



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



In the matter of: )  
)  
) ISCR Case No. 19-03288  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Kelly Folks, Esq., Department Counsel  
For Applicant: *Pro se*

09/07/2021

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**Decision**

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HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. A Statement of Reasons (SOR) was issued under Guideline F, financial considerations, due to unfiled state and Federal income tax returns and six other delinquent accounts. He arranged repayment agreements with the Internal Revenue Service (IRS) and the state Franchise Tax Board and honored those agreements by making payments in excess of \$30,000. Financial considerations security concerns are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On February 18, 2020, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued an SOR to Applicant, detailing the security concerns under Guideline F, financial considerations, under which it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DoD CAF acted 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DoD on June 8, 2017.

On March 10, 2020, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On June 9, 2021, DOHA issued a Notice of DCS Video Teleconference Hearing scheduling a hearing that was conducted on June 18, 2021.

The Department Counsel (DC) moved to withdraw Statement of Reasons (SOR) subparagraph 1.g that had alleged \$381 owed by Applicant for Federal income taxes for tax year 2015. (Tr. 19) Applicant had timely filed his return and paid his 2015 Federal income tax. (Tr. 36) DC moved to add an allegation as SOR 1.n stating that Applicant had a Federal tax lien of \$27,071 that remained unpaid. Applicant had no objection to the withdrawal of SOR 1.g or the addition of SOR 1.n. (Tr. 17) Both motions were granted.

Eleven Government exhibits (Ex. 1 – 11), and one Hearing exhibit (H Ex. I) were admitted into evidence without objection. The record was held open following the hearing to allow Applicant to submit documentation. On June 23, 2021, documents were received from Applicant and admitted into evidence without objection as Ex. A through H. Applicant testified at the hearing, as reflected in a transcript (Tr.) received on June 30, 2021.

### **Findings of Fact**

After a thorough review of the testimony, pleadings, and exhibits, I make the following findings of fact.

Applicant is a 62-year-old over-the-road long-haul truck driver who has worked for a defense contractor since March 2018. He is seeking a clearance. He is divorced and has one child age 23. Since 2010, he has lived with his partner to whom he is engaged. (Tr. 28) They live, when not on the road, in his fiancé's mother's home. (Tr. 28)

Applicant is a Navy veteran who received an honorable discharge in January 1986. (Tr. 10) He served in the Navy from 1977 to 1986. (Tr. 25) While in the Navy he served four deployments to the Western Pacific (WESTPACs). (Tr. 26) The first and third tours were for six months each, and the second and fourth tours were for nine months each. (Tr. 26) He held a top secret clearance while in the Navy. (Tr. 33)

Applicant worked as a commercial electrician until 2005, at which time he was diagnosed with stage IV lung cancer. (Tr. 21) He was terminated from his electrician's position when his sick leave ran out. He received unemployment compensation from May 2010 through October 2015, when he obtained his current job as a truck driver. (Tr. 9) He was also briefly unemployed from January 2018 through March 2018. He is current on his credit card accounts and other debts. He has no problem making his monthly car payment or the monthly amount he pays to the state Franchise Tax Board for past-due taxes. (Tr. 27) He currently leases his truck for \$4,000 per month and is looking to

purchase a used truck. (Tr. 26) Before driving for his current company he worked for a different freight line from October 2015 to January 2018.

Applicant owes money to the Social Security Administration (SSA) for disability funds he started receiving in 2010. (Ex. 2) His then employer put him on medical leave while he was receiving treatment for his stage IV lung cancer and terminated him when his sick leave ran out. (Tr. 23) With the loss of his employment his medical insurance ended. He began to receive disability compensation from the SSA.

