



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 20-01633
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Brittany White, Esq., Department Counsel  
 For Applicant: *Pro se*  
 05/07/2021

**Decision**

MARINE, Gina L., Administrative Judge:

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

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on November 18, 2018. On October 20, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The DCSA CAF acted 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on a date not reflected in the record, and requested a decision on the written record in lieu of a hearing. On February 17, 2021, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including pleadings and evidentiary documents identified as Items 1 through 7. He was given an opportunity to submit a documentary response setting forth

objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. He received the FORM on February 22, 2021, and did not respond or object to the Government's evidence. The case was assigned to me on May 7, 2021.

### **Evidentiary Matters**

Items 1 and 2 contain the pleadings in the case. Items 3 through 7 are admitted into evidence. Item 7 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 7. The Government included in the FORM a prominent notice advising Applicant of his right to object to the admissibility of Item 7 on the ground that it was not authenticated. Applicant was also notified that if he did not raise any objection to Item 7 in his response to the FORM, or if he did not respond to the FORM, he could be considered to have waived any such objection, and that Item 7 could be considered as evidence in his case. As noted above, Applicant neither responded to the FORM nor objected to Item 7.

### **Findings of Fact**

Applicant, age 53, is married with two adult children. He earned his high school diploma in 1985. He has been employed by a defense contractor as a warehouse specialist and maintained a DOD security clearance since 2014. He previously worked in the automobile industry. (Item 3)

Applicant financed the \$248,000 purchase of a home in September 2006 with a 4.25% interest conventional 40-year loan. The monthly payment was \$1,871. The lender foreclosed on the home in September 2018, as alleged in SOR ¶ 1.a. Applicant does not owe a deficiency balance. (Item 2; Item 3 at 10-11, 40-41; Item 5; Item 6 at 49-50)

In his SCA, Applicant attributed this foreclosure to being unable to refinance the loan with a "manageable payment" because he owed more than the market value. He asserted that he worked with the lender "for a while" and made "multiple attempts" to refinance before he was informed of the foreclosure. In his SOR answer, he described the foreclosure as "the best financial decision we could make for our family" because the "actual value of the home was decreasing so much that letting the house go was the best decision." (Item 2; Item 3 at 40-41)

During his February 2019 security clearance interview, Applicant described facts and circumstances related to the foreclosure that contradicted the record and what he reported in his SCA and SOR answer. It is unclear whether he was: describing another foreclosure, confused about the facts, or being intentionally misleading. He mentioned that his wife handled their finances, which could also account for the discrepancies. He referenced a different address for a home in which he resided from 1995 through 2006, and different loan terms. He stated that he let a friend talk him into financing a \$350,000 purchase in 2006 with a short-term balloon mortgage (with 2.5% interest only payments until 2008, when a \$250,000 balloon payment became due). He described efforts his wife made for three or four years to obtain a loan modification. Then, he claimed that he

did not find out about the foreclosure until an appraiser came to the home the day before the home was scheduled for auction. At that time, he learned that his wife had not paid the loan for four months and instead used the money to help their married daughter with her financial issues. He claimed that his wife had hidden the foreclosure notices from him. He told the investigator that his wife came to understand that it was time to cut the cord and let the kids manage their own lives. He also promised never to purchase another home with a balloon loan. (Item 3 at 11; Item 7 at 2)

Applicant failed to timely file his federal income tax returns for tax years (TY) 2015 through 2017, as alleged in SOR ¶ 1.b (for reasons not specified in the record). They were received by the IRS in July 2016, May 2018, and February 2019, respectively. (Item 2; Item 4 at 9-14)

Regarding his state income tax returns, SOR ¶ 1.f alleged that Applicant failed to timely file for only one year: TY 2016. Because Applicant did not address this allegation in his SOR answer, I will construe his nonresponse as a denial. The Government did not proffer any documentary evidence to support this allegation, which appeared to be based on the absence of a state income tax return for TY 2016 in Applicant's documentary production in response to interrogatories. In that response, he provided copies of his state income tax returns for TY 2015 (signed and dated July 2016), 2017 (signed and dated December 2018), and 2018 (unsigned and undated). While none of the copies he provided verified the date that the returns were actually filed and received, since the Government did not allege facts concerning those other late returns, I have considered them only for the purpose of evaluating mitigation and the whole person concept. (Item 2; Item 4 at 15-32)

