



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



In the matter of: )  
 )  
 REDACTED ) ISCR Case No. 19-01319  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: *Pro se*  
04/30/2020

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant did not file his income tax returns for tax years 2015 and 2016 until 2019. He incurred about \$157,674 in unsecured delinquent debt, \$68,206 of which are federal student loans that will survive his Chapter 13 bankruptcy filed in January 2019. His divorce strained his finances, and he has made ten months of payments under his bankruptcy plan, but some concerns persist about his financial judgment. Charges of indecent exposure and lewdness in September 2016 were not fully established. Clearance eligibility is denied.

**Statement of the Case**

On May 14, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

On July 9, 2019, Applicant responded to the Guideline F allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On August 30, 2019, Department Counsel amended the SOR to add a Guideline D sexual behavior security concern (SOR ¶ 2.a). Applicant responded to the new allegation on September 20, 2019.

On January 24, 2020, Department Counsel indicated that the Government was ready to proceed to a hearing, and the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On February 3, 2020, I scheduled a hearing for March 3, 2020. On February 24, 2020, DOHA became aware that Applicant had been separated from his defense-contractor employment on January 27, 2020. Applicant informed Department Counsel that he had a job offer with another defense contractor, so jurisdiction was established to convene the hearing as scheduled.

At the hearing, 10 Government exhibits (GEs 1-10) and 12 Applicant exhibits (AEs A-L) were accepted into the record without objection. Extensive documentation submitted with Applicant's response to the Guideline F allegations was admitted as AE A. Character reference letters submitted with his response to the Guideline D allegation were admitted collectively as AE B. Applicant testified, as reflected in a transcript (Tr.) received on March 11, 2020.

### **Findings of Fact**

The amended SOR alleges under Guideline F that Applicant filed for a Chapter 13 bankruptcy in about January 2019, which was still pending as of May 14, 2019 (SOR ¶ 1.a); and that Applicant failed to timely file federal income tax returns for tax years 2015 and 2016, and owed at least \$9,288 in delinquent federal taxes as of May 14, 2019 (SOR ¶ 1.b). Under Guideline D, Applicant is alleged to have been arrested in September 2016 for lewdness, open and gross; accost or annoy another person; and indecent exposure (SOR ¶ 2.a).

When Applicant answered the SOR allegations, he admitted the Chapter 13 bankruptcy filing, but explained that his divorce caused financial strain and negatively impacted his children's emotional and physical health. He also acknowledged that he had not filed his federal income tax returns on time for tax years 2015 and 2016 due to his divorce, but they were filed in January 2019. His tax indebtedness was being repaid through his Chapter 13 bankruptcy plan, and he had made several months of payments under the plan. In response to the Guideline D allegation, Applicant explained that his accuser was an underage female friend of one of his daughters and that the allegations of sexual misconduct were proven to be completely false, as evidenced by the dismissal of

the charges. (Answer.) After considering the pleadings, exhibits, and transcripts, I make the following findings of fact:

Applicant is 58 years old. He has been married and divorced three times. He and his third wife married in October 1995 and divorced in September 2013 because of domestic violence between his ex-wife and the oldest of their three daughters. He indicated in response to the SOR that his ex-wife was arrested in December 2009 and removed from the marital home because of domestic violence, and that over the next two years, he spent thousands of dollars as a court-appointed guardian ad litem investigated and gave him physical custody of their daughters. Additionally, he incurred the costs of therapy for their daughters, although he did not elaborate as to the extent of those costs. Their daughters are now ages 19, 17, and 15, and they live with him. He has a 36-year-old son from his first marriage and a 33-year-old daughter from his second marriage. He has had no contact with them in years. (GEs 1-2; Tr. 39-40.)

Applicant served honorably on active duty in the U.S. Air Force from August 1979 to August 1983. He then served in the U.S. Army from March 1984 until June 1984, when he was separated under other than honorable conditions. (GE 1.) He explained that he was separated after he reported his training officer for hitting other people, but he would not elaborate any further because his records are "sealed." (GE 2.) Applicant then enlisted in the U.S. Marine Corps and served honorably from May 1985 to May 1989. He subsequently served honorably in the Air National Guard (ANG) from May 1996 until he retired as a senior master sergeant in February 2011. He was called to active duty for the Air Force and deployed from February 2002 to November 2002. (GE 1; AEs G-J, L.) Applicant was granted a DOD secret clearance in June 1997. He was first granted sensitive compartmented information (SCI) access eligibility in April 2008 for his ANG duties. (GE 1.)