In October 2015, he started training to become a truck driver, and eventually obtained a commercial driver's license. (Tr. 29) He notified the SSA of his employment when he began earning income as a commercial truck driver. (Tr. 24) After notifying the SSA he was working, he received a letter from SSA informing him that his case would be reviewed and that he was still eligible to receive disability payments. In January 2017, he received another letter stating the same thing. (Tr. 24) At some point thereafter, SSA sent him a letter stating he had been overpaid and demanding he repay the funds at \$2,000 per month. (Tr. 24) He was not in a position to pay that amount. He intends to contact the SSA again in an attempt to reach an affordable monthly amount. (Tr. 70) He had purchased a boat in 2015, however, when he did so he was unaware of the debt owed to SSA. (Tr. 77)

The SSA disability payments should have stopped in October 2016. Applicant was overpaid between \$20,000 and \$22,000. His November 2019 credit report lists a collection balance of \$21,303 on this SSA account. (Ex. 11) Having finished paying \$820 monthly on his Federal Tax debt, he is now in a position to arrange a repayment plan with SSA and to start making payments. (Tr. 24)

On Applicant's March 2018 Electronic Questionnaires for Investigations Processing (e-QIP) he listed he was repaying his 2005 and 2015 federal income taxes. (Ex. 1) As of March 2019, he owed \$9,995 in Federal income taxes for year 2005. (Ex. 3) In April 2016, a \$27,071 Federal tax lien was filed against Applicant for tax years 2002 (\$207) and 2005 (\$26,864). (Ex. 9) As of June 21, 2021 the Federal tax lien was released. (Ex. C)

In 2005, after his sister and parent's died, and he was terminated from his job, Applicant cashed out his pension. At that time, he believed the company had withheld the proper taxes before providing him with the balance. (Tr. 21, 36, 49) He stated his income tax and the taxes on his sister's and parents' estates had added to the confusion and miscalculation of taxes owed. The result was he owed \$7,866 in Federal income taxes and \$9,995 in state taxes. During his November 2018 enhanced subject interview, he indicated he was paying \$829 per month on his delinquent taxes. (Ex. 2, 3) His IRS account transcript shows payments starting in November 2009 and ending in July 2019. Most of his monthly payments were for \$820. (Ex. 3)

Applicant's IRS account transcript dated July 2019 indicates he owed \$3,165 in Federal income tax when he filed his 2015 tax return in April 2016. He had \$4,795 withheld for 2015. (Ex. 3) This resulted in overpayment of his 2015 Federal income taxes.

In February 2018, \$383 in additional Federal income taxes was assessed for tax year 2015. His refund for 2015 was applied to his earlier tax debt. As of February 2018 his balance due for tax year 2015 was zero. (Ex. 3) As of May 12, 2021, Applicant had paid \$27,071 for the release of the Federal tax lien for tax years 2002 and tax year 2005. (Ex. C)

In April 2005, a \$1,460 state tax lien was filed against Applicant and in April 2008, an \$8,700 state tax lien was filed against him. (Ex. 9) A letter from the state Franchise Tax Board concerning delinquent state taxes was not timely received by him because he had moved to another state. (Tr. 39) Additionally, he was going through a divorce that was finalized in August 2005, which added to his financial problems. (Tr. 40, 74) When he received the notice that state taxes were owed, he immediately contacted the state tax authority and established a repayment plan. (Tr. 40) In 2016, Applicant began making regular \$250 monthly payments to the state Franchise Tax Board. (Tr. 22, 38, 41) As of March 2020, he owed \$7,475 on this debt. By March 2021, he had reduced the amount to \$4,758. (Ex. D and E)

Applicant continues to make monthly payments of \$250 each to the Franchise Tax Board. He provided documentation of his payments in March, April, and May 2021. (Exs. F, G, H) As of July 2019, his 2015 state tax liability for his current state of residence had been satisfied. (Ex. 3)

