



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case: 19-02485  
 )  
Applicant for Security Clearance )

**Appearances**

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

April 16, 2021

**Decision**

ROSS, Wilford H., Administrative Judge:

Applicant did not file his Federal or state income tax returns for tax years 2010 through 2017 in a timely manner. Applicant also had unpaid tax and consumer debts. Resulting security concerns were not mitigated. Based upon a review of the pleadings, exhibits, and testimony, national security eligibility for access to classified information is denied.

**Statement of Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on September 23, 2018. (Government Exhibit 1.) On December 16, 2019, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR 1) to Applicant, detailing security concerns under Guideline F (Financial Considerations). An Amendment to the Statement of Reasons (SOR 2) was issued to Applicant on July 2, 2020. The actions were taken under Executive Order 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective within the Department of Defense on June 8, 2017.

Applicant answered SOR 1 on February 21, 2020, and requested a hearing before an administrative judge. (Answer1.) He submitted answers to SOR 2 on July 30, 2020. The Government was ready to proceed on August 20, 2020. The case was originally assigned to another administrative judge on August 14, 2020. The case was reassigned to me on January 20, 2021. The Defense Office of Hearings and Appeals (DOHA) issued an initial notice of hearing on October 29, 2020. After a continuance due to Covid-19, the hearing was scheduled for February 3, 2021. The hearing was convened as scheduled. The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf, called his wife as a witness, and submitted Applicant Exhibits A through I, which were also admitted without objection. DOHA received the transcript of the hearing (Tr.) on February 17, 2021. Applicant requested the record remain open for receipt of additional information. On March 1, 2021; and March 15, 2021, Applicant submitted Applicant Exhibits J through R, which were also admitted without objection.

### **Findings of Fact**

Applicant is 61 years old and married. Applicant has four children, although his son died in 2008 at the age of 20. Applicant has a Bachelor of Science degree, a Master's degree in Business Administration, and has taken courses to receive his doctorate. This is Applicant's first application for a security clearance. (Government Exhibit 1 at Sections 12, 13A, and 17; Tr. 85-90.)

#### **Paragraph 1 (Guideline F, Financial Considerations)**

The Government alleged in this paragraph that Applicant is ineligible for clearance because he has failed to meet his financial obligations and is therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted all the allegations in both SOR 1 and SOR 2, with the exception of subparagraphs 1.j and 1.k, which he denied. Neither SOR contains subparagraphs 1.l, nor 1.m. SOR 2 allegations are denoted subparagraphs n. through r. He also submitted additional information to support the granting of national security eligibility.

Applicant's wife supervises the household finances and testified about them. Her husband adopted her testimony in its entirety. (Tr. 37-38, 68-69.)

Turning first to Applicant's Federal taxes:

1.a. Applicant admitted that he had not filed his Federal income tax return in a timely manner for tax year 2010. Applicant and his wife explained that their accountant, as well as a representative of the IRS, told them in approximately 2018 that they should not file the return because of the statute of limitations. This return has not been filed. (Answer 1; Tr. 32-38, 57-58.)

1.b. Applicant admitted that he had not filed his Federal income tax return in a timely manner for tax year 2011. Applicant and his wife explained that their accountant, as well as a representative of the IRS, told them in approximately 2018 that they should not file the return because of the statute of limitations. This return has not been filed. (Answer 1; Tr. 32-38, 57-58.)

1.c. Applicant admitted that he had not filed his Federal income tax return in a timely manner for tax year 2013. The tax return was actually filed on January 8, 2019. As of May 6, 2019, Applicant owed approximately \$13,106 in back taxes, interest, and penalties. No payments have been made towards this tax year. As further discussed below, Applicant is working on submitting an offer in compromise to the IRS. No further information was provided. (Government Exhibit 2 at 5; Tr. 39-41.)

1.d. Applicant admitted that he had not filed his Federal income tax return in a timely manner for tax year 2014. The tax return was actually filed on January 8, 2019. As of May 6, 2019, Applicant owed approximately \$27,629 in back taxes, interest, and penalties. No payments have been made towards this tax year. As further discussed below, Applicant is working on submitting an offer in compromise to the IRS. No further information was provided. (Government Exhibit 2 at 6; Tr. 39-41.)

1.e. Applicant admitted that he had not filed his Federal income tax return in a timely manner for tax year 2015. The tax return was actually filed on January 8, 2019. As of September 9, 2019, Applicant owed approximately \$28,686 in back taxes, interest, and penalties. No payments have been made towards this tax year. As further discussed below, Applicant is working on submitting an offer in compromise to the IRS. No further information was provided. (Government Exhibit 3 at 7; Tr. 39-41.)

1.f. Applicant admitted that he had not filed his Federal income tax return in a timely manner for tax year 2016. The tax return was actually filed on January 8, 2019. As of April 23, 2019, Applicant owed approximately \$17,755 in back taxes, interest, and penalties. No payments have been made towards this tax year. As further discussed below, Applicant is working on submitting an offer in compromise to the IRS. No further information was provided. (Government Exhibit 3 at 8; Tr. 39-41.)

1.g. Applicant admitted that he had not filed his Federal income tax return in a timely manner for tax year 2017. The tax return was actually filed on January 8, 2019. As of September 9, 2019, Applicant owed approximately \$13,869 in back taxes, interest and

penalties. No payments have been made towards this tax year. As further discussed below, Applicant is working on submitting an offer in compromise to the IRS. No further information was provided. (Government Exhibit 3 at 9; Tr. 39-41.)

According to an IRS document submitted by Applicant in August 2019 his account balance was approximately \$119,009. Applicant and his wife have been working on an offer in compromise to submit to the IRS for several months. Their first one was submitted when Applicant had a substantially higher income than he currently earns. Applicant submitted as an exhibit an "Offer In Compromise Pre-Qualifier" worksheet that he and his wife had prepared. He also submitted IRS booklet 656 "Offer In Compromise." However, Applicant did not submit a completed and signed offer in compromise. Nor is there any evidence that their offer in compromise had been received or accepted by the IRS. (Government Exhibit 3 at 11-12; Applicant Exhibits K, Q, and R; Tr. 44-45, 62-63.)

Turning to Applicant's state taxes:

1.h. Applicant admitted not filing a state tax return for tax year 2010. Applicant's wife again testified that they had been told by the state tax authorities and their accountant that due to the statute of limitations no tax return was due for that year. (Answer 1; Tr. 57-58.)

1.i. Applicant admitted not filing a state tax return for tax year 2011. Applicant's wife again testified that they had been told by the state tax authorities and their accountant that due to the statute of limitations no tax return was due for that year. (Answer 1; Tr. 57-58.)

1.j. Applicant admitted not filing state tax returns for the tax years 2013, 2014, 2015, 2016, and 2017, in a timely fashion. Records from the state tax authority show that the returns were all filed on January 4, 2019. Even though the returns were not filed until 2019, it appears that Applicant and his wife reached a payment agreement with the state tax authorities to pay their back taxes at an earlier date. They have been making consistent monthly payments since 2017. As of February 2, 2021, current balance was \$9,028. (Government Exhibit 2 at 7-10, Exhibit 3 at 14-27; Applicant Exhibits E, F, G, and H; Tr. 58.)

Applicant's wife stated that it was always her intention to file Federal and state tax returns every year, but she was just procrastinating. Part of the reason for her procrastination was the aftermath of their 20-year-old son's sudden death in 2008. They began to work on filing the back taxes because they were becoming concerned about the IRS and the amount of back taxes they owed. (Tr. 39-40, 56-57, 85-90.)

Turning to the general consumer debts, SOR 1.k to 1.r. Support for the existence and amount of these debts is found in the credit reports in the record dated June 26, 2020; and February 2, 2021. (Government Exhibits 4 and 5.)

Applicant and his wife both stated that the primary reason the following debts got so high was because of a significant pay loss due to Applicant being laid off from his former employment. They had to prioritize what debts they could pay. (Government Exhibit 1 at Section 13A; Applicant Exhibits A and J; Tr. 50-51, 54-55.)

1.k. Applicant denied owing \$2,749 to a university for a past-due debt placed for collection. According to Applicant this is a wrongful debt that the university is attempting to have him pay despite the fact they had been paid by the Federal government. Even though Applicant believes he does not owe this debt, he made a one-time payment to a collection agency to show his good faith. (Applicant Exhibit N at 5; Tr. 48-49, 83-87.)

Neither SOR 1 nor SOR 2 contain subparagraphs 1.l or 1.m.

1.n. Applicant admitted owing a bank \$669 for a charged-off account. Applicant made a payment arrangement with the collection agency and paid the agreed amount on February 2, 2021, as shown by documentation from the creditor. This debt is resolved. (Applicant Exhibit D; Tr. 49-50.)

1.o. Applicant admitted owing a bank \$1,869 for a charged-off account. Applicant made a payment arrangement with the collection agency for a reduced amount and has made three monthly payments for \$34 each. This debt is being resolved. (Applicant Exhibits B, N, and O; Tr. 51-52.)

1.p. Applicant admitted owing a bank \$2,721 for a charged-off account. Applicant made a payment arrangement with the collection agency for a reduced amount and has made three monthly payments of \$34 each. This debt is being resolved. (Applicant Exhibits B and O; Tr. 52-53.)

1.q. Applicant admitted owing a bank \$6,470 for a charged-off account. Applicant made a payment arrangement with the collection agency and paid the agreed amount on February 2, 2021, according to Applicant's wife. This debt is resolved. (Applicant Exhibits B and C; Tr. 53.)

1.r. Applicant admitted owing a bank \$3,655 for a charged-off account. Applicant made a payment arrangement with the collection agency for a reduced amount and has made three monthly payments of \$25 each. This debt is being resolved. (Applicant Exhibit B; Tr. 53.)

## **Mitigation**

Applicant submitted letters of recommendation from friends and his current landlord. These documents show that he is a respected and trustworthy person. (Applicant Exhibit Applicant Exhibit M.)

## Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 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 applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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, and has the ultimate burden of persuasion as to obtaining 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## Analysis

### Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying 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 Federal, state, or local income tax as required.

Applicant failed to timely file Federal and state income tax returns, as required, for tax years 2010 through 2017. He owes a considerable amount in back taxes, interest and penalties. He also had unpaid consumer debts. These facts establish *prima facie* support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's failure to timely file tax returns, pay his taxes, or his past-due consumer debts:

- (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, or a death, divorce or separation, clear

victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(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.

Applicant was extremely dilatory in filing his tax returns and attempting to resolve his past-due consumer debts. It is true that Applicant has filed all the subject returns, albeit late. That is not the sole determining factor. He does have an installment agreement with the state tax authorities, and has several years of payments. This has reduced his amount of delinquent state taxes significantly. However, Applicant has not resolved his unpaid Federal taxes at all, which total over \$100,000. There is some evidence that Applicant was preparing an offer in compromise to submit to the IRS, but there is no evidence that it has been filed or accepted. Applicant has just begun to resolve his delinquent consumer debt. I have considered the facts of his work issues, his son's tragic death, and the dilatory conduct of his wife, who was managing the family finances. All that considered, there remains the fact that there is little track record of Applicant resolving his debts, with limited exceptions. With regard to his state tax issues, Applicant has resolved subparagraph 1.j. He also resolved the debts alleged in subparagraphs 1.n and 1.q. Applicant did not mitigate the remaining concerns over his income tax or consumer debt issues. Guideline F is found against Applicant.

### **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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.



I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant did not provide sufficient evidence to show that he has resolved all of his tax and debt issues, or is likely to do so in the foreseeable future. If Applicant is successful in resolving these concerns over an extended period of time he may become eligible for national security eligibility. The potential for pressure, exploitation, or duress remains undiminished. Overall, the evidence creates substantial doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k: (No subparagraphs 1.l or 1.m.)	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o and 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	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 Applicant national security eligibility and a security clearance. Eligibility for access to classified information is denied.

Wilford H. Ross  
Administrative Judge