



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-01049  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Department Counsel  
For Applicant: *Pro se*

February 10, 2021

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On October 26, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. (Item 1.) The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after June 8, 2017.

Applicant answered the SOR on November 23, 2019, and requested a hearing before an administrative judge. The case was assigned to me on February 25, 2020. DOHA issued a notice of hearing on September 29, 2020, and the hearing was convened as scheduled on November 12, 2020. The Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. The Applicant provided no exhibits. Applicant also testified on his own behalf. The

record remained open until close of business on November 30, 2020, to allow the Applicant the opportunity to submit additional supporting documentation. Applicant submitted six Post-Hearing documents, collectively referred to as Applicant's Post-Hearing Exhibit A, which was admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on November 18, 2020.

### **Findings of Fact**

Applicant is 42 years old and married, but separated, with three children. He is seven classes short of a bachelor's degree and has military training. He is employed by a defense contractor as an Information Technology Cyber Security Architect. He is seeking to obtain a security clearance in connection with his employment.

### **Guideline F - Financial Considerations**

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information.

Under Guideline F, the SOR alleges that Applicant failed to timely file his Federal income tax returns for a number of years. He also failed to timely file state income tax returns for State #1, for State #2, and for State #3. Applicant owes delinquent Federal and state back taxes, medical debt, child support, and consumer debt totaling approximately \$125,000. He is also behind on his mortgage payments. In his answer, Applicant admits each of the allegations listed in the SOR, with the exception of n, p, q, r, s, and z, which he states have fallen off of his credit report and believes is no longer owing. Applicant's credit reports dated August 10, 2017; March 1, 2019; and November 10, 2020, confirm this indebtedness. (Government Exhibits 3, 4 and 5.)

Applicant served on active duty in the United States Army from 2002 through 2007. He joined the Army Reserves in 2016, and is currently an E-5. Applicant held a security clearance from March 2002 when he joined the Army, until June 2014.

Applicant worked for a defense contractor in Afghanistan from 2009 to 2013. He testified that until October 2013, he always paid his taxes and his bills on time, and lived within his means. (Tr. p.35.) He was able to accumulate things such as a house, cars, and debt, and was able to properly manage the expense. At that time, he was earning about \$167,000 annually. (Applicant's Post-Hearing Exhibit A.) In October 2013, when his daughter ran away from home, Applicant took emergency leave from Afghanistan to come back to the states to find her. Accusations of child abuse against his wife, instigated a court hearing in November 2013. The court found against the Applicant and his wife, and they lost custody of their children. Applicant then returned to work in Afghanistan. (Tr. pp. 21 - 23.)

At this point, Applicant made a life altering decision to quit his good paying job in Afghanistan that he had for almost five years, and return to the United States to fight for custody of his children. Applicant understood the consequences. He knew that his finances would be negatively impacted, preventing him from paying his bills. Applicant testified that his priority was his family, including their long term safety and stability. Applicant spent the next three years in court fighting for custody of his children. He spent his money on attorneys and court fees. He was eventually awarded custody of his youngest daughter. (Tr. p. 37.)

In July 2017, Applicant was hired by his current employer. At that time he knew that his job would require a security clearance. He did not tell his employer about his excessive indebtedness.

The following delinquent debts in the SOR remain owing and are of security concern:

1.a., through 1.c. Applicant failed to timely file Federal income tax returns for years 2013; 2014; 2015; 2016; 2017; and 2018. Applicant states that he has now filed his Federal income tax returns. Supporting documentation shows that these returns have now been filed. (Government Exhibit 2.) There is no supporting documentary evidence to show that his state income tax returns have been filed. Applicant has not filed and/or did not timely file his state income tax returns for State #1 for tax years 2013 and 2014; for State #2 for tax years 2014, 2015, 2016, 2017 and 2018; or for State #3 for tax years 2018 and 2019.

1.d., through 1.j. Applicant became indebted to the Internal Revenue Service (IRS) for numerous tax years. He owes the IRS for tax year 2010 in the amount of \$1,838.30; tax year 2011 in the amount of \$23,013.56; tax year 2012 in the amount of \$13,369.51; tax year 2013 in the amount of \$11,159.51; tax year 2014 in the amount of \$815.87; tax year 2016 in the amount of \$829.36; and tax year 2018 in the amount of \$431.29. (Government Exhibit 2.) Applicant testified that in total, he believes that he owes approximately \$53,000 in back taxes to the IRS. (Tr. 38.) At one point he had set up a payment plan to pay \$1,000 monthly, but has been unable to comply with the arrangement because he is now unemployed. Applicant has not contacted the IRS to explain his situation to them. (Tr. p. 41.)

1.k., through 1.m. Applicant owed back taxes to State #2 for tax year 2013 in the amount of \$3,014.91, and for tax year 2018 in the amount of \$2,123.60. He claims that he has filed a dispute with this state tax authority, and he does not owe the taxes. Applicant failed to submit any documentary evidence to substantiate this claim. (Tr. p. 40.) He also owed back taxes to State #3 for tax year 2018 in the amount of \$485. Applicant admits that he has not paid these taxes. (Tr. p. 39.) Applicant submitted copies of income tax returns for tax years 2018 and 2019 for State #3. (Applicant's Post-Hearing Exhibit A.)