During security clearance processing, Applicant was made aware that three financial judgments had been filed against him. (Tr. 71) In April 2004, a credit union obtained a default judgment in the amount of \$10,668 against him for his default on a loan for a pickup truck that was repossessed (SOR 1.h). (Ex. 4, Tr. 43) In January 2006, a financial corporation obtained a default judgment in the amount of \$10,085 against him (SOR 1.i). (Ex. 5, Tr. 47) In May 2007, a partnership obtained a default judgment in the amount of \$8,703 against him. (Ex. 6) Applicant intends to contact the creditors of the judgments and arrange repayment plans. (Tr. 51)

About the judgment for the repossessed truck, Applicant stated that at the time of the repossession, he was current on his loan payments and had full insurance coverage on his vehicle. (Tr. 44) The credit union disputed he had insurance on the vehicle and took out a loan insurance plan even after he had sent them proof of coverage. The credit union's plan added \$600 monthly to the cost of the loan. (Tr. 44) Unable to continue paying his insurance, the monthly loan payment, and the additional \$600 charged by the credit union for additional insurance, he let the vehicle be repossessed. After the repossession, Applicant received no information as to a balance owed on the loan. (Tr. 43) He has recently contacted the creditor who demanded he pay the entire amount owed immediately. (Tr. 45) He is not in a position to do so. After addressing the remainder of his past-due taxes and his social security obligation, he intends to pay this debt.

Applicant speculates the \$10,085 judgment and the credit union judgment are the same debt due to the original damages being so close in amount to the second judgment. (Tr. 47) Although there is no proof that they are the same debt.

Applicant stated the \$8,703 judgment filed in May 2007 may have been due to a credit-card account. (T. 48) The statute of limitations on the three judgments is ten years under state law unless the judgments are renewed. None of the three judgments are legally enforceable.

Applicant has two small medical accounts in collection (SOR 1.I, \$355 and SOR 1.m, \$820), which he believes are related to his lung cancer treatment. His credit report does not list a point of contact for the larger of the two accounts and lists only a post office box for the other. He stated he would pay the amounts if he knew whom to contact. (Tr. 52)

Applicant is not having any problem meeting his day-to-day living expenses. (Tr. 65) He and his fiancé have made a \$10,000 down payment on a \$90,000 home. (Tr. 57) Applicant inherited real estate from his sister's estate which he hopes to sell for approximately \$80,000 in the next few months. (Tr. 49) In June 2021, the mortgage on his property was paid and a notice of cancellation of mortgage was recorded by the clerk of court. (Ex. B)

## **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 must be considered 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(a), the adjudication process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

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.

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 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 Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination of 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**

AG ¶ 18 articulates the security concern for financial problems:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

Applicant failed to timely pay his Federal and state income taxes for 2005 (SOR 1.a). He reached repayment agreements with the IRS and the Franchise Tax Board and has honored those agreements. The evidenced does not establish SOR 1.b in that he did not fail to file his Federal income tax return for tax year 2015. In fact, he received a refund of overpayment of taxes for that year. He honored his repayment agreement for his

delinquent Federal income taxes, and, as of May 12, 2021, Applicant had paid \$27,071 for the release of the Federal tax lien for tax year 2002 (\$207) and tax year 2005 (\$26,864) (SOR 1.n). He has a repayment agreement with the state Franchise Tax Board and is honoring that agreement at a rate of \$250 per month. He owes the SSA for disability payments he received following his treatment for Stage IV cancer. He intends to repay this debt once he completes his payments for past-due state income taxes. He had three judgments filed against him in 2004, 2006, and 2007.

AG ¶ 19 includes three disqualifying conditions that could raise a security concern 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 annual Federal, state, or local income tax as required.” 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 record having established disqualifying conditions, additional inquiry about the possible applicability of mitigating conditions is required. Applicant has the burden of establishing that matters in mitigation apply. Six financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(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.

The Appeal Board has held that an applicant is not required to establish that he has paid off each debt in the SOR, or even that the first debts paid be those in the SOR. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). The Appeal Board stated in ISCR Case No. 17-00263 (App. Bd. Dec. 19, 2018) that “an applicant must demonstrate a plan for debt repayment, accompanied by concomitant conduct, that is, conduct that evidences a serious intent to resolve the debts.”