Applicant attended a community college from September 2007 to June 2008 while working full-time for the ANG as an information technology network manager. From September 2008 to June 2015, Applicant was employed as a systems engineer by a defense contractor (company X). (GE 1; AE K.) He took online classes part time from September 2010 to March 2015, and earned his bachelor's degree in May 2013 and his master's degree in March 2015. (GEs 1-2.)

In July 2015, Applicant began working as a project lead for a defense contractor at an Air Force base located a considerable distance from his home. In June 2016, he became employed by the defense contractor that took over the contract. In December 2016, he left that job for an information assurance position with company X at a worksite nearer to his home. (GE 1; AE K.) While in that position, he completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) on May 17, 2017. He listed a September 2016 criminal charge of indecent exposure, which was then in pretrial proceedings. In response to the SF 86 inquiries into his financial record, he responded negatively to a question concerning whether in the last seven years he had failed to file or pay federal, state, or other taxes when required by law or ordinance. He also answered "No" to inquiries into any delinquency involving routine accounts, but conversely responded "Yes" to a question regarding whether he was currently seeking assistance for financial

difficulties, and stated: “consolidation of debt due in part of divorce, a high mortgage until I had an opportunity to refinance. Additional house repairs were needed.” Regarding efforts to resolve his financial difficulties, he explained:

Since working with Freedom Debt Relief I have been paying down my debt each month with a payment of \$1,149 although my credit score was negatively affected, the long term plan 36 months will bring my debt under control. (GE 1.)

In July 2017, Applicant left his job with company X because he and his supervisor “did not always see eye to eye and he wanted a different opportunity.” (GE 2; AE K.) In August 2017, Applicant returned to work at the Air Force base under the employment of yet another defense contractor. His resume indicates that he was granted a top secret clearance and SCI access eligibility in 2017 (AE K), although he testified that he has held a top secret clearance and SCI access eligibility since 2013. (Tr. 41-42.)

On April 12, 2018, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant acknowledged that he had not yet filed his income tax returns for tax years 2015 and 2016; that he owed delinquent debts; and that he had been arrested for indecent exposure. (GE 2.) The salient details about these issues follow.

### **Financial Considerations**

Applicant and his third wife filed for divorce against each other in January 2010. Their divorce became final in September 2013. They share legal custody of their three daughters, for whom his ex-wife was ordered to pay child support of \$293 per week starting July 5, 2013. In their divorce settlement dated June 17, 2013, Applicant retained sole legal title of the marital home purchased in September 2008 and became solely responsible for paying the mortgage. His ex-wife was given half of his federal employee’s defined pension plan for the portion of his benefits earned between October 1995 and March 2013. His pension was to be divided by a Qualified Domestic Relations Order (QDRO) prepared by a professional with the costs for the QDRO to be shared equally. Applicant was required within 90 days to pay \$20,000 into his ex-wife’s retirement account and \$8,500 towards the marital debts. Applicant’s annual earnings totaled \$121,825 in 2013 and \$124,766 in 2014. (AE A.)

In June 2015, Applicant refinanced the mortgage on his home, obtaining a 30-year Department of Veteran’s Affairs loan for \$397,270 and lowering his monthly mortgage payment obligation from \$2,998 to \$2,500. (GEs 5, 7; Tr. 46.) He paid off that loan through a refinancing in January 2018 that lowered his monthly mortgage payment by another \$300. (GEs 5, 7.) Between 2015 and 2018, Applicant obtained several loans and credit cards on which he defaulted in his payments (GE 7), despite more than \$100,000 in annual income each year (\$118,661 in 2015, \$108,039 in 2016, \$115,198 in 2017, and \$107,352 in 2018) and the premature withdrawal of retirement assets in 2016. (AE A.) Some of the loans were obtained to pay for his divorce attorney. He testified that, by the time his divorce

was finalized in 2013, his attorney cost him \$59,000. (Tr. 55-56.) He provided no documentation to corroborate that amount.

