



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



In the matter of: )  
)  
) ISCR Case No. 20-01949  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Erin Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

10/25/2021

**Decision**

LYNCH, Noreen A., Administrative Judge:

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

**Statement of the Case**

On December 14, 2020, in accordance with Department of Defense (DOD) Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines F and E. 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 answered the SOR, and requested a hearing before an administrative judge. (Answer) The case was assigned to me on June 2, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 10, 2021, scheduling the hearing for October 14, 2021. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 12, which were admitted without objection. Applicant testified on his own behalf. He submitted three documents at the

hearing, Applicant Exhibits (AE) A, B, and C, which I marked, and accepted into the record without objection. DOHA received the transcript of the hearing (Tr.) on October 19, 2021.

### **Procedural Issue**

The Government moved to amend the SOR at the hearing based on Applicant's testimony that "he failed to file, as required, a federal tax return for tax years 2011, 2013, 2016, 2017, 2018, and 2019 (subparagraph ¶ 1.s) As of October 14, 2021, those tax returns remain unfiled. "Applicant failed to file, as required, a state tax return for tax years 2011, 2013, 2016, 2017, 2018, and 2019 (subparagraph ¶1.t). The Government also moved to amend under (subparagraph ¶ 2.c) that Applicant falsified material facts on an SF85-P questionnaire for public trust positions supplement executed on October 29, 2018, in the past seven years that he failed to file or pay federal, state, or other taxes, when required by law or ordinance, and (subparagraph ¶ 2.d) that he falsified material facts on a questionnaire on October 1, 2019, in response to Section 26 that he failed to file or pay federal, state, or other taxes, when required by law.

The amendments were accepted into the record to conform to Applicant's testimony and that he deliberately failed to disclose the information as amended in subparagraphs ¶ 1.s and ¶ 1.t, and subparagraphs ¶ 2.c and ¶ 2.d. Applicant did not object to the amendments.

### **Findings of Fact**

Applicant, age 34, is not married and has six minor children. (Tr. 18) He obtained his high school diploma in 2005. Applicant completed his security clearance application on October 1, 2019. (GE 1) He is a service desk analyst on a part-time basis for his employer since June 2021. (Tr. 20). Before his current position, he served as a private security officer. (Tr. 20) He does not hold a security clearance, but he held a public trust position in the past. (Tr.20-21)

### **FINANCIAL**

The SOR alleges that Applicant has delinquent debt in the approximate amount of \$26,583 in 16 delinquent accounts. The debts include consumer loans, medical accounts collection accounts, and a vehicle repossession. SOR ¶¶ 1.a through 1.p. and amended SOR ¶ 1.q and SOR ¶1.r for state tax lien for the year 2017 in the approximate amount of \$4,897, and state tax lien for the year 2018 in the approximate amount of \$2,568. The amended SOR ¶ 1.s alleges failure to file federal tax returns for the years 2011, 2013, 2016, 2017, 2018, and 2019, and SOR ¶ 1.t alleges failure to file state tax returns for tax years 2011, 2013, 2016, 2017, 2018, and 2019.

Applicant admitted the majority of the allegations, but he denied some because he disputed them, he was in a payment plan, or the delinquent debts were no longer on his 2021 credit report. (AE A, Tr. 30) The SOR financial allegations and tax liens were confirmed by Government exhibits (GE 1-12). The delinquent accounts were also on the 2021 credit report that Applicant provided. (AE A) Applicant provided no documentary

evidence of any payments that he made on any of the delinquent accounts or evidence of dispute.

Applicant was unemployed with a back injury in 2013. He received unemployment benefits. He recalls it was about \$800 or \$900 every two weeks. (Tr. 22) He stated that with the unemployment, he could only pay rent. He stated that the debts originated from the 2013 back injury. (Tr. 40) He admitted the delinquent accounts were old.

When questioned at the hearing, Applicant admitted that despite his answers to the SOR, he had never paid any of the delinquent accounts, nor had he started payment plans. As to the tax issues, SOR 1.q, the 2017 in the amount of \$4,897, Applicant stated that he contacted the state comptroller and was told that he did not have a tax lien. (Tr.41) Applicant provided no proof.

As to the SOR ¶ 1.r, the 2011 state tax lien in the approximate amount of \$2,568, Applicant paid the lien in 2018. (GE 6, Tr. 78) He did not explain why he delayed paying for seven years.

As to the amended SOR ¶ 1.s, Applicant failed to file, as required, a federal tax return for tax years 2011, 2013, 2016, 2017, 2018, and 2019, Applicant admitted to the allegation. As of October 14, 2021, the tax returns have not been filed. (Tr. 74)

As to the amended SOR ¶ 1.t, Applicant failed to file, as required by law, state tax returns for the tax years 2011, 2013, 2016, 2017, 2018, and 2019. The filings are still not filed as of October 14, 2021.

During Applicant's investigative 2019-2020 interview, he stated that he was going to address the delinquent accounts by setting up payment plans. (GE 11) He stated that he is willing and able to pay. He started to receive help from a consolidation company in 2019, but he stopped. Although the investigative report notes that Applicant is beginning payment arrangements, or made payments for the tax liens, he provided no documentation. He also noted that some accounts had been paid in full. (GE 11) At the hearing, he admitted that he had not made any payments. (Tr. 68) He notes that his current bills are paid on time.

Applicant completed a personal financial statement on May 26, 2020. (GE 7) His gross salary per year is \$43,000. His monthly net is approximately \$2,400. His domestic partner earns around \$3,500 a month. Child support is taken from his paycheck. His family members sometimes help with bills. (Tr. 88)

### **Personal Conduct.**

As to SOR ¶ 2.a, on February 23, 2018, Applicant had a domestic order entered against him for a one-year period. He admitted this allegation. He attended the court hearing on that date. He stated that the Judge started discussing child custody issues and would not let him speak. He believed the court order was then dismissed and he did not disclose the information. (AE C)

As to SOR ¶ 2.b, when Applicant completed his SF85P, for a public trust position in October 2018, he answered “no” to question 9 “was there a domestic violence order or restraining order issued against him”? He also answered “No” to Section 26 concerning bills or debts turned over for collection accounts. By answering “No”, he falsified his answer to the SF85P.

As to SOR ¶ 2.c, Applicant falsified material facts on an 85P for public trust positions on October 29, 2018, when he answered “no” to question 18, “in the past seven years have you failed to file or pay federal, state, or other local taxes, when required by law or ordinance.” He volunteered at the hearing that he did deliberately answered “No”. (Tr. 70-72)

As to SOR ¶ 2.d, Applicant falsified material facts on his e-Qip (October 1, 2019) in response to section 26, that in the past 7 years, he had failed to file or pay federal state or other taxes, when required by law.” He volunteered this information at the hearing.

## **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 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 credit reports, establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), AG ¶ 19(c) ("a history of not meeting financial obligations") and AG ¶ 19 (f) (failure to file 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; and

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

Applicant's debts are long-standing and he acknowledged that he had not provided evidence of payment or payment plans for any of the delinquent debts. He relied on the fact that some accounts were not on the credit report, but he also stated that he had never paid them and that they were old. He did have a back injury in 2013, but he received unemployment benefits. He had worked as a private security guard and switched fields recently to a lower paying job. He did not seek financial counseling, nor did he adhere to a consolidation plan that he had started a few years ago. He provided no proof that he disputed some accounts. He has not acted responsibly. The other issue is one of not filing federal or state tax returns for many years. He does not know how much he may owe in taxes. He chose to change fields of work and is employed. AG ¶ 20(a) and 20(b) are not established. Applicant's delinquent debts remain unresolved and he provided no plan or proof of payment.

AG ¶ 20(c) and 20(d) are not established. Applicant did not receive any financial counseling nor are there clear indications that his financial situation is under control. As to the failure to pay federal and state income taxes from 2011 to 2018, Applicant provided no credible explanation. He has not yet established a payment plan with the IRS. His financial problems are not under control. Any doubts must be resolved in favor of the Government.

Applicant failed to meet his burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.a through 1.t against Applicant.

### **Guideline E, Personal Conduct**

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions

about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Based on Applicant's alleged admitted deliberate falsification of his 2018 SF85P, 2019, SCA, and 2019 non-disclosure of failure to file or pay federal or state taxes for the above-mentioned years, the following condition applies.

AG ¶ 16 (a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admitted that he had a domestic violence order entered against him on February 23, 2018, but did not disclose it on his SF85P. He volunteered that he did not file taxes, federal or state for many years without explanation. An omission, standing alone, does not prove a falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission.<sup>1</sup> An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on an SCA was deliberate.<sup>2</sup>

In this instance, it is clear from Applicant's comments at the hearing that he knew that he did not file or pay his federal or state income taxes for some years. He also knew that he had a domestic protective order and provided no credible explanation as to why he thought it was dismissed. I find that Applicant intentionally falsified material information

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<sup>1</sup> See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

<sup>2</sup> ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

about his protective order and tax issues. AG ¶ 16(a) is established. None of the mitigating conditions apply.

### **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 Guidelines F and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, including his lack of credibility and openness at the hearing, I conclude that Applicant deliberately falsified the various forms alleged in the SOR. He also has unresolved delinquent debts that he admits he has never paid. Applicant also has not filed federal or state taxes for many years. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **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.t: **Against Applicant**

Paragraph 2, Guideline E (Personal Conduct): **AGAINST APPLICANT**

Subparagraphs 2.a-2:d: **Against 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