



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



In the matter of: )  
)  
) ISCR Case No. 20-03115  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Dan O’Reilly, Esq., Department Counsel  
For Applicant: *Pro se*

October 12, 2021  
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**Decision**  
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LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On November 8, 2018, Applicant submitted a security clearance application (e-QIP). (Item 3.) On March 26, 2021, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken 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*, effective within the DoD after June 8, 2017.

Applicant responded to the SOR (Answer) on April 19, 2021. (Item 2.) He requested that his case be decided by an administrative judge on the written record. Department Counsel submitted the Government’s written case on June 24, 2021. A complete copy of the File of Relevant Material (FORM), containing seven Items was received by Applicant on June 30, 2021. He was afforded an opportunity to file

objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant submitted no response to the FORM. DOHA assigned the case to me on September 22, 2021. Items 1 through 7 will hereinafter be referred to as Government Exhibits 1 through 7.

### **Findings of Fact**

Applicant is 44 years old and married with three children. He has a high school diploma and approximately two years of college courses. He is employed by a defense contractor as an Engineer. He is seeking to obtain a security clearance in connection with his employment.

### **Guideline F - Financial Considerations**

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information.

The SOR alleges that the Applicant is indebted to the Federal government for delinquent taxes for tax years 2014, 2015 and 2016. He is also indebted to six other creditors for accounts that have either been placed for collection or charged off. Applicant admits each of the allegations set forth in the SOR. Credit reports of the Applicant dated January 4, 2019, and December 22, 2020, confirm the indebtedness.

Applicant began working for his current employer in March 2020. He has had consistent employment as an engineer since April 2012, with no period of unemployment. Applicant served in the U.S. Navy from 1995 to 1999, and received an honorable discharge. (Government Exhibit 3.)

In his answer to the SOR, Applicant explained that his financial problems were caused by his wife's mismanagement of funds, her failing to timely file their income tax returns for tax years 2014 through 2016, and his prior period of unemployment from 2011 to 2012. (Government Exhibit 2.) The following delinquent debts set forth in the SOR are of security concern:

1.a. A delinquent debt is owed to the Federal Government for delinquent taxes in the amount of \$7,834.12 for tax years 2014, 2015 and 2016. Applicant states that he is currently in payment plan with the Internal Revenue Service (IRS) in the amount of \$500 a month. There is no evidence in the record that shows that he has started making payments toward the debt yet. (Government Exhibit 4.)

1.b. A delinquent debt is owed to a creditor for a medical account that was placed for collections in the approximate amount of \$2,863. The debt remains owing.

1.c. A delinquent debt is owed to a creditor for a repossessed vehicle that was charged off in the approximate amount of \$15,097. The debt remains owing.

1.d. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$2,870. The debt remains owing.

1.e. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$838. The debt remains owing.

1.f. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$315. The debt remains owing.

1.g. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$213. The debt remains owing.

Applicant did not file his Federal income tax returns for tax years 2014, 2015, and 2016 until after receiving the CAF interrogatories in February 2020. (Government Exhibit 4.) Applicant's credit report dated December 22, 2020, indicates that he purchased a vehicle for \$47,328 in or around November 2020. (Government Exhibit 6.) This was not a prudent decision given the fact that he has so many outstanding delinquent debts.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 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 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 clearance 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 as to 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness 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's delinquent debts include Federal taxes, a car loan and medical debts totaling in excess of \$30,000. Applicant failed to file his Federal income tax returns for tax years 2014, 2015, and 2016 in a timely fashion. He also failed to pay his Federal income taxes for 2014, 2015 and 2016. He also became indebted to a number of creditors whose accounts were either charged off or placed for collection. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under the Financial Considerations guideline are potentially applicable under 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;
- (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, or a death, divorce, or separation), and the individual acted responsibly under the circumstances;
- (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.

Applicant is delinquently indebted to each of the creditors set forth in the SOR. He has failed to provide sufficient evidence in mitigation. He gives no reasonable excuse for his failure to file his income tax returns on time, or pay his taxes. His only claim is that his wife mismanaged the funds. Given his experience, military background, and advanced education, Applicant knew or should have known the legal requirement to file his income tax returns and pay his Federal income taxes in a timely fashion. The fact that he did not file his income tax returns until he received the CAF interrogatories in February 2020 shows either that he could not afford to pay his taxes, or that he was negligent about it. In any case, Applicant knew that he had financial delinquencies and

unfiled tax returns at the time he completed his security clearance application in November 2018. Buying an expensive car, waiting years to file his taxes, and not resolving even minor delinquent accounts shows poor judgment and unreliability. Applicant has done little to nothing to show that he has resolved his delinquent debts. He shows a desire to resolve them, but nothing more. Applicant's inaction for so long reflects a pattern of unreliability, untrustworthiness, and poor judgment. Accordingly, Applicant does not meet the requirements to access classified information.

### **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 relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated the Financial Considerations security concerns.

### **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a.: through 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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge