



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



In the matter of: )  
)  
) ISCR Case No. 19-04043  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Kent, Esq., Department Counsel  
For Applicant: *Pro se*

11/29/2021

**Decision**

GARCIA, Candace Le'i, Administrative Judge:

Applicant failed to mitigate the financial considerations and personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 10, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). The action was taken under Executive Order (Exec. Or.) 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 DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on April 29, 2020 and October 29, 2020, and requested a hearing before an administrative judge. The case was assigned to me on February 15, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 2, 2021, scheduling the hearing for April 29, 2021. I convened the hearing as scheduled.

At the hearing, Government Exhibits (GE) 1 through 6 and Applicant's Exhibit (AE) A were admitted without objection. Applicant testified; he did not call any witnesses. At Applicant's request, I kept the record open until June 15, 2021, to allow Applicant to submit additional documentation. By that date, Applicant submitted documentation which I collectively marked as AE B and admitted without objection. DOHA received the hearing transcript (Tr.) on May 14, 2021. (Tr. at 18-23, 71-80; GE 1-6; AE A-B)

### **Findings of Fact**

Applicant admitted all of the SOR allegations except SOR ¶ 1.g, which he denied. He is 55 years old. He married in 1996 and has two adult children. He earned a bachelor's degree in 1989 and a master's degree in 2005. As of the date of the hearing, he completed all but the dissertation requirement towards a doctorate degree. He served honorably in the U.S. military from 1988 to 2008, when he retired as a lieutenant commander. (Answer; Tr. at 6-12, 30-31, 34, 46-47; GE 1, 6; AE A)

Applicant worked for a previous DOD contractor from 2008 until he was terminated in 2014, as further discussed below. As of the date of the hearing and since approximately 2017, he worked as the community planning liaison for a U.S. military facility. He was first granted a security clearance when he served in the U.S. military. (Answer; Tr. at 6-12, 15-18, 23-71; GE 1, 6; AE A)

The SOR alleged that Applicant failed to pay his federal and state income taxes for tax years 2010 through 2018; failed to timely file his federal and state income taxes for tax years 2013 through 2018; and owed approximately \$40,000 in delinquent federal and state taxes. (SOR ¶¶ 1.a, 1.b, 1.c). It also alleged that he had three delinquent consumer accounts totaling \$12,810 (SOR ¶¶ 1.d, 1.g., 1.h), and two delinquent federal debts with the U.S. Department of Veterans Affairs (VA) totaling \$1,413 (SOR ¶ 1.e, 1.f). The SOR also alleged that Applicant was terminated from employment with a DOD contractor in April 2014, due to unacceptable behavior involving inappropriate touching of employees and non-employees. The SOR allegations are established by Applicant's admissions in his Answer, 2019 security clearance application and during his 2019 background interviews, by the 2019 credit bureau report, court records, and employment records. (Answer; GE 1-6)

Applicant is the primary breadwinner. His wife, who has resided overseas with their children since 2008, previously owned a property management business that she sold in 2011, on the buyer's condition that she continue to run it. He attributed his delinquent debts to his 2014 employment termination, the consequent loss of his \$99,000 annual income, and a period of unemployment through 2015. His wife, at the time, earned an annual income of approximately \$16,000. When he became re-employed in May 2015, he started to regain control of his finances, while also financially supporting his family. As of the date of the hearing, he testified that he paid all but one of his revolving credit cards, to include the two alleged in SOR ¶¶ 1.d. and 1.h, and he intended to resolve his last outstanding card. (Answer; Tr. at 15-18, 23-71; GE 1, 6; AE A, B)

Applicant acknowledged, however, that he had not resolved his unpaid federal and state taxes or filed his delinquent tax returns. He stated that he needed to “. . . finalize his tax forms, send them in, and create a payback plan.” He attributed his delinquent taxes to having to financially support his family, and:

The taxes, you know, every day I wake up and I say I know I should have filed those, I know I should have done that, but it just kind of snowballed. The first time I did taxes [in 2008] I ended up owing like \$7,000 or something, and it just floored me. And I know it's not an excuse, but I just got a little bit scared to continue to do them and find out how much more I owed [sic]. So it's not an excuse; it's just kind of the way it turned out.