During his April 2018 OPM interview, Applicant did not dispute most of the adverse credit information that was on his credit record but not reported by him on his SF 86. He asserted that a March 2018 credit-card judgment for \$1,294 had been settled for \$850 (but then included it as a \$1,294 debt in a January 2019 bankruptcy filing). He admitted that he had not paid a loan charged off for \$6,566 in May 2017; two loans totaling \$15,242 charged off in October 2017; five consumer-credit debts totaling approximately \$12,686 charged off in November 2017; and four credit-card accounts for \$16,978 in collection since 2017. He admitted that he had received collection notices for several of his past-due debts.

Applicant also acknowledged that five federal student loans totaling some \$63,518 had been placed for collection in November 2017 because of nonpayment. He had thought they were in deferment until June 2018. He explained that he was under a repayment plan for his federal student loans starting March 2018 and was making \$325 monthly payments. He claimed to not recognize two other debts: a charge-off for \$1,344 from November 2017 and a collection debt of \$1,186 from April 2017 (both debts are on his Chapter 13 petition).

Applicant also admitted to the investigator that he had not filed his federal income tax returns for tax years 2015 and 2016 because he was concerned he would owe taxes and could not pay them. He wanted to catch up financially before filing them and indicated during his OPM interview that he was in the process of filing his delinquent tax returns. (GE 2.)

Available credit information from August 2019 indicates that Applicant stopped paying on most of his consumer credit cards and personal loans in the summer of 2016. He last paid on his federal student loans in July 2018. (GE 7.) Applicant explained to the OPM investigator in April 2018 that he could not keep up with his finances after his divorce from his third wife, given the loss of her annual income of approximately \$80,000 annually, and also having to pay a criminal lawyer about \$10,000 to represent him for a September 2016 indecent exposure charge. He explained that he had used Freedom Debt Relief, a credit-counseling service, from the fall of 2016 until June 2017 (Tr. 45), which helped him consolidate and pay off some debts. (GE 2.) He paid Freedom Debt Relief about \$1,000 a month. (Tr. 44.) He expressed his intent to use a credit counseling service in the future to help with his debts. He indicated that he was not able to meet all his financial obligations on time. (GE 2.) Available evidence shows that \$8,070 in delinquent debt was cancelled in 2017. (GE 5; AE A.)

At his hearing, Applicant explained that he did not continue with Freedom Debt Relief because “[he] had probably every appliance in [his] house break down from [his] furnace to [his] tractor lawn mower to [his] washer and dryer to [his] refrigerator.” He gave priority to keeping his house functioning rather than paying on his delinquent debts because he did not want his children to be taken away from him. (Tr. 42-43.) He also recalls that all three of his daughters may have been in orthodontic treatment at that time.

(Tr. 44.) He explained at his hearing that the divorce had “residual effect;” that there were “so many things that weighted [sic] on [his] shoulders;” but he admitted he made “poor choices,” such as \$1,645 in retail credit charges at Victoria’s Secret. (Tr. 81.) When asked about a credit card with an accumulated balance of \$14,003 on his bankruptcy petition, Applicant explained that it was for “appliances and stuff,” and for replacing carpeting with hardwood flooring because of his children’s allergies. (Tr. 83-84.)

In August 2018, Applicant sought legal counsel for advice about dealing with his debt. Four months later, he retained the services of the attorney at a fee of \$4,000 to assist him with a bankruptcy filing. After receiving a required briefing from an approved credit counseling agency, Applicant filed a Chapter 13 bankruptcy petition on January 31, 2019. He listed an unsecured priority claim of \$10,800 consisting of delinquent federal income taxes (\$3,800 for tax year 2015 and \$7,000 for tax year 2016), and nonpriority claims of \$144,856, consisting of \$66,232 in federal student loan debts and unsecured credit card and loan debts totaling \$78,624 (including some debts not discussed during his April 2018 interview). Two of his unsecured creditors, who were owed \$1,294 and \$6,741, were seeking judgments against him. Applicant listed as secured claims the \$394,967 owed on his mortgage and \$20,775 owed on a car loan for a 2012 sport-utility vehicle. Applicant listed monthly income of \$7,935, which included \$1,248 in child support and \$6,327 in take-home pay from his job as program manager with a defense contractor. His monthly expenses included \$2,130 for his mortgage, \$550 for his car payment, and \$335 for a vehicle leased for his now 19-year-old daughter. With estimated monthly expenses totaling \$7,235, he reportedly had \$700 in discretionary income with which to pay his creditors. (GEs 3-5; AE A.)

