



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



In the matter of: )  
)  
) ISCR Case No. 20-03664  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne M. Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

09/14/2021

**Decision**

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

On February 15, 2021, in accordance with DoD Directive 5220.6, as amended (Directive), and Administrative Guidelines (AG) implemented on June 8, 2017, the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance. 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 May 19, 2021. Applicant received the FORM on June 4, 2021. Applicant did not object to the Government's evidence, but provided a response to the FORM (Item 5). The Government's evidence, included in the FORM and identified as Items 1 through 4, 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 concerns.

### **Findings of Fact**

Applicant, age 64, is married and has two minor children. He served in the U.S. Navy from 1975 to 1981 receiving an honorable discharge. (Item 1) He obtained an undergraduate degree in 1990. Applicant completed his security clearance application on August 20, 2019. (Item 2) He has held a security clearance since the military. He has been employed as an analyst from July, 2019 to the present. (Item 1) Before that he was self-employed as a freelance research and design practitioner.

The SOR alleges that Applicant is indebted to the Federal Government for delinquent taxes in the approximate amount of \$5,378 for tax year 2015 (1.a); that Applicant is indebted to the Federal Government for delinquent taxes in the approximate amount of \$95,396.53 for tax year 2016 (1.b); that Applicant is indebted to the Federal Government for delinquent taxes in the approximate amount of \$553.44 for tax year 2017. (1.c); and that he is indebted to a state for delinquent taxes in the amount of \$24,427 for tax year 2016 (1.d). The Applicant admitted all the SOR allegations and provided explanations.

Applicant stated the delinquencies are a result of significantly reduced income for those years with an additional issue of a foreclosure on his state rental property in 2016, resulting in a substantial Capital Gains Tax recapture for the Federal and state taxes. He also acknowledged that he was delinquent on another state tax but has since repaid that amount. He further stated that he is currently in a repayment arrangement with the other state. (Answer to SOR) He also stated that he retained an enrolled agent to negotiate and initiate a repayment plan with the Internal Revenue Service (IRS).

Although not alleged in the SOR, Applicant disclosed in his security clearance questionnaire that he filed for Chapter 7 bankruptcy in 2013, in the amount of \$100,000. All debts were discharged. There was no other information concerning the bankruptcy other than financial hardship. (Item 1)

In response to Applicant's interrogatories, he noted that he filed federal income tax returns for tax year 2015 – 2019, but he is not in a payment plan for the delinquencies. (Item 3) Applicant stated in that same interrogatory that he was in a payment plan with one state for tax years 2015 and 2016, but did not provide any details of the payments. (Item 3) He is not in a payment plan for the other state. He has not started a payment plan with the IRS. (Item 3)

In Applicant's 2019 subject interview, he noted that he is self-employed and travels abroad as part of his freelance business. He also explained the financial hardship which caused the bankruptcy. He admits that he owes about \$260,000, including interest and penalty to the IRS. He stated that he intended to establish a payment plan with the IRS in the next week after his subject interview. There is no evidence of a plan in place in this record. He also stated that he just does not have the funds. (Item 3) He has a budget and

has a monthly net income of \$5,800. He does not have a dedicated savings account. He uses any extra money to bring his mortgage current.

As to SOR 1.a and 1.b, and 1.c, Applicant admits that he has unpaid federal taxes for the years in question, which total approximately \$101,328.15. He submitted IRS transcripts to confirm the amount. He is still not in a repayment plan.

As to SOR 1.d, Applicant has set up a payment plan for his delinquent state taxes (Item 2) with the other state. He pays \$500 per month. He submitted documentation that indicates he has paid \$500 a month since 2018 for tax year 2016. It appears that there is a \$24,413 balance. (Item 3)

### **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 (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 enter 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 EO 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* EO 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 latest security clearance application, establish three disqualifying conditions under this guideline: AG ¶ 19(b) ("unwillingness to satisfy debts regardless of the ability to do so"), AG ¶ 19(c) ("a history of not meeting financial obligations") and AG ¶ 19(f) ("failure to ..... or pay annual Federal, state, or local income tax as required").

The security concerns raised in the SOR may be mitigated by any of 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;

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

AG ¶ 20(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 admitted that he owed delinquent debt for his Federal taxes as noted in the SOR since 2015. He stated in his interview in 2019 that he would start a repayment plan with the IRS. At this time, he has not done so. He reached out to someone, but has not followed through. He is in a repayment plan for a state tax since 2018 with a current balance of \$24, 427. He has not received counseling.

There is no evidence to show that Applicant has made a consistent or concerted effort to resolve any of his tax issues except for his recent involvement with the state tax debts. He has a history of failing to pay his income taxes. He does not have a track record of financial responsibility in this area for the federal taxes. He started in 2018 to address the state taxes. He has shown a disregard for paying income tax as required by law. Applicant did not provide a good reason as to why he did not act earlier to resolve the situation.

Applicant has not acted responsibly and was not proactive. Without documentary evidence of more efforts, he has not demonstrated a track record of resolving federal financial problems and there is no indication that his financial situation is under control. AG ¶ 20(a)-20(d) and 20(g) are not established. Applicant's delinquent debts remain unresolved. He is now trying to work with a enrolled agent to enter into an IRS repayment plan. He has not met his burden of proof in this case. For these reasons, I find SOR ¶¶ 1.a through 1.c against Applicant and 1d. for Applicant.

The Appeal Board opined that unalleged conduct (delinquent taxes) can be considered for certain purposes although not alleged in 1.c and 1.d. Even in circumstances where an applicant has purportedly corrected his federal tax problems, and is now motivated to prevent such problems in the future, these adjustments do not preclude careful consideration of an applicant's security worthiness in light of his or her longstanding past behavior evidencing irresponsibility to pay income taxes. Applicant's, action, or inaction, under the circumstances cast doubt on his current reliability,

trustworthiness, and good judgment. (See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, including Applicant's military career in the U.S. Navy, I conclude that Applicant has not mitigated the security concerns raised by his financial indebtedness on delinquent federal taxes. He did file his income tax returns, but he has not paid his federal tax debts debt since 2015. He is working on the state delinquent tax. I conclude that it is not in the national interest to continue Applicant's eligibility for access to classified information. Any doubts must be resolved in favor of the Government.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1. c:

Against Applicant

Subparagraphs 1.d:

For Applicant

## **Conclusion**

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch  
Administrative Judge