



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 18-02220  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: *Pro se*

10/13/2021

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Personal conduct security concerns were not established, but Applicant did not mitigate the financial considerations security concerns.

**Statement of the Case**

On April 26, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). Applicant responded to the SOR on June 27, 2019, and requested a hearing before an administrative judge.

The case was assigned to me on September 16, 2019. Scheduling of the case was delayed because of Applicant's health and later because of the COVID-19 pandemic. The hearing was convened as scheduled on August 26, 2021. Government Exhibits (GE) 1 through 11 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection.

## Findings of Fact

Applicant is a 53-year-old employee of a defense contractor. He has worked for his current employer since 2016. He is a high school graduate with some certifications. He is divorced with two children. (Transcript (Tr.) at 29-33; GE 1, 8; AE A, B)

Applicant owned a business from about 2005 until he closed it in 2015. The business started to struggle in about 2010, and Applicant did not pay all of the payroll taxes that were owed. Because it was a Subchapter S corporation,<sup>1</sup> Applicant is personally liable for the taxes. The IRS filed a \$158,470 federal tax lien against Applicant's corporation in July 2011. Applicant stated that he did his own books, and the taxes were not paid by mistake. He stated that he hired an accountant who straightened out the taxes going forward, but the IRS still wanted their taxes, along with penalties and interest. He asserted that he paid the IRS more than \$100,000 over the years. He stated that he believes he owes about \$50,000 for the payroll taxes. He did not provide any supporting documentation. He stated that the IRS was not actively collecting the taxes. (Tr. at 18-23, 26, 28, 33-39, 61-62; Applicant's response to SOR; GE 1-3, 8, 9)

Applicant has not filed federal and state income tax returns for tax years 2011 through 2015. He filed his returns for 2016, 2017, 2019, and 2020 on time. His 2018 tax returns were not filed on time because he was in the hospital. They are now filed. In March 2019, he still owed the IRS \$2,550 for tax year 2017. He stated that he paid the 2017 taxes, and he plans to file the back returns. (Tr. at 20, 23-27, 39-43, 56-57, 61; Applicant's response to SOR; GE 2, 3; AE A, D)

Applicant had additional financial problems, primarily a delinquent credit card debt (SOR ¶ 1.d). A February 2016 credit report lists the account as current, with a \$33,668 balance. Applicant stated that it was a card that he used for his company, but had to personally guarantee. A September 2019 credit report shows the charged-off debt as \$19,904 past due, with a \$36,845 balance. Applicant has not made any payments on the account since February 2016. The credit card company has a pending lawsuit against Applicant. He stated that he has unsuccessfully attempted to settle the lawsuit and the debt, but he believes he will be able to settle the matter. (Tr. at 24, 43-46; Applicant's response to SOR; GE 3-6, 8)

Applicant is only an authorized user on the accounts alleged in SOR ¶¶ 1.e and 1.l, and not legally responsible for the debts. The \$62 debts alleged in SOR ¶¶ 1.g and 1.m are duplicate accounts. The February 2016 credit report lists four delinquent debts in Applicant's name: a \$102 medical debt (SOR ¶ 1.i), an \$85 cable television debt

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<sup>1</sup> S corporations are corporations that elect to pass corporate income, losses, deductions, and credits through to their shareholders for federal tax purposes. Shareholders of S corporations report the flow-through of income and losses on their personal tax returns and are assessed tax at their individual income tax rates. This allows S corporations to avoid double taxation on the corporate income. S corporations are responsible for tax on certain built-in gains and passive income at the entity level. See <https://www.irs.gov/businesses/small-businesses-self-employed/s-corporations>.

(SOR ¶ 1.j), a \$100 medical debt (SOR ¶ 1.k), and a \$65 telecommunications debt (SOR ¶ 1.m). (Tr. at 47-50; GE 4-6)

Applicant admitted that he owed the remaining debts alleged in the SOR, but he stated that he thought he paid most of them. He is disputing several debts. Several debts have fallen off of his credit report, but he submitted no documentation of any actual payments. With the exception of his taxes and the large credit card debt that is the subject of litigation, his finances are much better than they have been. The credit report obtained in August 2021 does not provide anything of value because it indicated: “Consumer Requested Security Freeze on His/Her Credit File – Report Unavailable.” (Tr. at 50-53, 56-58; Applicant’s response to SOR; GE 4-7; AE B(1), B(2), C)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in February 2016. He reported that he did not file tax returns and pay taxes, and that he owed “\$125,000 (Estimated)” for payroll taxes from “2012 (Estimated).” He did not report any additional financial problems. According to the February 2016 credit report, there were only four small debts that he may have been required to report. Applicant denied intentionally providing false information about his finances on the SF 86, and the evidence does not establish an intentional falsification. (Tr. at 53-56; GE 1, 4)

### **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 unpaid payroll taxes, unfiled tax returns, and delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Applicant is only an authorized user on the accounts alleged in SOR ¶¶ 1.e and 1.i, and not legally responsible for the debts. Those allegations are concluded for Applicant.

The \$62 debts alleged in SOR ¶¶ 1.g and 1.m are duplicate accounts. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR ¶ 1.m is concluded for Applicant.

The debts alleged in SOR ¶¶ 1.g and 1.i through 1.j total \$352 and include two medical debts and two small telecommunications debts. Those debts are old and do not generate current security concerns. Those allegations are concluded for Applicant.

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's tax problems go back to before July 2011, when the IRS filed a \$158,470 federal tax lien against his corporation. He still owes the IRS for the payroll taxes, and he has not filed his 2011 through 2015 federal and state income tax returns. 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).

Applicant owes more than \$36,000 for a credit card debt that is the subject of litigation (SOR ¶ 1.d) and about \$1,650 for two other debts (SOR ¶¶ 1.f and 1.h). He made assertions about paying his taxes and other debts, but he did not provide documentation. The Appeal Board has held that "it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts." See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)). Additionally, he stated that he was working to settle the large credit card debt, pay the rest of his taxes and other debts, and file his back tax returns. However, intentions to resolve financial problems 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 made a good-faith effort to pay his taxes and debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that the security concerns arising out of Applicant's unpaid taxes, unfiled income tax returns, and delinquent debts are not mitigated.

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

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not intentionally provide false information about his finances on his 2016 SF 86. AG ¶ 16(a) is not applicable. SOR ¶ 2.a is concluded for Applicant.

### **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 have incorporated my comments under Guidelines E and F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude personal conduct security concerns were not established, but 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:	Against Applicant
Subparagraphs 1.i-1.m:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For 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.

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Edward W. Loughran  
Administrative Judge