1.n., through 1.r. Applicant owes numerous consumer debt. This includes a mortgage account that is past due in the amount of \$18,907 with a total balance owed of \$83,725. The account remains delinquent, but has been frozen in foreclosure pending the COVID 19 pandemic. A second mortgage account on the same house is past due in the amount of \$841 with a total balance owed of \$2,120. A debt owed to a creditor was charged off in the amount of \$8,811. A debt owed to a creditor was charged off in the amount of \$5,960.

1.s. Applicant owed child support arrears in the amount of \$4,944. He testified that in May 2019, when the court transferred child custody to him, the court also erased all past due child support. (Tr. pp. 77 and 78, and Applicant's Post-Hearing Exhibit A.)

1.t., through 1.v. A debt owed to a creditor was placed for collection in the amount of \$2,650. A debt owed to a creditor was placed for collection in the amount of \$2,192. A debt owed to a creditor was placed for collection in the amount of \$2,101.

1.w. Applicant owed child support arrears in the amount of \$1,786. He testified that in May 2019, when the court transferred child custody to him, the court also erased all past due child support. (Tr. pp. 77 and 78, and Applicant's Post-Hearing Exhibit A.)

1.x., through 1.cc. A debt owed to a creditor was placed for collection in the amount of \$1,725. A debt owed to a creditor was charged off in the amount of \$1,704. A debt owed to a creditor was charged off in the amount of \$1,474. A debt owed to a creditor was placed for collection in the amount of \$1,079. A debt was owed to a creditor was charged off in the amount of \$570. A debt for a medical account is owed in the amount of \$270. (Government Exhibits 3, 4 and 5.) There is no evidence in the record to show that any of these debts have been paid.

It is noted that some of the debts set forth above do not appear on Applicant's most recent credit report. (Government Exhibit 5.) Under the particular circumstances of this case, their absence from the credit report is not affirmative evidence that the debts have been resolved. According to the Fair Credit Reporting Act, in some cases, derogatory accounts may fall off of the credit reports after seven years. This does not mean that the debt is no longer owing.

Applicant believes that financial management classes would be helpful to him. (Tr. pp. 85 - 86. He realizes that his past poor decisions have negatively impacted his finances. He testified that he has many close friends who are currently active duty military, National Guard, Army Reserves and the like. He further testified that he would never do anything, under any circumstances, to endanger their lives, or put his freedom or his country in danger. (Tr. pp. 25 - 26.)

Applicant's performance appraisal for 2019 is favorable. It indicates that he has "exceeded" and/or "substantially achieved" the expectations of the job in every category. (Applicant's Post-Hearing Exhibit A.)

## Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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. 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 clearance 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 as to 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. 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.

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

- (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 a history of financial delinquencies dating back to at least 2013. In regard to his taxes, it appears that he has now filed his Federal income tax returns but has been unable to pay his back taxes. His state tax returns in question have not been filed nor have the taxes been paid or disputed. His other debt is still outstanding. In 2013, Applicant took extraordinary steps when he decided to quit a good paying job and dedicated himself and his financial resources to obtaining custody of his children. At that time, he had already accumulated significant debt. He knew that he would put himself in financial jeopardy, and the consequences could be devastating. Today, he still owes most of this debt and remains excessively indebted. There is insufficient information in the record to conclude that he is financially stable, or that he can afford his lifestyle, or that he has the financial resources available to pay his financial obligations. Furthermore, there is no evidence in the record to show that any regular monthly payments of any sort are being made toward his debts. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under Financial Considerations are potentially applicable under AG ¶ 20.

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

(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; 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.

Admittedly, Applicant was confronted with a difficult and unexpected situation when his daughter ran away. This situation was beyond his control. However, the drastic measures Applicant took by quitting his job, ignoring his tax return filings, and all of his financial responsibilities was irresponsible on many levels. The decision he made caused his financial set back and his current financial situation. As a result, he is now suffering the consequences. Furthermore, when he became employed, he did little in the way of addressing his finances. Little progress if any has been made toward resolving his excessive indebtedness. Applicant only offers that he will pay the accounts when he can. Those debts that have fallen off of his credit report because they are old, he believes he does not owe. This does not demonstrate that he is responsible. He has not shown the requisite good judgment, reliability, or trustworthiness necessary to qualify for access to classified information, nor has he made a good-faith effort to repay his creditors or otherwise resolve the debt. Under the circumstances, he has not acted reasonably and responsibly. AG ¶ 20(b) does not provide full mitigation here and the others are not applicable.

### **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 relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated 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
Subparagraph 1.a.	For Applicant
Subparagraphs 1.b., through 1.r.	Against Applicant
Subparagraphs 1.s.	For Applicant
Subparagraphs 1.t, through 1.v.	Against Applicant
Subparagraphs 1.w.	For Applicant
Subparagraphs 1.x., through 1.cc.	Against 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 Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge