



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



In the matter of: )  
)  
) ISCR Case No. 20-01787  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

September 23, 2021

**Decision**

GLENDON, John Bayard, Administrative Judge:

Applicant failed to mitigate security concerns regarding financial considerations. Based upon a review of the pleadings, the documentary evidence, and Applicant’s testimony, national security eligibility for access to classified information is denied.

**Statement of the Case**

On July 12, 2019, Applicant filed a security clearance application (SCA). On December 2, 2020, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (CAF), issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (Financial Considerations). The CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended (Exec. Or.); Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (Dec. 10, 2016), effective within the DoD on June 8, 2017.

Applicant responded to the SOR (Answer). He admitted each of the 36 allegations, although he added additional comments regarding two of the debts alleged. He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On April 13, 2021, the case was assigned to me. On the same day, DOHA issued a notice scheduling the hearing for June 11, 2021.

I convened the hearing as scheduled. Department Counsel presented Government Exhibits (GE) 1 through 7, all of which were admitted without objection. Applicant offered three exhibits at the hearing, which I marked as Applicant Exhibits (AE) A through C. His exhibits were admitted without objection. (Hearing Transcript at 14-17, 33-34.)

I kept the record open initially until June 25, 2021, to give Applicant the opportunity to supplement the record. Applicant requested an extension of time, which I granted, giving him until July 23, 2021. He timely submitted three additional documents, which I marked as AE D through F and admitted into the record without objection. DOHA received the hearing transcript (Tr.) on June 16, 2021.

### **Findings of Fact**

Applicant's personal information is extracted from his SCA unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, Applicant's testimony, and the documentary evidence in the record, I make the following findings of fact.

Applicant is 55 years old and works for a defense contractor as a technician. He served honorably in the U.S. Marine Corps (1985-1989). He has married and divorced twice (1985-2014 and 2014-2019). He separated from his first wife in 2003. He and his first wife have five children. After their separation, he was the custodial parent for two of the children when they were minors. They are now 23 and 35. Applicant earned a high school diploma and has taken some college and technical school courses. He has worked in the aviation industry and specifically for defense contractors for much of his career. Counting his four years in the Marine Corps and again more recently as a contractor, he has held a security clearance for about eight years. He has never had a security violation. (Tr. at 11, 25-29; GE 2 at 11-12.)

### **SOR Allegations**

Paragraph 1, Guideline F - The SOR sets forth allegations regarding Applicant's failures to file his federal and state income tax returns for several years and pay his federal and state tax liabilities dating back to 2003 and as recently as 2019. Applicant's combined state and federal past-due tax liabilities total over \$90,000. The SOR also alleges a 2013 Chapter 7 bankruptcy and two delinquent consumer debts totaling about \$2,600.

The details regarding each SOR allegation are as follows:

**Failure to file federal income tax returns** - In his Answer, Applicant admitted that he failed to timely file his federal tax returns for the tax years (TY) 2010 through 2019. **(SOR 1.k.)** He reported in his answers to the Government's interrogatories that he filed the returns for TY 2011 through TY 2016 on September 11, 2020, and the returns for TY 2017 through TY 2019 on August 15, 2020. He also wrote that he was working with his accountant on the federal return for TY 2010. As of the close of the record, there was no evidence that he filed his 2010 federal tax return. The returns for the later years were filed before Applicant received the SOR in December 2020. (Tr. at 35-40; GE 2 at 2.)

**Failure to file state income tax returns** - In his Answer, Applicant admitted that he failed to timely file his tax returns for State 1 for TY 2010 through TY 2016. **(SOR 1.i.)** He also admitted that he failed to timely file his tax returns for State 2 for TY 2017 through 2019. **(SOR 1.cc.)** He reported in his answers to the Government's interrogatories that he filed the returns for TY 2011 through TY 2016 in State 1 on September 11, 2020, and the returns for TY 2017 through TY 2019 in State 2 on August 15, 2020. Both filing dates predate Applicant's receipt of the SOR. He provided no evidence that he has filed his tax return in State 1 for TY 2010. Applicant testified that he should have filed his returns because he had sufficient withholding to pay his tax liability. He attested that all assessments by the state tax authorities were due to the states' estimating what he owed and penalizing him for not filing. (Tr. at 42-43; GE 2 at 4.)

**Failure to pay federal income taxes** – Applicant admitted in his Answer that he owed the U.S. Government past-due income taxes in a total amount of about \$78,000 for TY 2003 and TY 2004 **(SOR 1.b)**, TY 2006 **(SOR 1.d)**, TY 2007 **(SOR 1.f)**, TY 2008 **(SOR 1.g)**, TY 2009 **(SOR 1.h)**, TY 2011 **(SOR 1.o)**, TY 2012 **(SOR 1.q)**, TY 2013 **(SOR 1.u)**, TY 2014 **(SOR 1.w)**, TY 2015 **(SOR 1.y)**, TY 2016 **(SOR 1.aa)**, TY 2017 **(SOR 1.dd)**, TY 2018 **(SOR 1.ff)**, and TY 2019 **(SOR 1.hh)**. In his interrogatory responses, he wrote that his total federal tax liability for TY 2011 through TY 2019 is \$43,425. He disclosed, however, tax liabilities by each tax year during that period totaling more than \$60,000.

Applicant testified that the IRS has “forgiven” his past-due taxes. After the hearing, Applicant provided a letter from the IRS, dated July 22, 2021, referencing TY 2008 and TY 2011 – 2020. In that letter, the IRS informed Applicant that it was closing its case for the collection of Applicant's tax liabilities for the referenced years as “Currently Not Collectible.” The IRS noted further the Applicant “still owe[d] \$94,168.43 to the IRS for the [referenced] tax periods.” The letter further noted that this tax liability will continue to accrue penalties and interest, and the collection case is subject to reopening if Applicant's “financial situation improves in the future.” The IRS also advised Applicant that it will file a Notice of Federal Tax Lien to protect the Government's interest. (Tr. at 38-41; GE 2 at 2, 3; AE E.)

**Failure to pay state income and sales taxes** – Applicant admitted in his Answer that he owed past-due income taxes to State 1 for TY 2006 **(SOR 1.e)**, TY 2009 **(SOR 1.i)**, TY 2011 **(SOR 1.p)**, TY 2012 **(SOR 1.r)**, TY 2013 **(SOR 1.v)**, TY 2014 **(SOR 1.x)**,

TY 2015 (**SOR 1.z**), and TY 2016 (**SOR 1.bb**). He also admitted that he owed State 1 sales tax for TY 2009 (**SOR 1.j**) and that State 1 filed two tax liens against him in 2011 (**SOR 1.m and 1.n**) and a wage garnishment in 2013 (**SOR 1.t**). In addition, he admitted in his Answer that he owed taxes to State 2 for TY 2003 (specifically, a State 2 county tax) (**SOR 1.a**), TY 2017 (State 2 income tax) (**SOR 1.ee**), and TY 2018 (State 2 income tax) (**SOR 1.gg**). He also admitted that State 2 filed a tax lien against him in 2006 (**SOR 1.c**). His state tax delinquencies, as alleged in the SOR and admitted in his Answer, total about \$18,000. In his interrogatory responses, he advised that his total tax liability to States 1 and 2 was \$6,782. Applicant testified that he had entered into an installment payment plan with State 1 to pay it \$40 per month until his tax liability is paid off.

After the hearing, Applicant submitted a letter from the tax collection department of State 1, dated June 21, 2021, acknowledging receipt of his application for an “Offer in Compromise.” The state agency wrote that it would inform Applicant if his settlement offer was accepted “as soon as possible.” Applicant testified that State 2 has forgiven his tax liabilities based upon his current finances. However, he submitted after the hearing an installment agreement, dated July 6, 2021, that he entered into with State 2 to pay \$40 per month, which reflects that State 2 is requiring Applicant to begin to pay his delinquent tax liability. (Tr. at 38-41, 43-44, 59; GE 2 at 4-5; GE 4-6; AE A; AE D.)

**2013 Chapter 7 Bankruptcy** – Applicant admitted in his Answer that in January 2013 he filed a petition for bankruptcy under Chapter 7 and that he was granted a discharge of his debts in May 2013. (**SOR 1.s**.) In his petition, he listed 43 unsecured non-priority debts totaling about \$32,000 that were subsequently discharged. He testified that he incurred these debts “to keep my family alive.” He also listed unsecured priority tax debts owed to the IRS in the total amount of about \$30,000 for TYs 2003, 2004, and 2006-2009 and debts owed to State 1 for delinquent income taxes in TYs 2006 and 2009 and a delinquent sales tax debt in TY 2009 arising from his purchase of a vehicle in another state. The total amount of the debts listed as owed to State 1 was about \$12,000. Lastly, he listed a State 2 county tax debt for TY 2003, which he incurred when he previously lived in State 2. None of the unsecured priority tax debts were discharged in the bankruptcy proceeding. (Tr. at 47-48; GE 3 at 23-32, 60.)

**Delinquent debts in collection** – Applicant admitted in his Answer two debts that were placed for collection. (**SOR 1.ii and 1.jj**.) He commented further that the debts were “incurred by” or “belongs to” his ex-wife. He also wrote that they were included in his 2013 bankruptcy. Neither the creditors nor the debts, however, are listed in his bankruptcy petition. Applicant provided no evidence that linked either of the two debts to any of the debts listed in his bankruptcy petition. According to the Government’s evidence, the debt alleged in SOR 1.ii for \$1,008 is owed to a former landlord in State 1 and arises from a lease default in about 2014. Applicant testified that he had a dispute with the landlord about an infestation of roaches in the apartment. The debt alleged in SOR 1.jj for \$1,622 was a credit-card account owed to a bank before it was referred to a collection agency. Applicant defaulted on the debt in about 2018. He testified that the credit card belonged to his ex-wife. Neither debt has been resolved. (Tr. at 51-54.)

Applicant testified that it was never his intent to neglect his financial obligations to the Government or others. He explained that his actions were simply the result of his difficult circumstances. Applicant felt that his obligations as a father of five children had to take precedence over certain other obligations. His service with the Marine Corps gave him a sense of duty and honor. His duties to his family and his country have always been important to him. He believes he has provided “unwavering devotion regardless of personal sacrifice “ to both. Beginning in 2003 when his children were young and his first wife left him, he has struggled to support himself and the two children for whom he was the custodial parent as well as his three other children who lived with his wife. He worked in State 1 in low-wage positions below his skill level. He was required to move frequently for different jobs. (Tr. at 11-12, 30-32, 40-45; AE C.)

Since his return to State 2 in 2017, he has begun the “process of becoming whole again.” He has worked for his current employer, a major defense contractor, since January 2019. He has now filed his tax returns, including his 2020 returns, and is beginning to make payment arrangements to pay his delinquent taxes to States 1 and 2. He owes the IRS an additional \$2,000 for 2020, but he claims that has been “forgiven” as well. As noted above, the IRS is simply not seeking to collect Applicant’s delinquent taxes at this time.

For TY 2020, Applicant was entitled to a tax refund from State 2, where he presently works and resides, but the state is retaining the funds to apply against his delinquent taxes. Applicant intends to continue filing his federal and state income tax returns in a timely manner in the future. Applicant failed to provide any significant reasons for his failure to timely file his federal and state tax returns for many years other than the fact that he was overwhelmed with his difficult circumstances. (Tr. at 11-12, 30-32, 40-45; AE C.)

Applicant’s current net pay is about \$3,400 per month. His monthly rent is \$1,695. He drives a 2017 Jaguar, which he testified he recently bought used for \$19,000. His monthly car payment is \$480. The Government’s March 23, 2021, credit report in the record (GE 7) reflects that on July 30, 2020, Applicant opened a car loan account with a high credit amount of \$26,912. His monthly payment on this account is \$488. After paying his rent and car note, he is left with about \$1,200 to pay his remaining expenses, including his tax installment payments to States 1 and 2. Applicant asserted in a written statement that he received financial counseling online and through his employer, but this is otherwise undocumented. He notes that with this counseling has become a “responsible credit card holder in good standing.” GE 7 lists four active credit cards. (Tr. at 48-51; GE 7 at 2-4.)

### **Whole-Person Evidence**

Applicant’s long-time friend testified in support of Applicant’s character. The friend has also worked with Applicant in the past. Applicant helped his friend develop the necessary technical skills to be successful and support his family. The witness testified that Applicant is “one of the most upstanding guys I know.” He praised Applicant’s

honesty. The witness addressed the financial problems Applicant faced when he was going through a divorce. Applicant's first wife cheated on him and divorced him leaving him with two children to raise on his own. Applicant struggled during these difficult times and acted responsibly taking care of his children. (Tr. at 19-23.)

Applicant also provided a reference letter and a performance review from his current employer. The writers praise Applicant's technical skills, dedication, and positive attitude. (AE B-1 and B-2.)

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Adverse clearance determinations must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v.*

*Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern under this guideline is set out in AG ¶ 18 as follows:

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. . . .

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.

Applicant's admissions in his Answer and testimony establish the following conditions under AG ¶ 19 that could be disqualifying:

- (a): inability to satisfy debts;
- (c): a history of not meeting financial obligations; and
- (d): 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.

The guideline in AG ¶ 20 contains seven conditions that could mitigate security concerns arising from financial difficulties. Five of these mitigating conditions have possible applicability to the facts of 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; 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.

AG ¶ 20(a) is not established. Applicant's tax debts and failures to timely file his federal and state tax returns are numerous, extensive, long-term, and ongoing. In the absence of a recent track record of timely filings of tax returns and payments on his delinquent taxes, his behavior casts doubt on his current reliability, trustworthiness, and judgment.

AG ¶ 20(b) is only partially established. Applicant's financial problems arose in part out of his personal circumstances during the period after his separation from his first wife in 2003. He began accruing tax debts in the subsequent years and did not act responsibly by developing a plan to avoid future tax indebtedness. He also did not act responsibly under the circumstances by failing to timely file his federal and state income tax returns for many years up until 2019. He did not provide an adequate reason to justify his failure to file his tax returns for many years as required.

AG ¶ 20(c) is only partially established. Applicant claimed that he received credit counseling online, which may have been in connection with his 2013 bankruptcy. He provided no details about that counseling. He also asserts that he received financial counseling through his employer, though he again provided no details or documentation to evidence the extent of the counseling. He correctly notes that he is presently maintaining credit cards. Applicant has also received professional assistance in the



preparation of his tax returns for the years 2011 through 2020. The second prong of this mitigating condition, however, has not been established. Applicant does not have a track record of making payments on his installment payment plans with States 1 and 2. Accordingly, his evidence has not provided clear indications that his state tax problems are resolved or are under control. His inability to pay his past-due federal tax debts is also evidence that his federal taxes are not resolved. The IRS wrote of its intention to file a tax lien against Applicant in an amount in excess of \$94,000, which will render this tax liability as a problem for Applicant for years to come.

AG ¶ 20(d) is only partially established. Applicant has very recently initiated an effort to repay his delinquent state taxes. His actions, however, are too late to be properly described as made in good faith. Also, he has not provided evidence of payments under his installment payment plans with State 1 and 2. As of the close of the record, the evidence does not even establish that his Offer in Compromise made to State 1 has been accepted. With respect to his federal tax delinquency of over \$94,000, Applicant's evidence that the IRS is not presently seeking payment due to Applicant's inability to pay does not mitigate his past actions just as the non-collectability of a consumer debt due to the application of a statute of limitations does not mitigate security concerns arising from the existence of an unpaid debt.

AG ¶ 20(g) is only partially established. Applicant has filed his federal and state tax returns for TYs 2011 and later, including 2020. He has not, however, filed his 2010 federal tax return. With respect to the taxes, penalties and interest he owes to State 2, he has entered into an installment payment plan to pay the state \$40 per month. He has made an Offer in Compromise to State 1 to begin paying his tax debt to that state. As of the close of the record, there was no evidence that State 1 had accepted Applicant's Offer in Compromise. Since both payment plans are recent, there is no evidence in the record to show that he has begun to comply with either payment plan, let alone to establish that he is in compliance with those arrangements. The fact that the IRS has determined that Applicant is unable to repay his large tax debt to the Federal Government and is not seeking payment at this time does not mitigate the security concerns raised by his past behavior. The inability to pay a debt is one of the disqualifying conditions under Guideline F. (AG ¶ 19(a).)

### **Whole-Person Analysis**

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. In applying the whole-person concept, an 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 and applying the adjudicative factors in AG ¶ 2(d), specifically:

- (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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have considered Applicant's determination and commitment to resolve his tax problems to the best of his ability to do so. He is a proud veteran of the Marine Corps and takes great pride in performing his current job in support of the U.S. military, which he has trained to do all his adult life. I have given weight to his military service and to the sincere and impressive testimony of his character witness. I have also weighed the difficult circumstances Applicant has faced for many years trying to support and raise his children to the best of his ability to do so. He was always there for his children.

The choice Applicant made, however, of putting his tax filing and payment obligations to the side for so many years presents security concerns under the Adjudicative Guidelines that he has not been able to mitigate. He did file his outstanding tax returns before he received the SOR, which evidences his sincerity to begin resolving his tax issues. However, he never had a plan to begin paying his delinquent federal taxes, starting by paying all his 2020 taxes. His \$2,000 of unpaid federal taxes in 2020 evidences that he did not withhold enough taxes from his paychecks and that future tax deficiencies are likely. At the same time, he prioritized the purchase in mid-2020 of a relatively expensive, luxury vehicle. Repaying the money he borrowed to purchase that car will consume a significant amount of his monthly income for years to come. Also, he initiated his plans to pay his state tax debts too late to begin to establish a track record of compliance with his installment payment plans.

Overall, the record evidence as described above leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. After weighing the applicable disqualifying and mitigating conditions and evaluating all of the evidence in the context of the whole person, I conclude Applicant has failed to mitigate the security concerns raised by his financial considerations.

### **Formal Findings**

Paragraph 1, Guideline F:

**AGAINST APPLICANT**

Subparagraphs 1.a through 1.jj:

**Against Applicant**

## **Conclusion**

I conclude that it is not clearly consistent with the national interests of the United States to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

John Bayard Glendon  
Administrative Judge