



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



In the matter of:	)	
	)	
	)	ISCR Case No. 19-03308
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

October 29, 2021  
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**Decision**  
\_\_\_\_\_

GLENDON, John Bayard, Administrative Judge:

Applicant has failed to mitigate security concerns regarding financial considerations. Based upon a review of the pleadings, the documentary evidence, and Applicant’s testimony, national security eligibility for access to classified information is denied.

**Statement of the Case**

On February 13, 2014, Applicant submitted a security clearance application (SCA). On November 9, 2020, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (CAF), issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (Financial Considerations). The CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended (Exec. Or.); Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in

Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (Dec. 10, 2016), effective within the DoD on June 8, 2017.

On November 30, 2020, Applicant responded to the SOR in writing (Answer) and attached 25 documents. He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). DOHA numbered the case ISCR No. 19-03308. The incorrect number on the SOR has been corrected. On April 30, 2021, the case was assigned to me. DOHA issued a hearing notice on July 19, 2021, scheduling the hearing for August 12, 2021.

I convened the hearing as scheduled. Department Counsel presented Government Exhibits (GE) 1 through 6, which were admitted without objection. Prior to the hearing, Applicant submitted by email four documents. I marked these documents as Applicant Exhibits (AE) A through D, and I marked the 25 documents he attached to his Answer as AE E through CC. I marked an additional exhibit presented by Applicant during the hearing as AE DD. (Hearing Transcript at 20-37, 92.)

I kept the record open until August 26, 2021, to give Applicant the opportunity to supplement the record. He timely submitted eight additional documents, which I marked as AE EE through LL and admitted into the record without objection. DOHA received the hearing transcript (Tr.) on August 19, 2021. (Tr. at 117-118.)

### **Findings of Fact**

Applicant's personal information is extracted from his SCA unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, Applicant's testimony, and the documentary evidence in the record, I make the following findings of fact.

Applicant is 59 years old, has been married for 34 years, and has two adult children. In 1984, he began working for a defense contractor as an engineer. He retired from that company after about 35 years. He then began working for a second defense contractor in 2019. He has continuously held a security clearance since 1984. He earned a bachelor's degree in 1984 and a master's degree in business administration in 2000. He also earned a certificate in project management in 2005. (Tr. at 36-40.)

Applicant disclosed in his 2014 SCA that he had not filed his tax year (TY) 2011 state tax return and that the state tax authority had issued a garnishment of his wages in the amount of \$5,900. He noted that he intended to file the return in April 2014, which would result in the state releasing the garnishment. This disclosure and incident reports filed by Applicant's employer regarding his state wage garnishments triggered a review by the Government of Applicant's tax filings and payments for the TYs 2009 through 2018. (Tr. at 42-44; GE 1 at 32-33; GE 4 at 9-12, 13-15, 16-26.)

The SOR alleged that Applicant failed to file his Federal and state tax returns for TYs 2009 through 2019 in a timely manner, as required. (SOR ¶¶ 1.a and 1.b.) The SOR

also alleges that the state imposed tax liens on Applicant in 2009 for unpaid taxes in 2006 and 2007; and again in 2013, 2017, and 2018 for unpaid taxes in TYs 2011, 2014, and an unspecified year, respectively. (SOR ¶¶ 1.c through 1.g.) In his Answer, Applicant admitted all of these allegations except 1.g. The SOR sets forth two additional allegations. One is for a debt in collection in an amount of about \$9,759. (SOR ¶ 1.h) The other is an allegation that he filed a Chapter 7 bankruptcy petition in 1998 seeking to discharge about \$196,258 in liabilities. (SOR ¶ 1.i) Applicant denied these last two allegations in his Answer. The specific facts regarding each of the allegations are as follows:

## **SOR Allegations**

Paragraph 1, Guideline F - The SOR sets forth eight allegations under this concern. In his Answer, Applicant admitted each of the allegations. The details regarding each of these allegations are as follows:

**1.a Failure to timely file Federal income taxes returns for TYs 2009-2019 –** Applicant did not file his Federal income tax returns on time for TYs 2009 through 2019, as evidenced by the IRS transcripts in the record for TYs 2009 through 2018, and Applicant's registered mail receipt for his TY 2019 Federal return, which Applicant added to the record after the hearing as AE II. Applicant represented in his January 16, 2020 interrogatory responses that his 2019 Federal tax return would be filed "before April 2020." His mail receipt reflects a mailing date for this return of May 17, 2021. Even after submitting his 2014 SCA, Applicant continued to file his Federal and state tax returns after their due dates. Applicant maintained at the hearing that although he did not file his Federal income tax returns in a timely manner for each of these years, he never owed any taxes. He provided no IRS documents, however, confirming that assertion for the years 2016 through 2019, even though he said he would after the hearing. He acknowledged receiving letters from the IRS over the years at issue regarding his failure to file his tax returns as required. After receiving the SOR in November 2020, Applicant filed his TY 2020 Federal tax return on time. (Tr. at 42-44, 46-64, 69-79, 81-84, 91, 116; GE 4 at 9-12, 13-15, 16-27; AE E-N, AE II; AE JJ.)

Applicant further testified that he received substantial refunds for each of the tax years in question because he deliberately overwithheld on his taxes. The record reflects that though he filed his returns three years after their due dates during the years involved, he managed to file his returns in time to avoid losing his tax refunds under the Federal statutory limitation for claiming income tax refunds. He testified that this timing was his "MO," or *modus operandi*. (Tr. at 62.) Applicant testified that he filed three years late rather than on time because each year, it was not his "priority" to file timely even though he was delaying the receipt of his refund by three years. When he was about to be too late to claim his refund, then the filing became a priority. Also, when he filed his returns and the IRS determined that he owed no additional taxes, the IRS would reverse the interest and penalties it had imposed if it prepared a substitute return. (Tr. at 52-56, 67.)

**1.b Failure to timely file state income tax returns for TYs 2009-2019 –** During the 11 tax years in question, Applicant also filed his state income tax returns in an untimely

manner. He filed his state tax returns at the same time as his Federal returns. All of his returns during that period were filed late by about one or more years, typically three years late. At the hearing, he submitted a document from his state tax authority indicating that his 2019 return was filed on May 17, 2021, about one year late. The same exhibit reflects that he timely filed his 2020 tax return in 2021, when the filing date was delayed to June 15, 2021, due to the Covid-19 pandemic. Applicant further testified that he only owed his state any additional tax in one year, TY or 2016 or 2017. He owed \$493 more than the taxes withheld from his paychecks. He received refunds in the other years. (Tr. at 45, 79-89; AE E; AE DD; AE HH; AE KK.)

**1.c 2009 state tax levy in the amount of about \$4,883 for TY 2006** – Applicant’s state tax issues date back to TYs 2006 and 2007 when the state imposed liens for both tax years. In certain years when Applicant failed to file his tax returns on time, the state would calculate his taxes without regard to his personal tax deductions, determine that he owed additional taxes, and impose a tax lien. Applicant explained that the state would withdraw the liens once he eventually filed his tax returns and the returns demonstrated that he was owed a refund. Applicant provided a screenshot of a webpage of the state tax authority summarizing his tax account. The document reflects that he owes no taxes for any of the tax years from 2010 to 2018. A similar document shows no taxes owed during the period TYs 2011 through 2020. (Tr. at 81-82; GE 2 at 1-2; GE 4 at 30; AE A.)

**1.d 2009 state tax levy in the amount of about \$6,967 for TY 2007** – See 1.c, above.

**1.e 2013 state tax levy in the amount of about \$5,997 for TY 2013** – See 1.c, above.

**1.f 2017 state tax levy in the amount of about \$11,296 for TY 2014** – See 1.c, above.

**1.g 2018 state tax levy in the amount of about \$6,982** – See 1.c, above.

**1.h Delinquent debt in collection in the amount of about \$9,759** – This debt arose from Applicant’s use of a credit card to pay expenses related to his father’s care in his old age and the management of his home before and after his father’s death. Applicant was unable to pay the account, and it became delinquent. He testified that this debt arose at a time when he had children in college and had other expenses. He settled the debt in November 2017 with a lump-sum payment of \$7,000. (Tr. at 92-98; GE 6 at 8; AE Z.)

**1.i 1998 Chapter 7 bankruptcy petition with debts of about \$196,258** – Applicant testified that he became indebted at the time and could not pay his bills. The main reason for his financial distress at the time was that he became responsible for child support for a child he had fathered in 1980. He first learned about the child when the child’s mother applied for welfare. He was notified that he had to provide child support of about \$500 per month. That financial obligation continued for about five years. He had two young children with his wife. His work was the family’s only source of income. This

unexpected expense ultimately caused him to seek a discharge of his consumer debts in a total amount of about \$80,000 or \$90,000. He fully paid his child support obligations until the child reached the age of 18. (Tr. at 98-101; GE 5 at 25.)

### **Whole-Person Evidence**

Applicant submitted evidence regarding the strength of his current financial position. He has a high credit score, high six-figure retirement accounts, and significant cash reserves. He also has substantial equity in his residence and three investment properties. (Answer at 2; AE B-D; AE BB; AE CC.)

Applicant also submitted his two most recent employee performance reviews, which rate him as an excellent employee with significant technical knowledge. His many years of experience in his industry has made him a valuable employee. He also provided evidence of his contributions to his local high school and as a mentor. (AE EE; AE FF; AE GG; AE LL.)

### **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Adverse clearance determinations must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication

the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern under this guideline is set out in AG ¶ 18 as follows:

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. . . . 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.

The Government's evidence and Applicant's admissions in his Answer and his testimony establish the following conditions under AG ¶ 19 that could be disqualifying:

- (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.

The guideline in AG ¶ 20 contains seven conditions that could mitigate security concerns arising from financial difficulties. Six of these mitigating conditions have possible applicability to the facts of this case:

- (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; 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.

AG ¶ 20(a) is not established. Applicant's failure to file his Federal and state income tax returns as required by law occurred over an 11-year period ending with the filing of his TY 2019 return a year late in 2021. Applicant's failure to comply with this basic rule applicable to all taxpayers casts doubt on his reliability, trustworthiness, and judgment. See ISCR Case No. 98-0608 at 1-2 (App. Bd. Jun. 27, 2000) (A person who has a history of not fulfilling their legal obligation to file income tax returns may be said not to have demonstrated the high degree of judgment and reliability required for access to classified information.) A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly, Applicant's failure to honor

other obligations to the Government has a direct bearing on his reliability, trustworthiness, and ability to protect classified information as reflected in the Guideline F security concerns raised in the SOR. See ISCR Case No. 14-03358 at 2 (App. Bd. Oct. 9, 2015). Applicant's 1998 Chapter 7 bankruptcy, while very dated, adds to the evidence that Applicant cannot be viewed as someone who reliably honors his legal and financial obligations and can be trusted to protect classified information.

AG ¶ 20(b) is not established. Applicant did not establish that there was a reason for his non-compliance with the tax laws over an 11-year period that was beyond his control. His only explanation was that he had other priorities. It is significant that when the deadline approached every year placing him at risk of forfeiting his refunds, filing his tax returns became a priority and he made the time to file his returns and receive his refunds. The condition that caused Applicant's delinquencies over an 11-year period was entirely within his control. Moreover, he did not act responsibly and in compliance with his legal obligation to file his tax returns in a timely manner.

AG ¶ 20(c) is not established. Applicant provided no evidence that he received any financial or tax counseling. If he had consulted a tax professional, he would have better understood that his "modus operandi" of filing his tax returns before the expiration of the three-year period allowed for claiming refunds is not an extension of his legal filing deadline. See ISCR Case No. 18-00635 at 3 (App. Bd. Apr. 5, 2019); ISCR Case No. 12-11375 at 4-5 (App. Bd. Jun. 17, 2016).

AG ¶ 20(d) is only partially established. Applicant provided evidence that he has repaid his one delinquent debt and that he has no other debts, aside from a home mortgage let alone any delinquent debt. His impressive financial condition, however, does not mitigate the security concerns raised by his long history of non-compliance with his Federal and state tax filing obligations. His resolution of his multiple state tax liens by filing untimely state tax returns cannot be considered a good-faith effort to resolve those debts. Moreover, these state tax liens could have been completely avoided by timely compliance with Applicant's state tax filing deadlines.

AG ¶ 20(g) is only partially established. For 11 years, Applicant failed to file his tax returns as required by law. The fact that he eventually filed his returns and owed no taxes does not mitigate the security concerns raised by his failure to comply with the law. The Directive cites failure to file returns as required as a disqualifying condition in and of itself, irrespective of whether the underlying taxes have actually been paid, as through withholding. See ISCR Case No. 15-03019 at 4 (App. Bd. Jul. 15, 2017).



## Whole-Person Analysis

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. In applying the whole-person concept, an 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 and applying the adjudicative factors in AG ¶ 2(d), specifically:

- (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 Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Additional comments are warranted. Applicant is a mature, highly educated, and well-compensated engineer employed by a major U.S. defense contractor. Starting in 2010, he exercised poor judgment in not prioritizing his legal obligation to file his Federal and state tax returns by the filing deadlines. In prior years, he complied with the law, and he knew it was his obligation to do so. Instead, he prioritized filing his returns within the time restriction for eligibility to receive tax refunds from the IRS and his state tax authority. This is indicative of judgments being made in his self-interest alone and without regard to his legal obligations, which is antithetical to the values of reliability and trustworthiness required of an individual seeking national security eligibility for access to classified information.

Overall, the record evidence as described above leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. After weighing the applicable disqualifying and mitigating conditions and evaluating all of the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his financial considerations.

### Formal Findings

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a through 1.g:

Against Applicant

Subparagraph 1.h:

For Applicant

Subparagraph 1.i:

Against Applicant

## **Conclusion**

I conclude that it is not clearly consistent with the national interests of the United States to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

John Bayard Glendon  
Administrative Judge