



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



In the matter of: )  
)  
) ISCR Case No. 19-03810  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

08/20/2021

**Decision**

LYNCH, Noreen A., Administrative Judge:

Applicant has not mitigated the security concerns under the financial considerations guideline. He did not present sufficient documentation to support his burden of proof. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 30, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Adjudicative Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017. Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government’s file of relevant material (FORM) on January 27, 2021. Applicant received the FORM on February 8, 2021. Applicant did not object to the Government’s evidence, and did not provide a response

to the FORM. The Government's evidence, included in the FORM and identified as Items 1 through 7, is admitted without objection. The case was assigned to me on August 19, 2021. Based on my review of the documentary evidence, I find that Applicant has not mitigated financial considerations security concerns.

### **Findings of Fact**

In response to the SOR, Applicant admitted SOR allegations 1.a through 1.g with explanations. (Item 2) He is 44 years old, and married with one child. Applicant attended college courses from 2004 through 2016, but he did not obtain a degree. He reports no military service. He completed a security clearance application on May 6, 2019. He has worked for his sponsoring employer since September 2018. (Item 3)

#### **Financial**

The SOR alleges that Applicant allegedly failed to timely file, as required, his Federal income tax returns for tax years 2013 through 2018 (1.a); and he failed to file, as required, a state income tax return for the tax years 2013 through 2018 (1.b). The SOR also alleges that Applicant is indebted for past-due student loan accounts in the approximate amount of \$3,000 (1.c through 1.g). The allegations are supported by his credit reports and security clearance application. (Item 3)

Applicant attributes his delinquent debts to a number of things: poor financial decisions; unemployment for a year (2017-2018); failure to file tax returns out of neglect and irresponsibility; and becoming frustrated with the tax process because he could not deduct mortgage interest as his name was not listed as the primary mortgagor where he lived. He stopped filing his income tax returns. He did not move from the residence until 2016. (Item 3)

In his answer to the SOR, Applicant stated that he lived as "a beach bum" for roughly 15 years which led to poor financial decisions. (Item 2) He states that the only bills he has now are the student loans and some credit card debt. His admission as to SOR allegations 1.a to 1.b are identical in that he failed to timely file, as required, his Federal and state income tax returns from 2013 through 2018. However, he states that he "had received a small refund in previous years and so did not think it important." Applicant added that he did not receive credit for the mortgage interest on the condo he shared, and he lived there until 2016. (Item 2)

As to SORs 1.c through 1.g, concerning the student loans, Applicant provided basically the same answers. He admitted that he failed to make timely payments to the loan service on several occasions because he was negotiating with the loan provider for some time to get his payment down to a more reasonable amount. (Item 2) He added that currently his loan is in deferment due to COVID. He fully expects to pay about \$250 a month when things move forward. At his 2019 interview, he denied that he had any delinquent accounts. (Item 3) After being confronted by the investigator with his student loan delinquent debts, he admitted that he had delinquent student loans. He could not

explain why he failed to disclose the items. (Item 4) Applicant's loans are now deferred due to COVID. He knew at the conclusion of his 2015 college coursework that he was required to begin paying on his student loans. He did not set up a payment plan until 2018. He then stopped in 2019 in hopes of forcing better terms out of the lender. (Item 4) He has not described how he will deal with the student loans when they are no longer deferred due to COVID, except that he would start paying \$250 a month.

In Applicant's 2019 investigative interview, he admitted that it was not a priority to file his taxes. He again stated that he did not believe that it was a priority. (Item 5) He noted that he became frustrated with the tax process, because he was paying the mortgage on his condo, but he was not listed as the primary mortgagor, and he did not receive the tax benefit. (Item 5) At the time he was completing his security paperwork for his current position as a defense contractor, he realized the importance of filing his taxes. Subsequently, he met with a tax analyst who advised him to file the Federal and state tax returns for the past three years. (Item 5) He is in the process of locating the necessary tax documents to begin the filing process. He again admitted to his negligence in failing to file his tax returns and is working toward rectifying the situation. (Item 5) At the time of his 2019 interview, none of his tax returns from 2013 to present were filed.

Applicant has not received any information from the IRS regarding his lack of filing. As of the interview, Applicant had not filed any of the tax returns for the tax years in question. However, he does not dispute his responsibility to file for Federal and state tax returns on time. He again admits to his negligence in failing to file his tax returns. (Item 5) He did not provide any information concerning the tax issues.

In his March 2020 interrogatory, Applicant listed that he had filed all of his Federal and state tax returns in January and February 2020. (Item 4) The filings took place just days before his interrogatory response. Applicant provided no documentation from his own records or copies of what was submitted in support of his assertion. However, he stated that he had no tax liability. He did submit tax transcripts for 2016-2018 that show a zero balance. (Item 4) He also believes that his tax returns for tax years 2013-2015 have been filed, but he does not have them. (Item 2)

Applicant stated that he is a homeowner, and he has about \$150,000 in equity. He noted that he had other assets, such as cars, motorcycles, and a retirement account. He has under \$500 in credit card debt. He provided no budget and has not sought financial counseling. (Item 2)

Applicant had substantial savings and he admits that he did not start to address his Federal or state taxes until after he received the SOR. He has not received financial counseling. (Item 4) At the interview, Applicant was given an opportunity to submit documentation regarding the financial delinquencies. He failed to provide any documentation or dispute information. (Item 4)

Applicant is now gainfully employed. There is no information in the record concerning his salary, use of a financial counselor, budget or income. Applicant provided no documentation to support a specific plan for resolving his financial issues.

### **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 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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."

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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline F (Financial Considerations)

The concern under this guideline 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 . . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, establish three disqualifying conditions under this guideline: AG ¶¶ 19(a) ("inability to satisfy debts"), 19(c) ("a history of not meeting financial obligations"); and 19 (f) "failure to file .... annual Federal, state, or local income tax as required").

The security concerns raised in the SOR may be mitigated by the following potentially applicable factors:

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 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; and

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

Applicant admitted, and his credit reports confirm, that he is responsible for the delinquent debts and failure to timely file his Federal and state income taxes from 2013 to 2018. He blames the debts on various things. He provided no information to support any actions that he has taken to resolve any of his SOR delinquent debts. He has received no financial counseling. He has not provided any documentation that supports any of the mitigating conditions. He receives partial mitigation for a condition beyond his control due to unemployment, but he did not act responsibly when he became employed.

As to the tax issues, Applicant partially admits and partially denies that he failed to timely file his income tax returns. If he did file the Federal and income tax returns, it was not until 2020.

Based on the lack of evidence produced by Applicant, it is difficult to conclude he made a sufficient good-faith effort to resolve his debts, tax issues or that his financial situation is under control. Despite gainful employment since 2018, there is no evidence that Applicant has a meaningful track record of financial responsibility in this case. He has not met his burden and none of the mitigating conditions apply. Any doubts must be resolved in favor of the Government.

### **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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance. Because protection of the interests of national security is the principal focus of this decision, any remaining doubts must be resolved by denying eligibility for access to classified information.

### **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
Subparagraphs 1.a –1.g:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Noreen A. Lynch  
Administrative Judge