



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-01521  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John Lynch, Esquire, Department Counsel  
For Applicant: *Pro se*

03/25/2021

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Synopsis**

Applicant provided documentary evidence showing that he has been addressing his delinquent debts in a comprehensive manner and presently has the financial resources to continue his strategy for satisfying them. Security concerns are mitigated.

**Statement of the Case**

On February 28, 2020, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued to 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 Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on or after June 8, 2017. On May 11, 2020, he answered the SOR and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) judge. I was assigned the case on June 26, 2020.

Delayed due to the global pandemic of 2020, a notice of hearing was ultimately scheduled on September 11, 2020, setting the hearing for October 8, 2020. The hearing

was convened as scheduled. The Government offered five exhibits (Exs.), noted as Exs. 1-4 and 6, and two hearing exhibits (HE), marked as HE 1-2. (Transcript (Tr.) at 7-8; 12-13) These documents were accepted into the record without objection. Applicant provided testimony and offered seven documents, accepted as Exs. B-E and G-I. A document pre-marked as Ex. A was not submitted after the hearing. (Tr. 15) No Ex. F was offered.

Applicant was granted through October 29, 2020, to submit any additional materials. On October 19, 2020, the previously identified transcript of the proceeding (Tr.) was received and five additional exhibits from Applicant were accepted into the record without objection (Exs. J-N). With no additional materials or commentary received, the record was closed on November 5, 2020. Based on the testimony, materials, and record as a whole, I find Applicant mitigated financial considerations security concerns.

### **Findings of Fact**

Applicant is a 49-year-old security officer. He has served in that capacity with the same government contractor for 24 years. He has maintained a security clearance without adverse incident for over two decades. He also works a part-time position with another entity. (Tr. 25) Combined, Applicant is employed for at least 70 hours a week. (Tr. 25) In addition, he has worked multiple hours as part of a five-year apprenticeship within the field of investigative services. (Tr. 26) Income from this apprenticeship, which appears to make him a self-employed independent contractor under the auspices of a trainer or mentor, has been minimal. (Tr. 28, 49-51) He is personally unsure of how such work qualifies in terms of income and taxes.

In sum, Applicant has generated a gross annual income of approximately \$140,000. (Tr. 33) His wife earns between about \$80,000 and \$90,000 a year. (Tr. 34) This is a notable increase since 2015, when the couple had a joint income of about \$152,000. (Tr. 48) They presently maintain their finances separately. (Tr. 34)

In terms of education, Applicant attended high school and has received financial counseling from a recognized entity. (Tr. 21) Consequently, he maintains a household budget. (Tr. 21) Applicant employs others to prepare his taxes. He is married and has two children, ages 23 and 13. The eldest child recently relocated to a distant state, where she plans to continue her education. Until the recent pandemic, Applicant's in-laws lived with the family; they have since returned to their home country. Applicant is presently selling his house of 14 years with plans to move to another area.

By 2017, Applicant had acquired some commercial debt, represented in SOR allegations 1.a-1.d., amounting to almost \$48,000. He appears to mainly attribute this to poor tax advice and tax return preparation, related tax issues, and house repairs. Feeling overwhelmed in about September 2017, Applicant sought the advice and guidance of a debt relief program. He then enrolled in that program, which negotiated settlements and made payments toward those debts. (Tr. 77-79, 82) He eventually left

that program in favor of a debt consolidation entity. (Tr. 97; see *also* Tr. 120-121) Ultimately, those debts were satisfied. (See Exs. A-D; Tr. 15-16, 82-83, 88, 92-94)

At issue in the SOR at allegations 1.e-1.h are Federal tax delinquencies for tax year (TY) 2015 (\$16,505), TY 2016 (\$16,105), TY 2017 (\$16,151), and TY 2018 (\$2,831), respectively, cumulatively amounting to about \$55,300. Applicant's tax records are incomplete. His knowledge of his tax situation is somewhat limited because he had others prepare his tax returns. However, his documents showed that he has been making progress on his TY 2015 tax debt through an instalment agreement since 2018, and reflected that he has made initial payments toward the debts owed for TY 2016-2018. (Ex. E) He is unsure if he has yet completed all payments toward TY 2015, but noted that he started regular instalment payments to the Internal Revenue Service (IRS) toward TY 2016 in September 28, 2020. (Tr. 18) He concedes regular payments toward TY 2017-2018 have not yet commenced, but will move on to the next year at issue on completion of the payments for TY 2016. (Tr. 19)

Finally, Applicant owed his home state of residence delinquent taxes amounting to about \$2,831 for TYs 2015-2016. This came about due to adjustments to his Federal tax obligation for that time period. In 2019, he satisfied the combined state tax obligation. (Tr. 19, 74; Ex. G) At present, he is up-to-date with all state taxes, consumer credit accounts, and personal loans. (Tr. 75, 114) His only outstanding delinquent debts are related to his Federal taxes, as noted above. (Tr. 103)

At present, Applicant's checking account has a balance of about \$4,000. (Tr. 34) A joint 401(k) account has a balance of about \$140,000. Applicant is timely on the \$200,000 balance owed on his mortgage. His payments on the family automobiles are timely. (Tr. 109) Those payments, amounting to about \$12,000 a year, conclude in late 2020 with the satisfaction of the underlying loans. (Tr. 36) Applicant was having a monthly net remainder of about \$1,000. (Tr. 36) Now that pre-sales home repairs are complete, he anticipates a monthly net remainder of at least \$3,000. (Tr. 37) Additional money will be available when the car payments cease. Applicant now employs professionals to prepare his tax returns. He and his wife do not lead extravagant lives. Applicant's last vacation was in the Caribbean over three years ago.

## **Policies**

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 used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. 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 variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person. This includes information that is both favorable and unfavorable.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under 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 to obtain a favorable security decision.”

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard such information, shall be in terms of the national interest, and do not question the loyalty of an applicant.

### **Analysis**

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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.

Here, the Government offered documentary evidence reflecting that Applicant has acquired multiple delinquent debts, both consumer and tax-related. This is sufficient to raise financial considerations disqualifying conditions:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(b) unwillingness to satisfy debts regardless of the inability to do so;

AG ¶ 19(c) a history of not meeting financial obligations, and

AG ¶ 19(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.

Four conditions could mitigate the finance-related security concerns posed here:

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;

AG ¶ 20(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;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control, and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debt.

The obligations at issue are multiple in number. Some are still existent and none were the result of unusual circumstances, thus obviating AG ¶ 20(a). Applicant attributed his accumulation of debt to tax issues and home repairs. He acknowledged that he did not perform his own tax work, and he did not specify if these repairs were ordinary, essential, cosmetic, or emergency. There is no indication that the obligations came about due to conditions beyond his control. Therefore, AG ¶ 20(b) does not apply.

Applicant has received financial counseling from an established entity and now maintains a budget. He satisfied both his commercial obligations and state tax debt, and started addressing his Federal tax balances. Therefore, AG ¶ 20(c) - AG ¶ 20(d) apply.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances. Consideration must be made of the nine adjudicative process factors at AG ¶ 2(d). I am also mindful that, under AG ¶ 2(a), the determination of whether to grant eligibility for a security clearance must be a commonsense judgment based on consideration of the guidelines and the whole-person concept.

Applicant is a 49-year-old security officer with a high school education. He has served in that capacity for 24 years and has successfully maintained a security clearance for over two decades. He supplements his income with a second job and is training for a new profession. Combined, the wages earned by Applicant and his spouse

have risen from about \$152,000 a year to approximately \$220,000-\$230,000 a year in the past few years. Their net monthly will increase significantly by the end of 2020.

In addition to receiving financial counseling, Applicant maintains a budget. He has professionals prepare his taxes. He is married and has two children, ages 23 and 13, and the oldest child recently moved out of the family residence. He no longer provides a home for his in-laws.

Applicant's testimony was direct and credible. He takes full responsibility for his acquisition of delinquent debt. He is committed to honoring his obligations. He has made progress in the past using a budget and his past level of income. Today, he commands an increased net monthly income of at least \$3,000 due to the departure of three family members and the elimination of house repairs. This increase is expected to soon grow further on cessation of his car payments. Combined, he should have more than sufficient funds to responsibly eliminate his remaining delinquent debts in an expedited manner.

The record shows that Applicant has started efforts to eliminate all of his delinquent debt, and he has thus far successfully addressed both his state tax and all commercial debts at issue. He presented evidence showing he has started addressing at least the first two of the four years of Federal tax debts at issue, starting with the oldest and moving forward. With the financial resources to continue addressing these final accounts, and given his resolve to honor his delinquent debts, I do not foresee any further delay satisfying his remaining tax obligations. I find Applicant mitigated 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:	FOR APPLICANT
Subparagraphs 1.a-1.i:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Arthur E. Marshall, Jr.  
Administrative Judge