



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



In the matter of: )  
)  
) ISCR Case No. 19-00268  
)  
Applicant for Security Clearance )

**Appearances**

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

09/18/2019

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 15, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on April 15, 2019, and requested a hearing before an administrative judge. The case was assigned to me on June 12, 2019.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 20, 2019, scheduling the hearing for July 25, 2019. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant’s Exhibit (AE) A, which was admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that I have marked AE B through G and admitted without objection.

## Findings of Fact

Applicant is a 48-year-old employee of a defense contractor. He has worked for his current employer since May 2019. He served on active duty in the U.S. military from 1991 until he was honorably discharged in 2000. He has a bachelor's degree, which was awarded in 2005, and additional college credits but no post-graduate degree. He is divorced with four children between the ages of 19 and 23. (Tr. at 13, 21-23, 26-29; GE 1, 2)

Applicant has a history of financial problems, which he attributed to his 2002 divorce, high child support payments, the loss of his job in 2015, and the subsequent six months of unemployment. He filed a Chapter 13 bankruptcy case in July 2007 as a means to keep his house from foreclosure. The petition listed \$293,000 owed on a mortgage loan; \$40,000 for an auto loan on a sport utility vehicle (SUV), and \$6,500 in unsecured claims. The bankruptcy was dismissed in September 2007. (Tr. at 13-14, 26-30; Applicant's response to SOR; GE 6)

Applicant did not pay all of his federal and state income taxes when they were due. In April 2018, he estimated that he owed the IRS \$20,000. He indicated post-hearing that he has been in contact with the IRS, who informed him that he owed more than \$60,000. He stated that he sent IRS Form 433-F (Collection Information Statement) to the IRS to begin the process of making payment arrangements. He provided a blank copy of an IRS Form 433-F. (Tr. at 16-18, 35; GE 1-3; Applicant's response to SOR; AE B-D)

From 2011 to 2017, Applicant's state imposed about \$90,000 in tax liens against him. The liens are not listed on his most-recent credit reports, but Applicant admitted that he owes his state more than \$111,000. He wrote that the state has yet to send him any forms, and he is "still reaching out to them." (Tr. at 14-20, 33-35; GE 1-3; AE B, C, E-G)

Applicant did not pay his mortgage loan. Credit reports from January 2018, January 2019, and April 2019 listed the loan as \$75,780 past due and in foreclosure, with a balance of \$323,324, and a date of last action of May 2015. He lost his home to foreclosure. There is no evidence that the house has been sold or if there is a deficiency on the loan after a sale. (Tr. at 18-19, 31-33; GE 2, 4, 5; Applicant's response to SOR; AE E)

Applicant bought a 2007 sports car for about \$50,000 in July 2010. He still had the sports car when he bought an SUV in November 2011 that was financed with a loan of about \$71,000, with monthly payments of \$1,325 for 73 months. He stopped paying the loan on the sports car at some point. The car was not repossessed. He maintained the car at a friend's house, at least in part so that the creditor could not repossess it. A January 2018 credit report listed the charged-off loan for the sports car with a \$12,433 balance. Applicant settled and paid the debt in about August 2018. He sold the car after the lien was released. He also stopped paying the loan for the SUV, and it was repossessed. He bought his current vehicle in October 2018, which was financed with a

loan of about \$47,000, with \$857 monthly payments. (Tr. at 37-41; Applicant's response to SOR; GE 1, 2, 4, 5; AE A)

SOR ¶¶ 1.f and 1.g allege debts of \$191 and \$38. The debts are listed on a January 2018 credit report with dates of last action on the accounts listed as December 2011 and January 2012. Applicant denied owing the debts, and they are not listed on the 2019 credit reports. (Tr. at 41; Applicant's response to SOR; GE 4, 5; AE E-G)

Applicant's annual salary is about \$150,000. Except for the six months of unemployment in 2015, he has been consistently employed with annual salaries in excess of \$100,000. He received financial counseling while he was in the military. He asks to retain his security clearance so that he can keep his job and pay his taxes. (Tr. at 23-27, 42; AE B)

### **Policies**

This case is adjudicated 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 adjudicative guidelines (AG), which became effective on June 8, 2017.

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(c), 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 EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern for 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (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 has a history of financial problems, including bankruptcy, unpaid taxes, and delinquent debts. Except for about six months of unemployment, he was

consistently employed, with annual income in excess of \$100,000. He bought a \$50,000 sports car, but failed to pay all of his taxes. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;

(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.

Applicant attributed his financial problems to his 2002 divorce, high child support payments, the loss of his job in 2015, and the subsequent six months of unemployment. Those conditions were beyond his control. His tax issues were not beyond his control.

Applicant bought a sports car for about \$50,000 in 2010 and an SUV in 2011 for about \$71,000. The car payments for the two vehicles would have been difficult to maintain if he actually paid them, but he stopped paying both loans, as well as his mortgage loan. He maintained the sports car at a friend's house, at least in part so that the creditor could not repossess it.

Applicant's dismissed Chapter 13 bankruptcy case in 2007 is mitigated, as are the two small debts alleged in SOR ¶¶ 1.f and 1.g. The loan for the sports car was settled and paid, and the mortgage loan was apparently resolved by foreclosure. Those allegations are also mitigated. However, Applicant owes the IRS more than \$60,000 and his state more than \$111,000.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018).

There is insufficient evidence for a determination that Applicant's tax problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or made a good-faith effort to pay his taxes. His tax issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that the security concerns arising out of Applicant's unpaid federal and state taxes are not mitigated.

### **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. I also considered Applicant's honorable military service. However, he owes more than \$170,000 in federal and state income taxes.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

## **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.b:	For Applicant
Subparagraphs 1.c-1.d:	Against Applicant
Subparagraphs 1.e-1.g:	For Applicant

## **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge