



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



In the matter of: )  
)  
) ISCR Case No. 19-01494  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Erin Thompson, Esq., Department Counsel  
For Applicant: John Hawke, Esq.

09/09/2021

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On August 5, 2019, the Department of Defense Consolidated Adjudication Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective on June 8, 2017.

Applicant answered the SOR on September 12, 2019, and requested a hearing before an administrative judge. The case was assigned to me on May 28, 2021. After coordinating with Applicant’s counsel, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing scheduling the hearing via the Defense Collaboration

Services (DCS) system for July 13, 2021. On July 12, 2021, Applicant's counsel requested a continuance, which was granted until July 26, 2021. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 7. There were no objections and the exhibits were admitted into evidence. Applicant testified. Post-hearing Applicant submitted Applicant Exhibits (AE) 1 through 5, which were remarked as AE A through E. They were admitted without objection. The record was held open until August 9, 2021, to permit Applicant to provide additional documents, which he did. The documents were marked as AE F through L, and admitted into evidence without objection, and the record closed. DOHA received the hearing transcript on August 3, 2021.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 45 years old. He earned an associate's degree. He married in 2001 and divorced in 2014. He has two children from the marriage, ages 16 and 10. He remarried in 2020. His wife has two grown children, one who lives at home with them. (Transcript (Tr.) 65-66, 70-72; GE 1)

Applicant enlisted in the Navy in 1995 and was granted a waiver to enlist due to drug use and a gun charge. He was granted a security clearance at some point. He testified that after the terrorist attacks of September 11, 2001, the military was reducing the number of its security clearances, and because Applicant had been granted a waiver to enlist, a government investigator interviewed him. Applicant disclosed to the investigator that he had used marijuana while on active duty in the Navy. In May 2004, the Department of the Navy Central Adjudication Facility (DON CAF) issued him a letter of intent to revoke his security clearance. He had an administrative hearing and the Navy Personnel Security Appeal Board upheld the revocation. Tr. 19, 66-70)

During Applicant's April 2018 background interview with a government investigator, his prior revocation was discussed. The investigator confronted Applicant with the May 2004 revocation letter from the DON CAF, which stated his clearance was revoked due to his failure to mitigate drug involvement concerns. Applicant explained that because he needed a clearance to perform his duties, he could not reenlist in the rate he was in, so he completed his enlistment and was honorably discharged in 2005. (Transcript (Tr.) 65-69; GE 1, 2)

After his discharge from the Navy, Applicant worked for a federal contractor from approximately August 2005 to July 2010. He was unemployed from approximately July 2010 to March 2011. He was employed by non-government companies from March 2011 to February 2013. He began employment with his present employer, a federal contractor, in March 2013 and has worked there since then. (GE 1)

Applicant and his wife filed Chapter 7 bankruptcy in June 2011. He attributed it to his reduced income after his military discharge and letting his wife handle the finances. He disclosed \$120,025 of unsecured nonpriority claims; \$1,187 of unsecured priority claims; and \$5,002 of secured claims. His Schedule E-unsecured priority claims were for 2008 and 2009 unpaid state taxes. His Schedule F-unsecured nonpriority claims included multiple vehicle debts, cellular services, medical, library, attorneys' fees, credit cards, other consumer debts, and a garnishment. His debts were discharged in June 2011. (Tr. 26, 87-89; GE 4)

In 2015, while employed with a federal contractor, Applicant applied for a security clearance. It was denied in approximately May 2016, due to his finances at the time. (Tr. 28, 84-86; GE 2)

Applicant completed a security clearance application in October 2017. Question 26 asks about his finances and whether he had failed to file or pay Federal, state, or other taxes in the past seven years. Applicant answered "no." It also asked about other financial delinquencies, whereby Applicant disclosed some of his delinquent debts. (GE 1)

Applicant answered government interrogatories in June 2019. In them he disclosed he failed to timely file his 2016 federal tax return (SOR ¶1.d). He stated the reason was because he was concentrating on delinquent accounts on his credit report and he forgot to file. (GE (2) He also stated:

I attempted to file the return but misunderstood TurboTax. When it said finished and completed, I thought it was sent to the IRS. When I looked at it again recently it actually said it was complete but I had to mail it in. So I'm in the process of doing it now. (GE 2)

Applicant's 2016 federal tax transcript shows that his 2016 tax return was filed in September 2019. It showed he had a balance of \$5,635 owed as of August 2021. Applicant also disclosed that he filed his 2016 state tax return on June 15, 2019. He did not owe taxes for that year. He disclosed that he owed \$92 for his 2018 state taxes. SOR ¶ 1.f alleged that Applicant owed delinquent state taxes for tax years 2014 and 2018 in the total amount of \$562. Applicant provided documents showing that he paid this debt in September 2019. (Tr. 21, 30-34; Answer to SOR; AE J)

SOR ¶¶ 1.b, 1.c, and 1.e alleged Applicant owed \$5,459 for tax year 2014; \$9,779 for tax year 2015; and \$4,002 for tax year 2018. Applicant disclosed in his interrogatories that he failed to pay his 2015 and 2018 federal income taxes and owed \$9,780 and \$4,002 respectively. He indicated that he had recently initiated a payment plan with the IRS, and he would be required to pay \$250 a month, but at that time it had not yet started. The interrogatory did not ask about his 2014 tax debt. (Tr. 31; GE 2)

Applicant testified that after receiving the SOR, he contacted the IRS and made a payment agreement. He said he began a payment plan with the IRS and has made timely payments. He provided a document that shows he owes \$4,577 for tax year 2018; \$5,622

for tax year 2016 and \$6,317 for tax year 2015. He explained that the reason he had tax debts was because he did not have sufficient amounts withheld from his income because he was having difficulties paying all of his expenses after his divorce. (Tr. 22, 29-32, 72-81; AE A)

Applicant did not provide a copy of an installment agreement with the IRS. He provided an IRS payment activity history document. It shows he made two payments in 2018 applied to the balances owed 2014 and 2017 tax years; six payments in 2019 applied to tax years 2014, 2019 and 2020; ten payments in 2020 applied to tax year 2014; and in 2021 he made payments from January to June, which were applied to tax years 2014 and 2015. Applicant's tax transcript for tax year 2016 shows an installment agreement was established in June 2019, but it was stopped in February 2020. No other information was provided as to the status of an existing installment agreement. (Tr. 23; AE A, K)

Applicant's 2020 tax year transcript reflects he has a zero balance owed as of April 2021. His 2019 tax year transcript reflects he has a zero balance owed as of June 2021. His 2018 tax year transcript reflects he owes \$4,596 as of August 2021. His 2017 tax year transcript reflects a zero balance owed as of April 2018. His 2016 tax year transcript reflects he owes \$5,635 as of August 2021. His 2015 tax year transcript reflects he owes \$6,002 as of August 2021. His 2014 tax year transcript reflects he has a credit of \$258 as of March 2021. (AE F, G, H, I, J, K, L)

Applicant attributes his financial problems to his 2014 divorce. The divorce decree provided that Applicant's wife would be responsible for the car debt in SOR ¶ 1.g (\$16,956) even though the car was titled in Applicant's name. She defaulted on the loan. I find in Applicant's favor on this debt. (Tr. 25-26, 28, 34-40)

The creditor for the debt in SOR ¶ 1.h (\$7,695) obtained a judgment against Applicant in July 2017. Applicant testified that he has been making payments through the court ordered garnishment for the past three years. He provided a document showing that the judgment was satisfied in May 2021. The debt is resolved. (Tr. 34-42; AE C, D, E)

According to their divorce decree, Applicant and his ex-wife were to split the amount owed on the debt alleged in SOR ¶ 1.i (\$2,798). He testified that he was told by his ex-wife that she paid the debt. He failed to provide any supporting documents that he paid his share or the debt is resolved. The debt is reported on his March 2019 credit report as in collection. The date of last activity was July 2012. It is not reported on his June 2021 credit report. It is unknown if this debt was removed because it was older than seven years, but as of March 2019 it had not been paid, which was five years after Applicant's divorce. Without documentary corroboration, it is unresolved. (Tr. 42-43; GE 6, 7)

Applicant testified that the debt owed in SOR ¶ 1.j which was past due in the amount of \$154 in August 2019, on a balance owed of \$1,162 was settled for a payment of \$370 in April 2019. Applicant provided a copy of his bank statement to show he transferred \$370 to the creditor. His June 2021 credit report shows that the debt was

charged off and settled for less than the balance owed. The debt is resolved. (Tr. 43-46; Answer to SOR; GE 7)

Applicant stated that the medical debts in SOR ¶¶ 1.k (\$317) and 1.n (\$297) are duplicates. He stated all of his debts to this creditor were paid in full. The debt in SOR ¶ 1.k is listed on his March 2019 credit report with a date of last activity as July 2013. The debt in SOR ¶ 1.n is listed on his October 2017 credit report as a collection, and date of last activity is July 2017. These debts are not listed on his June 2021 credit report. Applicant stated he would provide documentary proof of payment to show the debts were duplicates and paid. He did not. It is unknown if the debts were removed from his most recent credit report due to their age. They are unresolved. (Tr. 46-48; GE 6, 7)

