought his wife filed the income tax jointly as she usually does, but she only filed for herself. (Tr. 48) He did not realize this until he contacted the IRS later in 2017. His wife reportedly told Applicant that she filed separately for herself so that she could get a refund. He candidly stated that was an indication of the stress in the marriage –no communication. (Tr. 49)

For tax year 2017, delinquent taxes are \$6,821. However, Applicant submitted a chart that shows the current amount is \$7,482. (AE A) He explained that at the time he experienced a reduction in force and lost his regular salary, which was about \$138,000. He was given a severance package of about \$60,000, which was not taxed. (Tr. 52) He used the money to pay bills, but the money was gone by February 2016. (Tr. 52) He believed he would find another job soon but that did not occur. (Tr. 53) He filed the tax return in November 2018. (Tr. 54) Applicant again attributes this vexing situation to the wife's handling of the income tax filing separately instead of jointly, but he does not blame his wife for the situation.

Applicant recently started a second payment plan (in process) with the IRS for the delinquent tax debts for the years in question. He started the process with the IRS in June 2018, but the payment plan was not approved, as he could not make the minimum amount. (GE 5) He believes the minimum amount was \$1,000. At this time, he submitted a chart showing his payment history from 2017 through 2019 for a total of \$1,343 in payments. (AE B) At this time, Applicant has filed all his Federal income tax returns for the years alleged in the SOR.

SOR 1.e is the amount of a January 2019 state tax lien in the amount of \$3,157. (GE 6) Applicant admits the lien and stated that he has contacted the appropriate state office to enter a repayment plan. However, he believes that he owes the state \$11,000 for the year 2015. (Tr.63)

As to SOR 1.f, Applicant admits that this is a delinquent debt to his undergraduate school, which he learned about from a collection agency. He made 18 monthly payments of \$125 on the account, but the payments ceased in October 2018. The original amount was \$52,070 and is now \$48,395 according to the SOR. He contacted the agency and learned that there is no record of the debt or why the automatic payments stopped. (Attachment 1 with answer in file.) However, he filed for a scholastic academic transcript and that showed an amount of \$23,000. (Tr. 67) He could not receive an official transcript due to the amount that showed. (Tr. 68)

SOR 1.g is a collection account in the amount of \$10,500. This is related to a credit card debt. He states that he is making monthly payments of \$150.00. (Tr. 84, GE 2, GE 4)

SOR 1.h is a student-loan debt-collection-account from the Department of Education in the amount of \$42,413. He stated at the hearing that he has not made any payments to date because he has no proof of this debt and he has been victimized in the past. (GE 2) In addition, the student loan was being paid by his employer at that time and the employer initially stated that they would pay the tuition. However, when the contract ended and Applicant had no work, the employer stopped paying the tuition. Applicant stated that he never heard from anyone to collect any money. He contacted the department in 2016 to initiate a payment arrangement but he never heard from them. (GE 3)

SOR 1.i is a collection account in the amount of \$4,521. Applicant stated that this debt was paid in full in 2016, in a sworn affidavit. (GE 2, 3)

SOR 1.j is a debt in collection for the amount of \$3,314. Applicant has made monthly payments of \$106.36. Applicant presented documentation that the current balance is now \$711.56. (AE D)

Applicant had a 2018 budget in the file when he was gainfully employed. He has two car notes and a mortgage loan for \$1,265. He listed his payments to creditors including one on the SOR allegation. (GE 5) At this time, he and his wife share the household expenses. (Tr.87)

Applicant explained in his investigative interview in 2018 that he is seeking assistance from a credit counselor. (Tr. 83) His wife prepared the income taxes each year and did not want to employ a professional tax preparer. (Tr. 65)

Applicant acknowledged that he has not been consistent with his financial affairs in the past. He did not file the taxes because he assumed his wife did but he did not check. He also thought that he would owe money and with the periods of unemployment, he did not have any money. He explained that if there was a tax liability, his wife would not pay it.

## Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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 entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 10865 provides that adverse 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline F (Financial Considerations)

The concern under this guideline 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 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 . . . .

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, corroborated by his testimony and his credit reports, establish three disqualifying conditions under this guideline: AG ¶¶ 19(a) ("inability to satisfy debts"), 19(c) ("a history of not meeting financial obligations") and 19(f) ("failure to file or fraudulently file annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.")

The security concerns raised in the SOR may be mitigated by the following potentially applicable factors:

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(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;

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 overdue 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.

Applicant admitted and his credit reports confirm that he has been indebted to the Federal government for income taxes for an approximate total of \$80,000. He failed to timely file his Federal income tax returns for 2014, 2015, and 2017. He is in debt to the state government for about \$3,157 and owed on five collection accounts in the amount of \$109,000. The 2014, 2015, and 2017 Federal income tax returns have been filed. AG 20(a) is not fully applicable because he does not have his finances under control.

Applicant had two long periods of unemployment and underemployment. He candidly revealed that he had some personal issues that he has now addressed. Also, there was a situation with his marriage in which his wife did not communicate whether she filed the federal income tax return jointly or not. Applicant did not check on this situation and was not aware until recently. These unforeseen events were all beyond his control. To his credit, he did not blame his wife and accepted responsibility. AG¶ 20(b) partially applies, but he did not act responsibly under the circumstances.

Applicant has filed his income taxes and had started a payment arrangement with the IRS, but when he lost his jobs, he could no longer pay. He incurred new tax debt. At this point he has started a new arrangement. He incurred other delinquent debts by using credit cards to pay expenses and student debt. He recently filed his Federal income tax returns but still owes a significant sum of money in taxes. He began making some payments for the Federal debt in late 2018, but he still does not have a payment plan in place. He has paid one or two small debts and he intends to pay all his delinquent debts. He experienced financial problems due to circumstances beyond his control, but he did not establish that he acted responsibly in the wake of those unforeseen circumstances. Applicant's inaction regarding his taxes and his other debts precludes a conclusion that his finances are mitigated. He did not receive credit counseling. AG¶ 20 (c) does not apply. He submitted some receipts for payments or settlement of some debts. Applicant has yet to address the state lien issue. AG¶ 20(d) partially applies. Due to the lack of evidence submitted by Applicant, it is impossible to conclude he made sufficient good-faith effort to resolve his debts or that his financial situation is under control. AG ¶ 20 (g) partially applies in this case.

### **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 relevant 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.

Applicant credibly testified at the hearing. He disclosed all his tax and financial issues on his security clearance application. He goes to work each day as a teacher making a much lower salary than he did as a contractor. He acknowledged his personal issues that probably affected good judgment. He and his wife did not communicate about filing of income taxes. He accepts responsibility. He obtained two degrees and had been paying or had his employer paying but that ended. When he lost his jobs, he had to stop the IRS payment arrangements that he had for the income tax payments. He has learned from his mistakes. He was passionate about the fact that he wanted to achieve something for himself. However, his judgment with respect to the filing and paying taxes provides doubts despite his intention and commitment to pay all his delinquent debts. He has paid smaller debts. He is steadfast that he wants to pay his debts, and showed that he is in earnest. He has paid or is paying on several and is in place to pay his taxes. On balance, Applicant did not produce information sufficient to mitigate the security concerns about his finances.

Overall, the record evidence leaves me with some questions and doubts as to Applicant's eligibility for a security clearance at this time. 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 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.f and 1.h:  
Subparagraphs 1.g,i. and 1.j:

Against Applicant  
For Applicant

### **Conclusion**

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

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Noreen A. Lynch  
Administrative Judge