



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



In the matter of: )  
)  
) ISCR Case No. 19-02731  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nichole Smith, Esq., Department Counsel  
For Applicant: *Pro se*

10/07/2021

**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 December 27, 2019, the Defense Counterintelligence and Security Agency 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; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on February 17, 2020, and he requested a hearing before an administrative judge. A notice of hearing was issued on July 26, 2021, scheduling the hearing for August 16, 2021 through the Defense Collaboration Systems (DCS). On August 11, 2021, Applicant requested a continuance, which was granted. The

hearing was held as rescheduled on August 30, 2021 through DCS. The Government offered exhibits (GE) 1 through 4. There were no objections and GE 1 through 4 were admitted into evidence. Applicant did not offer any exhibits. The record was held open until September 6, 2021, to allow Applicant to submit documents. He provided Applicant Exhibits (AE) A through I that were admitted without objection, and the record closed. DOHA received the hearing transcript on September 7, 2021.

### **Procedural Matters**

Department Counsel moved to amend SOR ¶ 1.a by striking the following sentence: “As of the date of this Statement of Reasons, the tax returns remain unfiled.” In addition, she moved to amend SOR ¶ 1.b by striking the year “2018.” The motions were granted.

### **Findings of Fact**

Applicant partly admitted and denied the SOR allegations in ¶¶ 1.a and 1.b. He admitted the allegations in SOR ¶¶ 1.d, 1.e, 1.f, 1.h, 1.i, 1.j, 1.k, 1.m and 1.n. He denied the allegations in SOR ¶¶ 1.c, 1.g, and 1.l. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 43 years old. He served in the military from 1996 until he was honorably discharged in 2000. He served in the Air Force Reserve from 2003 to 2007 and received an honorable discharge. He married in 1998 and has three children ages 27 and twins age 14. He earned a bachelor’s degree in 2011, a master’s degree in 2013, and is pursuing a doctorate degree. Applicant’s wife has been steadily employed since 2003. Applicant has been employed by the same federal contractor since 2006. (Tr. 17-21; GE 1)

The SOR alleged that Applicant failed to timely file his 2012, 2014, 2015, 2016, 2017 and 2018 federal income tax returns. He failed to timely file his state tax returns for the same tax years, except 2018. Th SOR alleged that Applicant is indebted to the federal government for delinquent taxes in the amount of \$3,043 for tax year 2013; \$3,891 for tax year 2014; \$12,186 for tax year 2015; and \$3,911 for tax year 2017. (GE 1, GE 2; AE B through AE I)

IRS tax transcripts from August 2021 reflect that Applicant filed his 2012 federal tax return in August 2014 (he filed for an extension in April 2013); tax year 2014 was filed in November 2017; tax year 2015 was filed in November 2017; tax year 2016 was filed in August 2019; tax year 2017 was filed in August 2019; and tax year 2018 was filed in July 2019. Applicant provided a copy of his 2019 federal tax transcript that reflects he filed his return in February 2021. Applicant testified that he has not yet filed his 2020 federal income tax return. Tax years 2019 and 2020 were not alleged in the SOR. Any derogatory information will not be considered for disqualifying purposes, but may be considered in the application of mitigating conditions, in a credibility determination, and in a whole-person analysis.) (Tr. 35, 66-68; GE 2; AE B through AE I)

In response to government interrogatories from October 2019, Applicant stated that all of his state tax returns from 2010 to 2018 were filed. His stated his 2012 state return was filed in July 2014; tax year 2014 was filed in October 2017; tax year 2015 was filed in October 2017; tax year 2016 was filed in July 2019; tax year 2017 was filed in July 2019. State documents show that these tax returns have been filed and there is no balance owed. (GE 2)