The debt in SOR ¶ 1.l (\$270) had a balance owed on a repossessed vehicle. Applicant testified that he paid the debt. The credit reports indicate the account was refinanced, paid, and closed. The debt is resolved. (Tr. 48-50; GE 6, 7)

The medical debt alleged in SOR ¶ 1.m (\$737) was paid in December 2017. It is resolved. (Tr. 52; Answer to SOR)

Applicant testified that after receiving the SOR and being confronted with his delinquent debts, he is now aware of how important it is to be financially responsible and he has acted responsibly and has not overextended his finances. Applicant has a loan from his 401K pension plan that he is repaying. He took the loan to pay bills. He has not participated in financial counseling. (Tr. 61-64, 75-76)

Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes. It may be considered in mitigation, when making a credibility determination, and in a whole-person analysis.

### **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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.” 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. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an 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 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 relating to the guideline 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (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 tax as required.

Applicant has a long history of financial problems cumulating with his 2011 bankruptcy. Subsequently he accumulated delinquent debts that are not resolved. He failed to timely file his 2016 federal income tax return. He failed to timely pay his federal income taxes for multiple years and his state income taxes for two years. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 has unresolved delinquent debts. He also owes federal income taxes for multiple tax years. He has a long history of financial problems. In 2011, he had approximately \$120,000 of debt discharged in bankruptcy. His financial problems continued and then were aggravated by his failure to pay his federal and state income taxes. I cannot find that his behavior is unlikely to recur. His behavior casts doubt on his current reliability, trustworthiness and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to his 2014 divorce and his ex-wife's failure to pay some of the debts assigned to her. This condition was beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. It has been seven years since Applicant's divorce. His divorce did not impact his ability to timely file his federal income tax return for 2016 or coordinate a payment plan with the IRS prior to receiving the SOR. He did not provide sufficient evidence that he has an installment agreement with the IRS. Since 2019, he has made some payments towards his tax debts. Applicant has not acted responsibly. AG ¶ 20(b) has minimal application.

There is no evidence Applicant has participated in financial counseling. Applicant provided evidence that the delinquent debts in SOR ¶¶ 1.g, 1.j, 1.l were paid. AG ¶ 20(d) applies to these debts. The debts in SOR ¶¶ 1.b, 1.f and 1.h were paid, but AG ¶ 20(d) does not apply. A garnishment is not considered a good-faith effort to repay a creditor. Applicant's failure to address his delinquent taxes until after receiving the SOR does not constitute good-faith.

Applicant paid his delinquent state taxes and has made some payments towards his delinquent federal tax debt. AG ¶ 20(g) applies to his state taxes. However, he did not provide evidence that he has an existing installment agreement with the IRS and is in compliance with it. He is given some credit for his payments, but it is insufficient to apply AG ¶ 20(g) or to mitigate the financial issues raised. Applicant indicated he paid certain debts but did not provide sufficient evidence to substantiate his claims. AG ¶ 20(e) does not apply to those debts.

### **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 the 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant has a history of financial problems. He had \$120,000 of delinquent debt discharged in bankruptcy in 2011. He resolved one debt after a judgment was entered and his wages were garnished. He did not provide sufficient evidence to conclude other debts were paid. Some of the debts are more than seven years.

Applicant failed to timely file his 2016 federal income tax return. He failed to timely pay his federal income taxes for multiple years and his state income taxes for two years. He did not begin to address his tax issues until after he received the SOR. The timing of resolution of financial problems is an important factor in evaluating an applicant's case for mitigation because an applicant who takes action to resolve financial problems only after being placed on notice his or her clearance is in jeopardy may lack the judgment, and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. See, e.g., ISCR Case No. 17-03229 at 4 (App. Bd. Jun. 7, 2019).

In addition, The DOHA Appeal Board has held that:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with these things is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Someone who fails repeatedly to fulfill his or her legal obligations 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. 14-01894 at 5 (App. Bd. August 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

Applicant did not provide sufficient evidence in mitigation regarding his finances. The record evidence leaves me with questions and doubts as to Applicant's eligibility and

suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

### **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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1e:	Against Applicant
Subparagraphs 1.f-1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraphs 1.l-1.m:	For Applicant
Subparagraph 1.n:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge