



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



In the matter of: )  
)  
) ISCR Case No. 19-03411  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

07/22/2020

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**Decision**

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BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F (Financial Considerations). His lack of action over the past several years, despite his awareness that his debts were a security issue, does not support a finding of a good-faith effort. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 4, 2018, Applicant submitted a security clearance application (SCA). On March 6, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, (Financial Considerations.) The action was taken under Executive Order 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended; DOD Directive 5220.6, Defense Industrial Personnel Adjudicative Guidelines for Determining Eligibility for Access to Classified Information; and the National Security Adjudicative Guidelines issued by the Director of National Intelligence, effective within the DOD on or after June 8, 2017. (GE 1, 2)

Applicant answered the SOR on March 18, 2020. He admitted two of the SOR allegations, (¶¶ 1.a, and 1.b), and he denied the others, (¶¶ 1c., and 1.d) He submitted documents with his response to the SOR. He requested that his case be decided by an administrative judge on the written record in lieu of a hearing. (GE 1)

On April 30, 2020, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six items, was mailed to Applicant on April 30, 2020. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant received the FORM on May 7, 2020, and he provided a 10-page written explanation in his response to the FORM, and he attached 17 documents. I labeled his documents as Applicant Exhibits (AE) A 1-17, which were admitted into evidence without objection. He did not object to Items 1 through 6, which I marked as Government Exhibits (GE) 1-6, and admitted into evidence. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on July 6, 2020.

### **Findings of Fact**

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact: Applicant is 67 years old. He earned a master's degree in 1996. He has been married since 1972 and has two grown children. In 1972, he enlisted into the U.S. Air Force, and he was honorably discharged in 1977. He held a DOD security clearance during his 25-year career as a federal civil service employee. Since September 2018, he has been employed by a federal contractor as a program analyst. (GE 1, 2; AE A)

### **Financial Considerations**

The SOR alleges four delinquent accounts totaling approximately \$27,000, of which \$15,000 is attributed to delinquent federal taxes. Applicant stated the tax debt developed as a result of Internal Revenue Service (IRS) tax audits of his business for tax years 2008 – 2011. He claimed that all of his federal income taxes are paid and current. Applicant retired from civil service, and in 1998, he started his own business as a senior management consultant. His business did federal subcontractor work and also partnered with city public schools to provide math and science educational support for many underprivileged students. From 2009 to 2014, his small business struggled financially. He received annual IRS tax audits, for both personal and business tax returns, for tax years 2006 through 2011. The audits revealed several tax issues, and a \$15,000 federal tax lien for tax years 2008-2011 was filed against him. In addition, the board of education for the public city schools failed to pay his business \$48,000 for services rendered. The city school board's position was that there was no signed contract on file. His business closed in December 2015. (GE 1, 2; AE A)

The financial allegations are supported by credit reports submitted by the Government. Applicant did disclose his federal tax issue on the SCA, but he did not

disclose any other adverse financial accounts. The credit reports do not show that any of the accounts are under dispute. (GE 2, 4-6; AE A) The record establishes the status of Applicant's accounts as follows:

SOR ¶ 1.a alleges a \$15,000 federal tax debt that remains unpaid. Applicant hired a tax attorney in approximately 2014 to provide the IRS an offer in compromise (OIC). He also tried to refinance his home so that he could pay the federal tax debt, but he claimed that he was unable to obtain a new loan after the federal tax lien had been filed. He wanted to make installment payments through the OIC process, but he was unable to make any payments within the required five-month time period. He decided that his only option to pay his tax debt was to collect the \$48,000 unpaid business invoice pending with the city schools. In April 2016, the IRS determined that his tax debt was uncollectible, and made it clear to Applicant that he remained financially responsible for the federal tax debt. The IRS stated in their letter that it was to his advantage to make voluntary payments towards the amounts he owed to minimize additional interest and penalties. In at least 2016, e-mail communications disclosed that the IRS had garnished his retirement income. Applicant contacted his attorney in an effort to stop the garnishment. In his SOR response, the March 2020 documentation showed that the IRS garnished his retirement income from the Office of Personnel Management to pay towards his delinquent federal taxes since he did not submit payments to the IRS voluntarily. (GE 1; AE A, A-3, A-6, A-7, A-8, A-13, A-14, A-15, A-16)

Applicant's documents show that his OIC of \$32,395 was accepted by the IRS, and he was required to put down 20%, or pay \$6,279 by December 2014. The remaining 80% balance of \$26,348 was due within five months. There is no explanation from him about this significantly higher federal tax amount that was included in the OIC. According to his tax attorney, Applicant owed the IRS approximately \$75,327 for both personal and business delinquent federal taxes. The OIC amount was about 43% of the total tax obligation. This adverse information is not alleged in the SOR. Applicant's tax attorney reported that the IRS was fully aware that his home was almost fully paid, and the equity in his home could pay the majority, if not all, of his OIC. Although Applicant claimed he could not refinance his home mortgage with the credit union creditor set forth below, it was his attorney's opinion that Applicant was just "unwilling" to do so. It is clear from the e-mail communications that Applicant was not pleased with the OIC. (GE 1; AE A-6) In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility;
- (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances;
- (c) to consider whether an applicant has demonstrated successful rehabilitation;
- (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or
- (e) to provide evidence for whole person analysis under Directive Section 6.3.

In his SOR response, Applicant stated; “I have **agreed and made arrangements** with the U.S Department of Treasury to pay the amount owed, and **I am in compliance with those arrangements**. Please see attached letter from the U.S. Department of the Treasury, Bureau of the Fiscal Service, dated 03/02/20.” (Emphasis added) The attached letter was the garnishment documentation of his retirement income, which is not considered a voluntary payment. There is no evidence of any voluntary payment arrangement with the IRS. (GE 1)

SOR ¶ 1.b is a charged-off credit union account for \$9,985. Applicant admitted this debt is business-related and stated in his SOR response that the credit union is also the holder of his home mortgage. He claimed the credit union was using his home equity to resolve this business-related debt, but he did not provide any supporting documentation. In the 10-page statement he provided after the Government submitted their File of Relevant Material (FORM), he does not mention that this debt was paid from the equity in his house. He made it clear in his statement that the debt is linked to the failed business, and not to him personally. There is insufficient evidence to show that this debt is resolved or being paid voluntarily. (GE 1; AE A)

SOR ¶ 1.c alleges a consumer credit account referred for collection in the amount of \$1,262. Applicant denied this allegation in his SOR response. In his background interview conducted in February 2019, he stated that this was a business account which was not paid due to the outstanding invoice of \$48,000 from the city schools. However, in his March 2020 SOR response, he stated that this account was the result of a security breach, and he was currently disputing this account. In the 10-page statement he provided after the Government submitted the FORM, Applicant claimed that this account stemmed from a lawsuit filed against him in 2006, which was subsequently dismissed. He claimed that his lawyer told him that it is not uncommon for a creditor to wait ten years and then make another attempt to collect the debt. He believed this debt is the result of the creditor pulling old debt from old files. This debt is not resolved. (GE 1, 3; AE A, A-16)

SOR ¶ 1.d alleges a judgment filed against Applicant in 2018 by a collection agency for \$998. Applicant denied this allegation in his SOR response. In his February 2019 background interview, he stated that this account was a business debt that was not paid due to the outstanding invoice of \$48,000 from the city schools. His March 2020 SOR response stated that this account was the result of a security breach, and he was currently disputing the account. In the 10-page statement he provided after receipt of the Government’s brief and supporting documentation, Applicant claimed that this collection agency has a poor reputation of making false claims. He did not know why the credit reports did not reflect his dispute, but he planned to file another dispute with the credit reporting agencies. This debt is not resolved.

Applicant credits his business and himself for enabling several young individuals in the city schools, who were not successful in school and life, to become highly recognized professionals over the years. He has many fond memories of teaching, mentoring, and coaching underprivileged students with bright young minds.

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

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

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

## Analysis

### Guideline F: Financial Considerations

The security concern 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. 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (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.

Applicant has over \$27,000 of delinquent debt, to include federal taxes that are unpaid and unresolved, as shown on his credit reports. In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (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 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;

(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.

There is insufficient evidence to apply any of the mitigating conditions. Although his unsuccessful business was a situation beyond his control that adversely affected his finances, Applicant failed to demonstrate that he acted responsibly under the circumstances. He denied two of the four delinquent accounts, (¶¶ 1.c, and 1.d), and he provided inconsistent information about these disputed accounts. He has not shown a reasonable basis to dispute the legitimacy of the past-due debts, or provide proof to substantiate the basis of the dispute. He did not provide documentation of his communication with the collection creditor to determine whether a listed account on the credit report was in fact fraudulent.

Applicant admitted responsibility for the other two debts, (¶¶ 1.a, and 1.b), but he failed to provide any evidence to show that he is paying, resolving, or has settled any of those debts, to include any voluntary payments as suggested by the IRS. He had an opportunity to resolve his delinquent federal taxes with the OIC, however, he failed to take responsible action to resolve this debt. Garnishment of his retirement income is not an agreed-upon payment arrangement and does not demonstrate a good-faith effort to pay this significant tax debt. There is no evidence he received financial counseling, and he did not provide a monthly budget to illuminate why he was unable to make any

voluntary payments to his creditors. Overall, Applicant has not paid any of the delinquent debts or made any plans to pay them. His financial situation is not under control. Moreover, his lack of action over the past several years, despite his awareness that his debts were a security issue, does not support a finding of a good-faith effort.

### **Whole-Person Concept**

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

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a position of trust with the Government. An applicant is not required to be debt-free, but is required to manage his finances to meet his financial obligations.

Applicant failed to provide supporting documentation to mitigate his delinquent accounts and he failed to demonstrate that he acted reasonably under the circumstances in dealing with his creditors. There is no showing by Applicant of any effort to pay, legitimately dispute, or otherwise resolve any of the financial security concerns. Applicant has not provided a financial plan or a detailed budget of his current financial circumstances.

Overall, the record evidence leaves me with doubts as to Applicant's good judgment, reliability as well as eligibility and suitability for a security clearance. Because