Applicant failed to timely pay his federal income taxes for TY 2015, 2017 (as alleged in SOR ¶¶ 1.c and 1.d), and TY 2018 (unalleged). In February 2017, he established an installment agreement for TY 2015, which was terminated in August 2019. Between July 2017 and May 2019, he made 19 payments totaling \$8,779. His tax refunds for TY 2016 (\$2,060) and TY 2014 (\$213) were applied to the balance owed for TY 2015 in April and September 2017, respectively. In April 2019, he established an installment agreement for TY 2017, also terminated in August 2019, pursuant to which he did not make any payments. In November 2020, he agreed to pay \$250 bi-weekly for a balance totaling \$39,537 for TY 2015, 2017, and 2018. In February 2021, he paid \$444 to fully resolve his debt for TY 2018 and agreed to make \$350 bi-weekly payments for the remaining balance totaling \$34,057 (\$20,776 for TY 2015; \$13,282 for TY 2017). Applicant did not proffer evidence of any payments he made pursuant to either agreement. The record does not indicate whether the reduction in balance owed between 2020 and 2021 reflects either payments he made or credits that were applied to his account. (Item 2; Item 4 at 9-14; Item 6 at 51-57)

Applicant failed to timely pay his state income taxes for TY 2015, 2017, and 2018 (as alleged in SOR ¶¶ 1.e, 1.g, and 1.h) and TY 2016 (unalleged). He claimed to have paid the debt for TY 2015, without providing any proof. In November 2020, he agreed to pay \$314 per month (beginning in December 2020 for 36 months) for a balance totaling \$9,948. While the agreement did not reference the tax years to which it applied, the

balance suggests that it may include TY 2015 through 2018, which totaled approximately \$9,638 (\$1,565 for TY 2015; \$1,788 for TY 2016; \$4,625 for TY 2017; \$1,660 for TY 2018). Applicant did not provide proof of any payments he made pursuant to that agreement. (Item 2; Item 6 at 58)

On his November 2018 SCA, Applicant answered “no” to whether, in the last seven years, he had “failed to file or pay Federal, state, or other taxes when required by law or ordinance?” (as alleged in SOR ¶ 2.a). In response to another SCA “financial record” question, he disclosed a history of delinquent debts, including the mortgage account alleged in SOR ¶ 1.a. During his February 2019 security clearance interview, he volunteered that, while he and his wife had filed their federal and state taxes every year, they have owed taxes that they could not pay. He estimated his combined federal and state tax debt to be about \$30,000. He asserted that they were paying \$500 per month to the IRS and, and that while his state debt had been paid off in TY 2016, they owed state taxes again in TY 2017. (Item 3 at 36-42; Item 7 at 2)

In his SCA, Applicant attributed his financial issues to an almost \$20,000 annual pay reduction resulting from a loss of income associated with his work as a commission-based automobile parts salesman due to a “drop in business.” He asserted that he had been working with his creditors to whom he explained his situation and was trying to do what he could to resolve his debts. He paid two of the three credit-card accounts referenced in his SCA in 2013. In March 2019, Applicant outlined a budget with a monthly net remainder of about \$129, including expenses totaling \$585 designated for his state and federal taxes. The record otherwise contains scant details surrounding his financial history. (Item 3 at 36-42; Item 7 at 3)

In his SOR answer, Applicant explained that he misunderstood the tax question on the SCA and answered “no” because he thought the question meant whether he filed or paid taxes at all. He asserted that his “no” answer was not meant to deceive or deliberately fail to disclose information. He apparently believed that because he had “filed taxes every year” and “been making payments to the IRS” that his “no” answer was correct given his interpretation of what was being asked. (Item 2)

Applicant provided copies of his TY 2019 and 2020 federal and state returns (unsigned and undated). The returns indicated that he expected refunds from the IRS (\$2,016 for TY 2019; \$820 for TY 2020) and would owe the state \$1,590 for TY 2019 and \$1,432 for TY 2020. He did not proffer evidence of when the returns were actually filed or received, or of his tax payments. No delinquent debts were reported on Applicant’s November 2019 credit report, which is the most recent report in the record. (Item 5; Item 6 at 39-48; 59-70)

In his SOR answer, Applicant described his financial situation as “something that we have been working on and continue to work on.” He expressed that he is happy working for his current employer and has been a “loyal and trustworthy employee” with a strong work ethic. (Item 2)

## 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.” (*Egan* 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.” (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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.

Clearance decisions 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.” (EO 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. (*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. 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. (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; AG ¶ 2(b))

## Analysis

### Guideline F: Financial Considerations

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

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds . . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. (ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012))

Applicant's mortgage foreclosure and failure to timely file federal income tax returns or pay federal and state taxes (as alleged in SOR ¶¶ 1.a through 1.e, 1.g, and 1.h) establish the following disqualifying conditions: AG ¶ 19(a) inability to satisfy debts; AG ¶ 19(c) (a history of not meeting financial obligations); and AG ¶ 19(f) (failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required).

SOR ¶ 1.f alleged facts that potentially supported application of the above disqualifying conditions with respect to his failure to file a state tax return for TY 2016. However, the mere absence of a tax return from an interrogatory response, without more, does not suffice to establish SOR ¶ 1.f. Thus, I find that allegation in favor of Applicant.

None of the following potentially applicable mitigating conditions under this guideline are fully established:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not

cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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

AG ¶ 20(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.

Because Applicant's foreclosure did not result in a deficiency balance, the concern is not with the foreclosure itself. Thus, I find SOR ¶1.a in his favor. However, the facts and circumstances surrounding the foreclosure remain relevant to my analysis of the history of indebtedness that continues to persist and his failure to timely file tax returns. Applicant is credited with eventually filing his delinquent federal returns, making 19 payments totaling \$8,779 between July 2017 and May 2019 towards his TY 2015 federal taxes, fully resolving his TY 2018 federal taxes in February 2021, and making payment arrangements at various times to resolve his delinquent state and federal taxes. However, he did not meet his burden to establish mitigation under Guideline F.

The degree to which his underemployment in the automobile industry or other issues affected his ability to pay his mortgage loan and taxes was not fully developed in the record. Applicant has not made any meaningful progress in resolving his delinquent tax debts since becoming employed in the defense industry in 2014. The record suggests that he may have strategically defaulted on his mortgage loan by prioritizing his self-interest above a legal obligation despite having the means to pay it. Although Applicant did not specify reasons for his late tax return filings, the record suggests that it may have been due to a lack of funds to pay the associated taxes. The fact that he could not afford to pay his taxes did not absolve him of the obligation to timely file his tax returns.

Applicant has not established a sufficient pattern of regular payments pursuant to the arrangements he made with the IRS and his state to resolve his delinquent taxes. He has not demonstrated that his late tax return filings or tax payments were reasonable given his circumstances. In light of the record as a whole, his repeated delays in filing his returns and paying his taxes call into question his suitability for access to classified information. I am left with doubts about Applicant's current reliability, trustworthiness, and judgment. AG ¶ 20(a) does not apply. The partial applications of AG ¶¶ 20(b), (d) and (g) do not suffice to mitigate the ongoing Guideline F concerns.

## **Guideline E: Personal Conduct**

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

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

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

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

The SOR alleged facts sufficient to establish the following disqualifying condition under this guideline:

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

Applicant denied deliberately failing to disclose information about his late tax return filings and payments. He contended that he misunderstood the question and believed that his “no” answer was correct given his interpretation of what was being asked. Not only was his interpretation incorrect, but the record facts do not support his claim that, by the time he completed his November 2018 SCA, he had “filed taxes every year.” He filed his TY 2015 and 2016 federal returns (albeit late) before he completed his SCA. However, he did not file his TY 2017 federal return until February 2019. Although the record did not substantiate the dates that his state returns were filed and received, he had not signed his TY 2017 state return before the date he completed his SCA. While he had “been making payments to the IRS” at the time he completed his SCA, he had not been making any payments towards his state tax debt.



Nevertheless, when a falsification allegation is controverted, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an Appellant's state of mind at the time of the omission. An Appellant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate.

In this case, weighing in Applicant's favor is the fact that he put the Government on notice that he had financial issues by disclosing a history of delinquent debts on his SCA. He also volunteered information about his significant tax debt during his interview. Applicant's interpretation of the tax question, while incorrect, was reasonable under the circumstances. I do not find substantial evidence of an intent on the part of Appellant to omit, conceal, or falsify facts from his SCA. Therefore, AG ¶ 16(a) is not established.

### **Whole-Person Analysis**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guidelines F and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F and E, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concern raised by his SCA omission. However, he has not mitigated the security concerns raised by failure to timely file his federal tax returns and pay his federal and state taxes. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

Formal findings 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:	For Applicant
Subparagraphs 1.b – 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g – 1.h:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

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

Gina L. Marine  
Administrative Judge