IRS tax transcripts reflect that payments made by Applicant were applied to delinquent tax years with a balance owed. If there was an excess, it was applied to a subsequent year's delinquent taxes. At different times, Applicant had installment agreements with the IRS, but they were canceled presumably after he failed to timely file his tax returns in subsequent years. The transcripts reflect payments made and refunds applied to delinquent balances owed. His 2013 federal taxes were paid through payments made in 2019; 2014 taxes were paid by payments from 2019 and 2020. For tax year 2015, payments began in late 2020 and have continued into 2021. Applicant's monthly payments are \$300. The remaining balances owed as of August 2021 are \$6,919 for tax year 2015; \$4,535 for tax year 2017; and \$1,395 for tax year 2018. (Tr. 40-54; GE 2; AE B through AE I)

In Applicant's June 2017 security clearance application (SCA) he disclosed that he failed to timely file and pay 2014, 2015, and 2016 federal income taxes. He anticipated he owed \$2,000 for each tax year. He stated:

Spouse thought that entire process was automated and forgot to complete the final documentation for processing. Discovered the last week of April. Appointment made with tax preparer to bring all filing information current. (GE 1)

In July 2018, Applicant was interviewed by a government investigator as part of his background investigation. He explained that he was aware of his tax situation. He explained that there was a misunderstanding between him and his wife, each thinking the other had timely filed the tax returns for each year. He told the investigator that his wife had never handled any of their financial matters in the past and was unfamiliar with the process. Both he and his wife are extremely busy with their own careers. As soon as Applicant was made aware of the tax situation he immediately called his accountant who handled the filing of their tax returns and made arrangements with the IRS and his state to make monthly payments until the balances owed were paid in full. He had every intention of meet his financial obligations now and in the future. (GE 2)

Applicant testified and affirmed that the reason he did not timely filing tax returns was due to a miscommunication with his wife. He thought she filed the taxes, and she thought he did. He testified that they never discussed who was going to file the tax returns. In the past, an accountant prepared their tax returns. Applicant normally was the person who brought their tax information to the accountant for preparation of the return. He did not do this for the delinquent tax years alleged. Someone did file for an extension in April 2013 for tax year 2012 and in April 2014 for tax year 2013, which was not alleged.

Applicant denied he was the person who filed the extensions. He stated he did not believe he was going to owe taxes because in the past he had received refunds. After he was notified in 2017 that he owed taxes, he contacted his accountant, and he made arrangements to file and pay his taxes. Applicant testified that he has not discussed their tax issues regarding his security clearance with his wife prior to attending his hearing. He has not discussed with her any actions she may have taken regarding their tax returns. (Tr. 21-37; AE B, AE C)

The SOR alleged other delinquent debts. Applicant testified that several were paid and they became delinquent due to oversight and a mix up with mail because his father has the same name. He did not have the documents to show which debts were paid and he could not remember them. He said the only thing he could do is obtain a new credit report to show the accounts were paid. He did not provide a credit report in his post-hearing submissions. (Tr. 22-23, 55-57)

Applicant has approximately \$90,000 of deferred student loans. He testified that he attended financial counseling through a program offered at his church in 2018 and again in 2020. Credit reports from October 2019 and July 2017 corroborate the debts alleged. They reflect the debts began accumulating in 2019. (Tr. 22-23, 55-57; GE 3, GE 4)

Applicant testified that the debts alleged in SOR ¶¶ 1.g (\$250); 1.l (\$922); 1.m (\$36); and 1.n (\$70) were paid in full. The record was held open to allow him to provide supporting documents. He did not. These debts are unresolved. (Tr. 56-59)

Applicant testified that two or three months ago, he made an offer to make \$300 payment towards the collection accounts in SOR ¶¶ 1.h (\$2,947) and 1.i (\$5,804), but did not follow up. These debts are not resolved. (Tr. 60-61)

The debt in SOR ¶ 1.j (\$712) is a charged off account. Applicant testified he attempted to contact the creditor about six months ago, but was unsuccessful. This debt is unresolved. Regarding the past due account in SOR ¶ 1.k (\$141), Applicant did not provide evidence that he has resolved it. (Tr. 61-62)

Applicant testified that he has post-traumatic stress disorder from his military service. He did not seek treatment until this year. He stated many aspects of his life are impacted by it. It placed a strain on his marriage. At one point, he was contemplating a divorce. He stated that he had a tendency to not deal with his finances. He stated he ignored his finances and hoped the issues would go away. (Tr. 63-70)

Applicant has no money in savings and about \$200 to \$300 in expendable savings each month after paying his expenses. He said most of his money goes to eating out and tithes. He chooses to give to charity before paying taxes. He tithes about \$1,500 a month. He chooses to give to his local church because that is where his heart is. Applicant took full responsibility for his errors when dealing with his finances. He stated his issues were

due to immaturity and not following up and dealing with the problems. He intended to work out payment plans to bring his accounts into good standing. (Tr. 70-77)

Applicant and his wife's adjusted gross income for 2019 was \$161,535; for 2018 was \$168,237; for 2017 was \$171,419; for 2016 was \$170,892; for 2015 was \$202,502; for 2014 was \$174,739; 2013 was \$163,228; and 2012 was \$159,075. (Tr. 47-48; AE B through AE I)

In a post-hearing statement, Applicant expressed his regrets and remorse for his failure. He takes full responsibility for his situation and blames no one. He requested to continue to serve his family and the soldiers. He is committed to making changes. (AE A)

### **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 income tax as required.

Applicant failed to timely file his federal and state income tax returns 2012, 2014, 2015, 2016, 2017 and 2018. He was indebted to the federal government for delinquent taxes for tax year 2013, 2014, 2015, and 2017. He has numerous delinquent debts that

began accumulating in 2019 and are unresolved. 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.

In his 2017 SCA, Applicant explained his failure to timely file his tax returns for numerous tax years was because of a miscommunication between him and his wife, each believing the other had timely filed. Applicant had been responsible for filing returns for past years and admitted his wife had no experience. He has not discussed his tax issues with his wife to find out if she took any action on their tax returns. I did not find his explanations for failing to file timely for multiple years credible. After he completed his SCA, Applicant again failed to timely file his 2017, 2018, 2019, and 2020 federal tax returns, showing even after he was on notice that there was a problem, he continued his pattern of failing to timely file the returns. He has other delinquent debts that he failed to provide documents to show they are resolved or being paid. His debts are recent and ongoing. His financial delinquencies cast doubts on his reliability, trustworthiness, and

good judgment. Insufficient evidence was provided to show his financial problems were the result of behavior beyond his control. AG ¶¶ 20 (a) and 20(b) do not apply.

Applicant provided tax transcripts to show his delinquent tax returns have been filed. He owed federal taxes for multiple years. Applicant made some payments to the IRS that were applied to his delinquent tax debts. Although he had installment agreements in the past, they were canceled when he did not timely file subsequent tax years returns. Applicant owes balances for tax years 2015, 2017 and 2018. He did not provide documentation to show he has a current installment agreement with the IRS. AG ¶ 20(g) has some application.

Applicant testified that he attended financial counseling in 2018 and 2020. He failed to provide evidence that he is resolving his numerous delinquent debts or has an active installment agreement with the IRS. There are not clear indications that Applicant's financial problems are under control or being resolved. Although he has made some payments to the IRS, there is insufficient evidence that he is adhering to a good-faith effort to repay his tax debt and other overdue creditors. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant stated that he had resolved several of the alleged debts in the SOR, but failed to provide supporting evidence. AG ¶ 20(e) does not apply.

### **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 neglected to timely file his federal and state income tax returns for numerous tax years. He continues to owe federal income taxes for multiple tax years. He has numerous delinquent debts that are not resolved. Despite some evidence of mitigation, it is insufficient to overcome his failure to timely resolve his tax issues and other delinquent debts.

The DOHA Appeal Board has held that:

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).<sup>1</sup>

Applicant's non-compliance with a fundamental legal obligation to timely file his federal and state income tax returns raises serious concerns. His failure to pay his other delinquent debts remains a concern. Applicant has not established a reliable financial track record. 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
Subparagraphs 1.a-1.d:	For Applicant
Subparagraphs 1.e-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

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<sup>1</sup> ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).