



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 20-02902  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Allison Marie, Esq., Department Counsel  
For Applicant: *Pro se*

09/21/2021

\_\_\_\_\_

**Decision**

\_\_\_\_\_

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On February 19, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on April 30, 2021. Department Counsel withdrew SOR ¶ 1.h, indicating it was a duplicate of SOR ¶ 1.d. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 12, 2021. As of July 13, 2021, he had not responded. The case was assigned to me on September 9, 2021. The Government exhibits included in the FORM and the documents attached to Applicant’s response to the SOR are admitted in evidence.

## Findings of Fact

Applicant is a 56-year-old employee of a defense contractor where he has worked since November 2019. He served on active duty in the U.S. military from 1987 until he retired with an honorable discharge in 2011. He is rated 100% disabled by the Department of Veterans Affairs from a service-related injury. He has a bachelor's degree, which he earned in 2017. He married for the third time in 2019. He has seven children between the ages of 6 and 19. (Items 4, 5)

The amended SOR alleges Applicant owes back child support in the amounts of \$66,772 and \$24,274 (SOR ¶¶ 1.a and 1.i); he did not file his 2017 and 2018 federal and state income tax returns (SOR ¶¶ 1.j and 1.k); and he owes six delinquent debts totaling about \$29,000 (SOR ¶¶ 1.b-1.g). The debts include \$13,937 owed after Applicant returned a leased 2017 luxury car (SOR ¶ 1.b) and \$4,269 owed on the purchase of his wife's engagement ring and their wedding rings (SOR ¶ 1.d). The allegations are established through credit reports and Applicant's admissions. (Items 3, 5-8)

Applicant attributed his financial problems to his 2017 divorce from his second wife and high child support payments. He was unemployed for a period from about 2017 to 2018. His wife is an immigrant who was waiting for authorization to work in this country. (Items 4, 5)

Applicant admitted owing all of the SOR debts with the exception of the \$4,031 debt alleged in SOR ¶ 1.e and the \$63 debt alleged in SOR ¶ 1.g. He stated that both debts were paid. He did not provide any documentation establishing they were paid. The \$4,031 debt is reported on the 2019 combined credit report and the 2020 Equifax credit report. The activity date is September 2018. The debt is not listed on the 2021 Equifax report. The \$63 debt is listed on all of the credit reports. (Items 3, 5-8)

Applicant filed his 2018 federal and state income tax returns late. He still had not filed the 2017 income tax returns as of the date of his SOR response. He stated that he did not file the returns because he knew that he would owe taxes, and he did not have the money to pay them. He indicated in his response to the SOR that he planned to file the 2017 returns in the upcoming tax season. No additional information was provided about the 2017 returns. (Items 3-5)

Applicant admitted to owing the \$66,772 and \$24,274 child support arrearages. He stated that the \$24,274 delinquency was being paid by garnishment from his military retirement pay. He provided a copy of his retiree account statement. The statement shows three garnishments ordered in the amounts of \$1,501, \$859, and \$782, but it only showed \$452 being deducted from his pay, likely because his pay was not enough to pay even one of the three garnishments. The \$66,772 child support arrearages have increased on each credit report in evidence, with the 2021 credit report showing a balance of \$71,793. (Items 3, 5-8)

Applicant stated that he intends to pay his debts. He admitted that his finances were in bad shape, but he expected them to improve when his wife receives authorization to work. (Items 3, 5) He did not respond to the FORM, so more recent information about his finances is not available.

## **Policies**

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

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(c), 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 EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern for financial considerations 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable 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.

Applicant has a history of financial problems, including child support arrearages, a defaulted auto lease, and other delinquent debts. He did not file his 2017 and 2018 federal and state income tax returns when they were due. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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.

Applicant attributed his financial problems to his 2017 divorce from his second wife and high child support payments. He also was unemployed for a period in about 2017 to 2018. His wife is an immigrant who was waiting for authorization to work in this country.

Applicant's divorce, unemployment, and his wife's immigration status were beyond his control. Filing his tax returns was within his control. In determining whether all of Applicant's financial problems were beyond his control and whether he acted responsibly under the circumstances, several things stand out. Applicant could not pay his child support, but he committed to the lease of a 2017 luxury car. It is understandable that Applicant wanted a nice engagement ring for his wife and wedding rings for both of them, but not if he could not afford to pay for them and not at the expense of providing for his children.

Applicant filed his 2018 federal and state income tax returns late. He still had not filed the 2017 income tax returns as of the date of his SOR response. Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018). AG ¶ 20(g) is applicable to the 2018 tax returns, but not the 2017 tax returns.

Applicant stated that the \$4,031 debt alleged in SOR ¶ 1.e and the \$63 debt alleged in SOR ¶ 1.g were paid. I am giving him the benefit of the doubt and crediting him with resolving those debts. SOR ¶¶ 1.e and 1.g are concluded for Applicant.

There is no evidence of payments toward the remaining SOR debts. He stated that he intends to pay his debts. However, intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. Financial considerations security concerns are not 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 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. I also considered Applicant's honorable military service.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

## 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.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Withdrawn
Subparagraphs 1.i-1.k:	Against Applicant

## Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Edward W. Loughran  
Administrative Judge