Applicant reached a repayment agreement with the IRS and paid \$27,000 in accord with the agreement to address his 2002 and 2005 Federal income tax debts. His Federal income tax liens have been released. He has a repayment agreement with the state Franchise Tax Board by which he makes \$250 payments on his state income tax debts (SOR 1.e ad 1.f). As of March 2021, he had reduced the balance owed to \$4,758. He provided evidence of three additional payments of \$250 each in March 2021, April 2021, and May 2021.

AG ¶ 20(d) applies to his past-due Federal and state tax debts, which have now been paid or are being paid per repayment agreements. AG ¶ 20(g) applies because Applicant entered into repayment arrangements with the appropriate tax authorities and has honored those agreements. Additionally, in his favor, he acted to address his tax issues prior to the receipt of the SOR.

Applicant reportedly owed two small medical debts totaling approximately \$1, 200, which he would pay, if he knew whom to pay. These small debts, even if unpaid, are relatively minor in amount so that they are of minimal security significance.

AG ¶ 20(a) applies to the judgments, the most recent of which is more than 14 years old. None of the judgments are legally enforceable. Additionally, the judgment resulting from the repossession of the pickup truck occurred under such circumstances that it is unlikely to recur and does not cast doubt on Applicant’s current reliability, trustworthiness, or good judgment. He was current on his monthly truck payments and has the proper insurance on the vehicle. The action by the credit union to charge an additional \$600 monthly for insurance made it impossible for him to continue owning the vehicle.

Once Applicant has completed paying his state past-due taxes, he will address the social security debt. It should be noted that Applicant went to the SSA and told them he was working, and the disability payments should stop. The response by SSA indicated they were reviewing the matter and payment would continue. They sent him a second letter stating the same thing. Only later did the SSA determine there was an overpayment. Applicant did what he could in good faith to notify the SSA to stop making the disability



payments. He acknowledges he owes a debt to the SSA and intends to reach a repayment agreement as soon as he has the financial ability to do so. Having made and honored other repayment agreements, I believe he will honor a repayment agreement to the SSA once made.

Applicant has shown that he has a plan to resolve his delinquent obligations and that he has taken significant steps to implement those plans. The financial considerations security concerns are mitigated.

### **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 common-sense 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. The comments under Guideline F are incorporated in the whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant's Federal income tax debt resulted when he had Stage IV cancer, his sick leave ended, his employer terminated his employment, and the company paid out his retirement plan. He was mistaken in his belief that his company had withheld taxes before disbursing him the balance. This caused him to owe sizeable Federal and state liabilities that he did not expect and could not afford to repay at the time. Additionally, the death of his sister and parents around that time caused confusion with completing the estate tax returns and his income tax returns. His 2005 divorce added to his financial problems. The events that led to his tax issues are unlikely to recur. More importantly, he arranged repayment agreements with the IRS and state and has paid more than \$30,000 to honor those repayment agreements. Having reached and honored such large repayment agreements in the past, Applicant is likely to reach and honor a repayment agreement with the SSA once made.

The judgments can no longer be a source of financial pressure for him as they are beyond the statute of limitations for collection. His financial issues have been adequately addressed to whether they no longer present an unacceptable security risk.

The law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, have been carefully applied to the facts and circumstances in the context of the whole person. The issue is not simply whether all the delinquent obligations have been paid, it is whether Applicant's financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(c)) A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. Overall, the record evidence leaves me without questions or doubts about his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the financial considerations security concerns.

### **Formal Findings**

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

Paragraph 1, Financial Considerations: FOR APPLICANT

|                          |               |
|--------------------------|---------------|
| Subparagraphs 1.a – 1.f: | For Applicant |
| Subparagraph 1.g:        | For Applicant |
| Subparagraphs 1.h – 1.n: | For Applicant |

### **Conclusion**

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

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CLAUDE R. HEINY II  
Administrative Judge