



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
)  
[NAME REDACTED] ) ISCR Case No. 19-02203  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric Price, Esq., Department Counsel  
For Applicant: *Pro se*

06/01/2020

---

**Decision**

---

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns about his finances. His financial problems and his failure to file his income tax returns occurred under circumstances that are unlikely to recur. Information about his actions to address his debts and to resolve his income tax deficiencies, combined with the strength of his current finances, is sufficient to mitigate the security concerns raised by the Government's information. Applicant's request for a security clearance is granted.

**Statement of the Case**

On May 8, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew eligibility for a security clearance required for his employment with a federal contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not

determine, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2, that it is clearly consistent with the interests of national security for Applicant to have a security clearance.

On July 31, 2019, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F). The guideline cited in the SOR was part of the current set of adjudicative guidelines (AG) issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017.

Applicant timely responded to the SOR (Answer) and requested a hearing before an administrative judge at the Defense Office of Hearings and Appeals (DOHA). With his response, he proffered Applicant's Exhibits (AX) A – N. I received the case on November 25, 2019, and I convened the requested hearing on January 28, 2020. The parties appeared as scheduled, and DOHA received a transcript of the hearing (Tr.) on February 10, 2020. Department Counsel proffered Government Exhibits (GX) 1 – 8. Applicant and one witness testified. Applicant also proffered AX O – U. All exhibits were admitted without objection.

I held the record open after the hearing to allow Applicant to submit additional relevant information. The record closed on February 14, 2020, after I received Applicant's post-hearing submissions. They have been admitted without objection as AX V – X. Also included in this record are Hearing Exhibit (HX) 1 (Index of Government Exhibits), HX 2 (Department Counsel's Discovery Letter, dated November 15, 2019), and HX 3 (Department Counsel's waiver of objection to Applicant's post-hearing submissions).

### **Findings of Fact**

Under Guideline F, the Government alleged that Applicant did not file his federal income tax returns on time for the 2010 – 2017 tax years, and as a result, owes \$23,120.61 in past-due taxes (SOR 1.a). It was also alleged that Applicant filed a Chapter 7 bankruptcy petition in February 2013, declaring \$188,638.02 in unsecured debts, and that he was discharged of his debts in July 2013 (SOR 1.b). Finally, the Government alleged that Applicant had delinquent credit card debts of \$2,739 (SOR 1.c) and \$1,711 (SOR 1.d) to the same credit card company. In response to the SOR, Applicant denied with explanations each of the allegations. (Answer; Tr. 10 – 11)

Applicant's denials created issues of controverted fact as to SOR 1.a – 1.d, and required the Government to produce sufficient reliable information to establish those allegations as facts. (Directive, E3.1.14) The information presented in GX 1 - 8 satisfied that requirement and established those allegations as facts. In addition, I make the following findings of fact.

Applicant is 58 years old and works in an information technology (IT) position for a defense contractor. He was hired by his current employer in June 2019, and he has

worked in similar positions for defense contractors and for companies outside the defense industry since December 1996. Applicant first received an industrial security clearance in 2007. (Answer; GX 1; AX L)

Applicant has been married twice. He and his first wife were married from March 1991 until 2004, when she abandoned the marriage, leaving him to raise their child (now age 26). Applicant remarried in May 2006, creating a blended family with his wife and her two children, now ages 25 and 28. (Answer; GX 1; GX 2)

When he submitted his e-QIP, Applicant disclosed much of the adverse financial information addressed in the SOR. His financial problems began with the failure in 2011 of a small IT services business he had started in 2008. The business began as a part-time venture at a time when his full-time defense contractor employment was unstable due to government contract expirations and his employer's organizational changes. Initially, Applicant ran the business from his home and it became successful enough that he relocated to a commercial space and hired additional employees. Unfortunately, starting in about 2010, his business began to suffer as part of the national economic downturn and he had to close the business in 2011. A subsequent partnership in a woodworking business in 2012 also failed. Applicant had financed both businesses through the use of personal credit and he was unable to stay current on his repayment obligations when the business closed. As alleged in SOR 1.b, in February 2013, Applicant filed for Chapter 7 bankruptcy liquidation of his debts, and he was discharged of his debts in July 2013. (Answer; GX 1; GX 3; GX 5; AX E; Tr. 48 – 49, 61)

After July 2013, Applicant was beginning to recover financially when a series of unexpected expenses arose. In January 2013, as a result of his bankruptcy, Applicant and his family of five had to leave a house he had purchased in July 1991. They moved into a three-bedroom, two-bathroom house that initially was big enough for all of them. Later in 2013, Applicant's grandfather, who lived about two hours away, became ill and could not care for himself. Applicant was the nearest relative who could help his grandfather and began traveling to see him on a regular basis. Applicant lost time and income from work, and he bore the costs of some of his grandfather's medical expenses. Additionally, because Applicant is legally blind and cannot drive, his wife also had to take time off from work to drive him. In 2015, Applicant's grandfather was relocated to a nearby skilled nursing facility where he died three years later. (Answer; GX 3; AX O; Tr. 49 – 51)

Also in 2013, Applicant's mother became ill and was hospitalized in an adjoining state. After she was transferred to a hospital and recovery facility in Applicant's state, he often had to drive three hours to tend to her. Later that year, she moved in with Applicant and his family. As noted above, the house Applicant was renting at the time was large enough for his family of five when they moved in at the beginning of 2013. It quickly became too small to house six adults (Applicant's child and stepchildren were in their 20s by 2013). Applicant and his wife moved to a larger house that commanded a significantly higher monthly rent. At this point, Applicant's wife had been unemployed for several years because of medical issues and Applicant was relying too much on credit cards to make

ends meet. In 2016, Applicant and his family moved to a house with lower rent. His mother lived with him and his family until she died in 2017. Applicant's wife regained employment in 2014, and by 2018, Applicant's own employment had stabilized. He and his wife recently qualified for mortgage financing and hope to buy a house in 2020. Applicant meets all of his current obligations and estimates he has between \$500 and \$750 remaining each month after expenses, which include his IRS payments. (Answer; GX 3; HX 3; Tr. 54 – 56)

Applicant did not file his income tax returns on time for the tax years 2011 through 2017. In each year, he requested an extension of the April 15 filing deadline; however, he only filed his 2011 returns before the extension expired. He did not file his federal returns for 2012 through 2017 until December 2018. He filed his 2018 returns on time and, as of his hearing, he expected to file his 2019 return by the end of February 2020. Applicant did not file his returns as required because he was either personally overwhelmed by the stresses of his personal life or, more recently, he could not afford to pay an accountant to compile and file his tax returns. As a result, Applicant owes in excess of \$23,000 in unpaid taxes. Applicant began taking action to file his returns and pay his past-due taxes in late 2018. Once his returns were filed, his accountant negotiated a repayment plan with the IRS in May 2019. That effort was delayed by a federal government shutdown in December 2018 and January 2019. Since July 2019, Applicant has paid \$341 each month as required by the plan. (Answer; GX 1 – 3; AX V; Tr. 52 – 53, 57 – 61)

Applicant also has resolved the debts alleged at SOR 1.c and 1.d. They were delinquent credit card debts Applicant accrued in late 2015. He was able to resolve the debt at SOR 1.c through settlement in January 2017. As to SOR 1.d, he had difficulty communicating with the collection agency that owned the account. In January 2020, he resolved the debt by paying a lesser amount agreed to by the creditor in a settlement agreement. (Answer; GX 1 – 3; GX 6 – 8; AX F; AX G; AX N; AX P – R; AX X; Tr. 61 – 64)

Applicant has an excellent reputation with friends and co-workers. Information about his performance at his last two employers reflects reliability, hard work, and professionalism. People who have known Applicant for most of the past 20 years feel he has the requisite integrity, honesty, and trustworthiness to occupy a position of trust. A co-worker who has known Applicant since 1998 has personally observed Applicant as a single father who endeavors to act responsibly and who has always been reliable. (AX H – K, AX M; Tr. 44 – 47)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the

factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest for an applicant to either receive or continue to have access to classified information. (*Department of the Navy v. Egan*, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government’s case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion. (See *Egan*, 484 U.S. at 528, 531)

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. (See *Egan*; AG ¶ 2(b))

## **Analysis**

### **Financial Considerations**

Applicant was discharged of his personal debts in 2013 through a Chapter 7 bankruptcy petition. Thereafter, he became delinquent on two credit card accounts and he failed to file or pay his federal income taxes between 2011 and 2017. This information reasonably raises a security concern about Applicant’s finances that is articulated at 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

More specifically, available information requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

By contrast, available information shows that Applicant's bankruptcy occurred as a result of a failed small business in 2012, around the time of the national economic downturn. As to his credit card debts, Applicant experienced a series of unexpected personal challenges that adversely affected his finances; however, Applicant allowed those personal challenges to distract him from his obligation to file his income tax returns for several years. As soon as Applicant and his wife were able to stabilize their financial and personal circumstances, they began to work toward financial rehabilitation. In 2018, several months before the SOR was issued, Applicant acted to resolve his income tax discrepancies. All of his past-due returns have been filed and he has been making payments on his past-due taxes through a repayment plan agreed to with the IRS. He also has resolved both credit card delinquencies and his current finances are sound. He and his wife have qualified for mortgage financing and are moving forward on the purchase of a house. Equally important is the stability in Applicant's personal life over the past three years, a circumstance that makes it unlikely he will experience similar financial problems in the future. All of the foregoing supports application of the following AG ¶ 20 mitigating conditions:

(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; and

(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; 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's response to the Government's information about his finances and tax returns is sufficient to mitigate the security concerns under this guideline. I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Applicant's financial problems arose, in part, from circumstances beyond his control. Generally, a record of noncompliance with one's tax obligations indicates a significant problem in one's judgment and reliability. It is clear that Applicant knew of his filing requirements when they arose, as he requested filing extensions each year. By contrast, Applicant exercised good judgment by acting to resolve his tax and other financial problems well before the SOR was issued. Applicant is unlikely to miss his tax obligations or to incur delinquent debts in the future. He also was candid and forthcoming throughout the application, investigation, and adjudication of his request for a clearance. Further, he has a solid reputation as a co-worker and friend among persons who have known him for most of the past 20 years. A fair and commonsense assessment of the record evidence as a whole shows that Applicant has mitigated the security concerns about his financial problems.

### **Formal Findings**

Formal findings 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: FOR APPLICANT

Subparagraphs 1.a – 1.d: For Applicant

## **Conclusion**

In light of all of the foregoing, it is clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE  
Administrative Judge