On March 15, 2019, Applicant moved to amend his bankruptcy, in part to add under Schedule D a claim for his daughter’s piano. The debt was brought to his attention when the creditor asserted a claim in his bankruptcy. Under a new summary of his assets and liabilities, he reported that he owed \$19,964 in priority unsecured claims for taxes; \$144,856 in nonpriority unsecured claims of which \$66,232 was his federal student loans; and secured claims of \$428,310 (his car loan, mortgage, and \$12,568 for his daughter’s piano). He reported net income after expenses of \$573 per month. He filed a Chapter 13 plan under which he proposed to pay \$573 per month for 60 months. His mortgage, car payment, and payment on a used piano for his daughter were to be paid directly to his creditors rather than through the plan. His federal income tax delinquency of \$9,288 for tax years 2015 and 2016, state income tax debt of \$760, \$2,500 of his bankruptcy attorney’s fees, and \$340 in pre-petition arrearage on his car loan were to be paid in full under the plan. His unsecured claims totaling \$78,624, including the federal student loans, were to be paid at a pro rata share of 12.42%. However, his federal student loans will survive the bankruptcy discharge. (AE A.)

On March 20, 2019, Applicant completed a post-petition personal financial management course for his bankruptcy filing, and he made a payment of \$700 to the bankruptcy trustee. Applicant filed amended Chapter 13 plans on May 14, 2019, and again on June 5, 2019, which are not in the record. An order confirming his Chapter 13 plan was entered on July 26, 2019. (GE 3.) As of August 5, 2019, 25 creditor claims had been filed

totaling \$587,195, which included \$429,470 in secured claims and \$9,050 in priority claims (federal and state taxes). Of his \$157,674 in unsecured claims, \$68,206 is his student loan debt. (AE A.) Bankruptcy payment records show he has made monthly payments of \$575 to the trustee from April 2019 through January 2020. He testified he made his payment for February 2020 as well. (AE E; Tr. 47.) Applicant testified that he has not been late in any debt payments since he filed his bankruptcy petition in late January 2019. (Tr. 84-85.) Available credit information from August 2019 indicates that he had been chronically late in making his car payment from September 2017 through January 2019. His mortgage payments have been made on time, although his mother and sister helped him by contributing about \$700 so that he could make his \$2,200 mortgage payment for February 2020 when he was unemployed. (GE 7; Tr. 45, 48-50.)

Applicant's federal and state income tax returns for tax year 2015 were completed by a tax preparer on April 12, 2017, but not submitted by Applicant until late February 2019 or early March 2019, after his non-filing came to the attention of the bankruptcy court. His federal return for 2015 was received by the IRS on March 5, 2019. For tax year 2015, his adjusted gross income was \$136,186. He reported underpayments of \$1,121 in federal income taxes and \$472 in state income taxes for tax year 2015. As of June 17, 2019, he owed the IRS \$1,777 for tax year 2015. His federal and state income tax returns for tax year 2016 were completed by a tax preparer in January 2019. His federal income tax return for 2016 was received by the IRS on February 21, 2019. His adjusted gross income for 2016 was \$151,176, which included \$106,651 in salary but also \$44,000 in taxable income due to an early disbursement of retirement funds that he indicates went to house repairs and a minivan. (Tr. 84.) He underpaid his federal income taxes by \$6,662 for 2016. As of June 2, 2019, he owed the IRS \$9,748 for tax year 2016 due to penalties and interest. (AE A.) At his hearing, he explained his belated tax filings as follows:

And that really was the height of everything just coming together financially, you know, between car and appliances. And trying to fix the house up and trying to make a decision on my own as to whether or not the best thing to do was to keep the house and try to keep the children. And it was just a lot for one person to be able to handle at that time. And you know, I think that, that just was something that slipped. It wasn't a priority at that time. And I realized it. Anyways, I've tried to make amends for that. (Tr. 59.)

Applicant testified, without any corroborating documentation, that he had filed his income tax returns for tax years 2017 and 2018. (Tr. 62.)

In June 2019, Applicant became employed by another defense contractor when his previous employer lost the contract with the Air Force. On January 27, 2020, Applicant was laid off for lack of work. (AE K, Tr. 36-37.) He collected unemployment compensation of \$700 a week in February 2020. (Tr. 63-64.) On March 2, 2020, he started a new job with a defense contractor as an information technology manager for a limited access area at an annual salary of \$130,000. (Tr. 38-39, 54.) He is required to maintain a DOD security clearance and is working in an unclassified environment pending the adjudication of his

clearance eligibility. (Tr. 38-39.) The job is closer to his home pays more than his previous job. (AE C.)

Applicant's 19-year-old daughter was in college as of March 2020. She is no longer his dependent for income tax purposes, although Applicant was helping her with college expenses through his GI bill. (Tr. 41.) His ex-wife continues to pay child support for their other two daughters, currently at a reduced \$196 a week because of her financial situation. (Tr. 43-44.) As of his March 3, 2020 hearing, Applicant had approximately \$1,400 in his checking account and \$2,300 in his savings account. (Tr. 49.) He has three open credit-card accounts on which he owes an aggregate balance of approximately \$1,000. (Tr. 65-66.)

### **Sexual Behavior**

Applicant was arrested on September 10, 2016, on three counts: misdemeanor indecent assault and battery on a person age 14 or over; felony enticement of a child; and felony lewdness, open and gross. A female teen friend of one of Applicant's daughters reported to the police that she had gone to Applicant's residence to help clean. Applicant was home alone and directed her to his bedroom to fold some laundry. He told her that he was going to shower in an adjoining bathroom. He came to the bedroom fully clothed a short time later and asked her if she was interested in having sex with him, and despite her negative response, he continued to compliment her before exposing himself and masturbating in front of her. After he told her that the incident would stay between them, she ran home. Although reportedly hysterical, she gave a similar account of the incident to her sister, and their mother took them to the police station, where they filed a complaint. The girl's mother told the police that her daughter had no psychological issues and was not on any psychiatric medication. When the police questioned Applicant at his home, Applicant stated nothing had happened at his home, and he denied that he had exposed himself. He told the police that he and the girl were upstairs when she made a comment about something "kinky," looked at her phone, and then left. Applicant posted \$3,500 bail and was released. (GE 9.)

Court records indicate that Applicant was charged on September 12, 2016, with felony lewdness, open and gross; misdemeanor accost/annoy another person; and misdemeanor indecent exposure. Applicant reported his arrest to security officials at work in February 2017, when he applied for a special access program. When asked by the facility security officer why he had not self-reported in a timely fashion, Applicant responded that he was unaware he had to report being arrested. (GE 8.)

When asked about the charges during his April 2018 OPM interview, Applicant stated that he had been arrested for indecent exposure and possibly a second charge of gross or lewd conduct. He told the OPM investigator that his daughter had a friend, then age 16 (Tr. 68), over to their house in September 2016; that the girl walked by his bedroom and reported seeing him drying off after a shower; and that since his door was barely ajar, she must have opened the door. He asserted that the girl had a history of mental health treatments and of making false accusations, and that the case against him was dismissed



on April 10, 2018. (GE 2.) Available court records corroborate that the charges were dismissed with prejudice on April 10, 2018. (GE 10.)

Applicant asserts that records obtained through subpoena during his criminal proceedings reveal that the complainant had a history of psychological treatment, including an admission to a mental health facility for an extended period, and that she had previously made similar accusations against others, and so the court recommended that the case be dismissed. (AE F; Tr. 68.)

When asked at his security clearance hearing to give his version of the events of September 2016, Applicant responded that, at the request of his daughter, he agreed to pay her friend for some painting, covering the pool, and yard work around his house; that his daughter was called into work and not home when the girl came over; that he met the girl at the front door and told her that she could return in the afternoon if she wished. He then stated:

And that was it. I mean I kind of looked at her and she had a drink or something in her hand. And she just looked rather odd. So she mumbled something under her breath and you know, she left. (Tr. 67-69.)

When confronted by his April 2018 discrepant account to the OPM investigator that the girl must have seen him drying off after his shower, Applicant responded:

That could have happened before because I was trying to recall that my daughter has a whole bunch of friends. And this is a girl that has come over to our house a couple of times before. And I know that they were in our pool and they were upstairs. And they were all, you know, changing and what have you. And you know, I'm in my master bedroom, you know, and I could have — this is what I'm recalling. I think that something that may have happened a few days earlier where I was in my shower and she was upstairs in my daughter's room. And I think she may have seen me through my door being, you know, ajar. . . . And I believe that, that's the story that she went home and told her older sister. And you know, it was just absolutely shocking to me because I didn't — the police didn't come over to my house for almost five or six hours later. So I was absolutely stunned as to, you know, [that] they were making accusations [against] me. (Tr. 69-70.)

Applicant persisted in denying that the teenager was upstairs with him on the day in question. (Tr. 72-73.) When confronted with the police report, where he had reportedly told the police that he and the girl were upstairs when she made a comment about something “kinky” before leaving, Applicant denied he had made the comment, and asserted that the girl was in his residence less than five minutes. (Tr. 72.) As to why he did not converse with the girl outside given his daughter was not home, Applicant responded, “But I've had so many girls — children in my house over the course of this many years . . . . So that was very normal.” (Tr. 73.)

Applicant has strong ties to his community, where he has lived for 12 years. He is active in his church, daughters' school, and their basketball team. (AE C; Tr. 88.)

### **Character References**

Five individuals authored character references for Applicant. They have worked alongside Applicant in the military or as defense contract employees or both and recommend him for a security clearance. They consider Applicant to be trustworthy and to have high integrity. A captain in the Air Force expressed confidence that Applicant is very trustworthy and can be trusted to maintain confidentiality and loyalty to our country. A contractor employed as a project lead on an Air Force cyberspace defense weapon system has known Applicant for four years. He indicates that Applicant is committed to his career, his family, and the country, and that “[Applicant’s] dedication to raising his children with the same values and respect which he demonstrates on the job is something to be admired.” (AE B.) None of these co-workers mentioned any of the security concerns at issue, so it is unclear whether they know of Applicant’s financial problems or his arrest.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has 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). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. 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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 concerns about financial considerations are articulated 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. . . .

An applicant is not required to be debt free, but is required to manage his finances in a way as to exhibit sound judgment and responsibility. The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

The Guideline F security concerns are well established by his record of considerable credit-card and loan delinquencies, including \$68,206 in federal student-loan debt; by his

failure to timely comply with his income tax filing obligations for tax years 2015 and 2016; and by his past-due federal income taxes that have accrued to \$11,525. Based on the facts in this case, four disqualifying conditions under AG ¶ 19 apply:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators; 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 burden is on Applicant to mitigate the negative implications for his financial judgment raised by noncompliance with his tax filings and his delinquent debts. Application of the aforesaid disqualifying conditions triggers consideration of the potentially mitigating conditions under AG ¶ 20. One or more of the following conditions may apply in whole or in part:

- (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 person has received or is receiving 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.

AG ¶ 20(a) cannot reasonably apply. Available credit information shows that Applicant stopped paying on several consumer-credit accounts during the summer of 2016. Many of his past-due debts went unaddressed until January 2019, when he filed a Chapter 13 bankruptcy petition. As of his amended petition in March 2019, he owed \$157,674 in nonpriority unsecured claims of which \$68,206 was defaulted federal student-loan debt. His financial problems are too recent and recurrent for mitigation under AG ¶ 20(a).

AG ¶ 20(b) has some applicability because of Applicant's protracted divorce proceedings and related issues, such as the cost of the guardian ad litem and therapy for his daughters. His uncorroborated testimony is that he incurred some \$59,000 in attorney fees over the three years. He provided no information about his other expenses related to the divorce, such as the expense of his daughters' therapy. He kept the marital home after the divorce and had to cover the mortgage payment, then almost \$3,000 a month, on his income alone. He testified that he had to replace nearly every appliance in his home, and that he had to remove carpeting because of his children's allergies. He had some decline in his income in recent years, but his ex-wife was paying and continues to pay him child support. His reliance on consumer credit persisted after his divorce with seemingly little consideration to what he could reasonably afford.

I have to consider whether Applicant acted in a responsible manner when dealing with his financial difficulties. See ISCR Case No. 05-11366 at 4, n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether Applicant maintained contact with his creditors. While he may have been confused as to whether his student loans were deferred, he knew that he had stopped paying on several credit-card accounts in the summer of 2016. He admitted during his April 2018 that he received collection notices in many cases. He attempted to work through Freedom Debt Relief from the fall of 2016 to June 2017, but then did little to resolve his debts before consulting with an attorney in August 2018, who advised him to file for bankruptcy. It took Applicant another four months to decide to proceed with a Chapter 13 filing, even though he had to know as of his April 2018 interview that his unresolved financial issues were of concern to the DOD. Applicant failed to give sufficient priority to resolving his past-due debts.

Applicant also exhibited irresponsibility in his handling of his tax issues for 2015 and 2016. Applicant's federal and state income tax returns for tax year 2015 were prepared in April 2017, but were not filed until late February 2019 or early March 2019. His tax returns for tax year 2016 were completed by a professional preparer in late January 2019 and filed by Applicant shortly thereafter. He testified that his income tax returns for tax years 2017 and 2018 have been filed. Even where an applicant has corrected his tax problems, and is motivated to present such problems in the future, the administrative judge is not precluded from considering an applicant's trustworthiness in light of longstanding behavior evidencing

irresponsibility. See ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015). As recently noted by the DOHA Appeal Board, “A person who fails repeatedly to fulfill his or her obligations, such as filing tax returns when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information.” See ISCR Case No. 18-01045 at 3 (App. Bd. May 14, 2019), citing ISCR Case No. 17-03978 at 3-4 (App. Bd. Mar. 6, 2019). Applicant was obligated to file his income tax returns on time, whether or not he could afford to pay the taxes owed.

AG ¶ 20(c), AG ¶ 20(d), and AG ¶ 20(g) warrant some consideration because of his bankruptcy filing, which includes his federal tax delinquency, and because of his belated submissions of his federal and state income tax returns for tax years 2015 and 2016. As of early March 2020, he had made ten months of \$535 payments under an approved Chapter 13 plan. Applicant had credit counseling that is required for a bankruptcy filing. If he makes all his payments, his unsecured creditors will receive only about 12.42% of what they are owed. However, with the exception of his student loans, they will not be legally able to pursue him for their remaining balances. Even so, given his history of credit overextension and his late payments on his car loan from September 2017 to January 2019, his ten months of bankruptcy payments provide insufficient assurance that his financial problems are safely behind him and that he can be counted on to manage his finances responsibly in the future. He testified that he has about \$3,700 in combined checking and savings deposits and yet he needed the help of family members to make his mortgage payment in February 2020. His new job is an increase in salary to \$130,000 annually, but given his serious history of financial mismanagement, a longer period of compliance with his bankruptcy plan is needed to fully mitigate the financial considerations security concerns.

#### **Guideline D: Sexual Behavior**

The security concern about sexual behavior is articulated in AG ¶ 12:

Sexual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress. These issues, together or individually, may raise questions about an individual’s judgment, reliability, trustworthiness, and ability to protect classified or sensitive information. Sexual behavior includes conduct occurring in person or via audio, visual, electronic, or written transmission. No adverse inference concerning the standings in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

On complaint of a 16-year-old female friend of his daughter that Applicant made inappropriate comments of a sexual nature to her, exposed himself, and then masturbated in her presence. Applicant was arrested in September 2016 and charged with three crimes of a sexual nature: felony lewd conduct, open and gross; misdemeanor indecent exposure; and misdemeanor accost/annoy another person. Such conduct, if true, would clearly implicate AG ¶ 13(a), “sexual behavior of a criminal nature, whether or not the individual has been prosecuted.”

Applicant denies any validity to the charges, which he attributes to the girl's mental health issues and her history of similar unsubstantiated complaints against others. He presented no corroborating documentation to support his claims that the girl suffers from a mental illness for which she takes medication and has been psychiatrically hospitalized. Available court records do show that the case was dismissed with prejudice, however, which would suggest that the prosecution had some doubt about whether it could prove its case beyond a reasonable doubt. Applicant was allowed to retain custody of his three teenage daughters, so apparently the state's Department of Children and Families (DCF) was persuaded that Applicant was not a risk to his own children.

Sexual behavior may have security significance, notwithstanding dismissal of criminal charges. The burden is on the Government to prove by substantial evidence that Applicant engaged in sexual behavior of the type contemplated within AG ¶ 12. See Directive ¶ E3.1.14. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." See ISCR Case No. 18-00754 (App. Bd. June 17, 2019).

The reason for the dismissal of the charges is not stated in the criminal record in evidence. In response to the SOR amendment, Applicant indicated in September 2019 that after the prosecutor and his own attorney reviewed a record from a mental health hospital, where the girl was admitted for several months, and DCF reports, the prosecutor and his attorney asked that his case be dismissed. Although he claims he was briefed about what was in the reports, he did not provide details. I did not have the opportunity to assess the credibility of the teenage girl, but her account to the police was similar to what she told her sister as soon as she arrived home that day. There is no apparent reason why she would make false accusations against Applicant, given her friendship with his daughter. A mental illness could explain her behavior, but the only information in that regard is from Applicant, whose credibility is somewhat suspect because of his disparate versions of what happened that day.

When questioned by the police, Applicant denied that he exposed himself to the teenager, but he also stated that he and the teenager were upstairs; that she made some comment about something "kinky;" and that she then looked at her phone and left. Applicant discrepantly told an OPM investigator in April 2018 that he was charged with indecent exposure after the teenage girl, who had mental health issues, came over to his house and walked by his bedroom while he was drying off after a shower. His door was barely ajar, so she must have opened the door. At his March 2020 hearing, Applicant initially testified that, at the request of his daughter, he agreed to pay her friend for some painting, covering the pool, and yard work around his house; that his daughter was called into work and not home when the girl came over; that he met the girl at the front door and told her that she could return in the afternoon if she wished. He claimed that she mumbled something under her breath and then left the house. When asked about the discrepancy between that account and what he told the OPM investigator, Applicant responded:

That could have happened before because I was trying to recall that my daughter has a whole bunch of friends. And this is a girl that has come over

to our house a couple of times before. And I know that they were in our pool and they were upstairs. And they were all, you know, changing and what have you. And you know, I'm in my master bedroom, you know, and I could have — this is what I'm recalling. I think that something that may have happened a few days earlier where I was in my shower and she was upstairs in my daughter's room. And I think she may have seen me through my door being, you know, ajar. . . ." And I believe that, that's the story that she went home and told her older sister.

Applicant persisted in denying that the girl was upstairs with him on the day in question, which directly contradicts what he told the police. He maintained that the girl confused it with another incident where she may have seen him drying off after a shower, but it would not explain why he had told the OPM investigator that she had seen him after a shower. What can reasonably be gleaned from the inconsistent accounts is that Applicant allowed the girl into his home to perform some chores when his daughters were not home, and that he was upstairs alone with the teen when he said or did something that made her run home and complain with some hysteria about him to her sister. The evidence falls somewhat short of proving that he intentionally exposed himself or engaged in lewd behavior toward her. While Guideline D security concerns are not adequately established, his inconsistent accounts of what transpired that day raise concerns about his judgment that cannot be ignored under the whole-person evaluation.

### **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 his conduct and all relevant circumstances in light of the nine adjudicative process factors in 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.

Applicant is commended for his years of military service and for his dedication to his daughters. His desire to provide a stable life for them after his divorce likely contributed to some irresponsible financial decisions, including not filing his federal income tax returns when they were due for tax years 2015 and 2016. Those delinquent income tax returns have been filed, and his past-due taxes are included in a Chapter 13 bankruptcy plan approved in July 2019. Yet, he owes some \$68,206 in defaulted federal student loans that will survive the bankruptcy, and he has yet to demonstrate a track record of sound financial decisions. He responded negatively on his SF 86 to inquiries concerning any delinquency involving routine accounts when he owed more than \$140,000 in past-due balances. The



Government must be able to rely on the representations of those persons granted access to classified information, and Applicant raised considerable doubts about whether he can be counted on to provide full and frank answers. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). After applying the disqualifying and mitigating conditions to the evidence presented, I conclude that it is not clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant.

### **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:	Against Applicant
Paragraph 2, Guideline D:	FOR APPLICANT
Subparagraph 2.a:	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 or continue eligibility for a security clearance for Applicant. Eligibility for access to classified information is denied.

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Elizabeth M. Matchinski  
Administrative Judge