(Tr. at 15-18, 23-71; GE 1, 6; AE A, B)

Applicant testified that the 2008 tax year was the last time he timely filed his federal and state income tax returns. He stated that he resolved the \$7,000 in federal taxes that he owed for that tax year through a voluntary garnishment of his wages. He stated that he untimely filed his 2009 federal and state income tax returns, and he could not recall which tax entity garnished his wages to resolve his outstanding taxes for that year. He did not state whether the garnishment of his wages was voluntary or involuntary. He stated that he untimely filed his federal and state income tax returns for tax years 2010 through 2012 in 2014. He stated that he subsequently made payments through a payment arrangement of \$300 monthly towards his state income taxes for those tax years, until the state terminated the payment arrangement when he failed to timely file his 2013 federal and state income tax returns. He stated that he had not made payments towards his federal taxes for tax years 2010 through 2012. (SOR ¶¶ 1.a, 1.b, 1.c; Tr. at 15-18, 23-71; GE 1, 6; AE A, B)

Applicant stated that he intended to file his federal and state income tax returns for tax years 2013 through 2020 in May 2021. While he completed the tax forms as of June 2021, he had yet to mail them to his spouse for her signature, which was required before filing them. He stated that he planned to tackle his outstanding federal and state taxes of approximately \$40,000 through a repayment plan with the IRS and the state. He stated that he considered seeking professional tax assistance in approximately 2015, but elected against it because he could not justify the cost when he was trying to resolve his other delinquent consumer debts. He stated that his spouse is aware of their tax delinquencies and his failure to file their taxes, and she admonishes him to get them done. (SOR ¶¶ 1.a, 1.b, 1.c; Tr. at 15-18, 23-71; GE 1, 6; AE A, B)

SOR ¶ 1.d alleged a \$4,297 charged-off credit card. Applicant stated that he began paying this debt in 2015. Documentation reflects payments of \$100 monthly beginning in December 2017, and then payments of \$300 monthly from February 2018 until he fully paid this debt in September 2020. (Tr. at 25, 39-40; GE 1, 2, 6; AE A, B)

SOR ¶¶ 1.e and 1.f alleged two delinquent debts with the VA totaling \$1,413. Applicant paid these debts in May and December 2020. He testified that he was able to

do so with money he had available after he had resolved some of his other delinquent debts. (Tr. at 25, 40-42; GE 2, 5, 6; AE A, B)

SOR ¶ 1.g alleged a \$195 gas bill placed for collection. Applicant testified that he intended to dispute this debt. He learned from one of the major credit reporting agencies that this debt was for 2015 gas usage at an address he had not lived in since 2013. As of the date of the hearing, he had not yet obtained a copy of his renter's agreement from his storage or his previous landlord so that he could submit it with his dispute. (Tr. at 25, 43-44; GE 2, 6; AE A)

SOR ¶ 1.h alleged a \$8,318 charged-off credit card. Applicant testified that the creditor garnished his wages at approximately \$455 monthly until the debt was paid. Documentation reflects payments of approximately \$455 monthly that he made directly to a collection agency beginning in September 2019, until the debt was paid in full in March 2021. (Tr. at 26, 42-44, 62; GE 1, 2, 6; AE A, B)

Applicant admitted he was terminated from employment with a DOD contractor in April 2014, due to unacceptable behavior involving him massaging other employees' and non-employees' necks. He acknowledged that, "by definition, it's unacceptable behavior." He testified that he was terminated when he returned from a combined work and personal trip, his employer told him that he had no recourse, and he chose not to sue for wrongful termination and decided to move forward. (SOR ¶ 2.a; Tr. at 26-30, 44-46, 62-65; GE 1, 3, 6; AE A)

Applicant testified that he learned a very important lesson from this incident, "... no touching in the workplace whatsoever . . ." This was the only time he was terminated from employment, other than when he worked for a fast-food restaurant in college. As of the date of the hearing, his wife was unaware of this termination or the surrounding circumstances. He stated that he was unconcerned if she were to find out, but "I just didn't need to put that extra weight on her shoulders at the time," as her father was sick, she was dealing with their teenage children who were acting up, and she was having difficulty with her job. He also stated, "I have always been honest about this incident . . ." but acknowledged, "... as it is an embarrassing situation, I do not tell just anyone and keep it to myself except in time of need and confidentiality." (SOR ¶ 2.a; Tr. at 26-30, 44-46, 62-65, 67-68; GE 1, 3, 6; AE A)

As of the date of the hearing, Applicant earned \$124,000 annually, he received \$38,000 net annually from his retirement pension, and his wife earned \$18,000 annually. He has used a budget since 2017 to keep track of his finances, but stated that although his monthly net remainder is approximately \$800, they are always in the negative because of their delinquent debt and the financial assistance they provide for their children. He sends his family about 40% to 50% of his salary, or approximately \$4,000 to \$7,000, each month. Since 2018, he pays \$800 monthly to rent a bedroom in a house that he shares with three other people. He stated that with the cost of travel, he last traveled to visit his family overseas in 2016, and they last traveled to visit him in the United States in 2008. He had not received any financial counseling or professional tax assistance. (Answer; Tr. at 38, 47-50, 54-55, 57-60, 66-69; GE 1, 6; AE A, B)

## **Policies**

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(a), 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 Exec. Or. 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* Exec. Or. 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 as required.

Applicant was unable to pay his debts. He also failed to pay his federal and state income taxes for tax years 2010 through 2018; timely file his federal and state income taxes for tax years 2013 through 2018; and owed approximately \$40,000 in delinquent federal and state taxes. The evidence is sufficient to raise AG ¶¶ 19(a), 19(c), and 19(f).

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.

It is well established that failure to comply with tax laws suggests that an applicant has difficulty with abiding by government rules and regulations. See, e.g., ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). It is also well established that the mere filing of past-due returns or resolution of delinquent tax debts does not compel a favorable security-clearance adjudication. ISCR Case No. 17-01907 (App. Bd. Mar. 7, 2018). The timing of corrective action is an important factor in determining whether security concerns raised by tax delinquencies are mitigated. Applicants who wait until their clearances are in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018).

Applicant's financial support for his family who have resided overseas since 2008 and his unexpected 2014 work termination are conditions beyond Applicant's control that partially contributed to his financial problems. The first prong of AG ¶ 20(b) only partially applies. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. He paid the debts in SOR ¶¶ 1.d, 1.e, 1.f, and 1.h, and he intended to dispute the minimal debt in SOR ¶ 1.g. I find that ¶ 20(d) applies to SOR ¶¶ 1.d through 1.h and ¶ 20(e) applies to SOR ¶ 1.g.

Applicant has not sought professional tax assistance or debt counseling since he first encountered difficulty with handling his taxes in 2008. As of June 2021, he had not yet filed his delinquent federal and state tax returns, made any payments toward his delinquent taxes, or taken other action to secure payment arrangements with the IRS or the state tax authority. I also find that such behavior did not happen so long ago, was not infrequent, and did not occur under such circumstances that are unlikely to recur. It continues to cast doubt on his current reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), 20(d) are not established as to SOR ¶¶ 1.a, 1.b, and 1.c.

## **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

. . . (2) any disruptive, violent, or other inappropriate behavior; . . . and,

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing . . . .

Applicant was terminated due to unacceptable behavior involving him massaging other employees' and non-employees' necks. While his termination occurred seven years ago and was an isolated incident, his spouse was not yet aware of it or its surrounding circumstances as of the date of the hearing. AG ¶¶ 16(d) and 16(e) applies.

AG ¶ 17 describes the following conditions that could mitigate the personal conduct security concerns:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant's termination occurred seven years ago and was an isolated incident. He was candid and credible at the hearing. However, his spouse remained unaware of his termination or the circumstances surrounding it at the time of the hearing. I continue to have doubts about Applicant's reliability, trustworthiness, and judgment. AG ¶¶ 17(c), 17(d), and 17(e) do 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 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant failed to mitigate the financial considerations and personal conduct 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 - c:	Against Applicant
Subparagraphs 1.d - h:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Candace Le'i Garcia  
Administrative Judge