



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



In the matter of:	)	
	)	
	)	ISCR Case No. 20-01021
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Bryan Olmos, Department Counsel  
For Applicant: *Pro se*

01/12/2022

\_\_\_\_\_

**Decision**

\_\_\_\_\_

CERVI, Gregg A., 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 January 18, 2019. On October 22, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The DOD CAF acted 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) effective on June 8, 2017.

Applicant responded to the SOR, once in an undated response, and on March 20, 2021, and requested a hearing before an administrative judge. The case was assigned to me on August 26, 2021. Defense Office of Hearings and Appeals (DOHA) issued a

notice of hearing on September 15, 2021, scheduling the hearing for September 28, 2021. The hearing was rescheduled due to Applicant's travel and COVID-19 restriction. An amended notice of hearing was issued on September 23, 2021, and the hearing was convened on October 6, 2021.

Government Exhibits (GE) 1 through 5 were admitted into evidence without objection. Applicant testified but had no exhibits to submit. The record was held open until October 20, 2021, to permit Applicant to submit documentary evidence. Applicant submitted Applicant Exhibit (AE) A, which included an email and several tax, student loan, and credit documents. DOHA received the hearing transcript on October 13, 2021.

### **Findings of Fact**

Applicant is a 32-year-old risk analysis and monitoring technician for a government contractor working for another government agency, employed since July 2021. He previously worked for another contractor from October 2018 to March 2021, but was laid off. Applicant earned a bachelor's degree in 2012. He is not married and has one seven-year-old child. Applicant holds an interim security eligibility.

The SOR alleges under Guideline F that Applicant owes approximately \$29,000 in six delinquent debts. His debts include a past-due car loan (SOR ¶ 1.a), a charged-off car loan (SOR ¶ 1.b), 10 past-due Department of Education loans (SOR ¶¶ 1.c-1.m), and three charged-off credit accounts (SOR ¶¶ 1.n-1.p). The remaining Guideline F allegations include failure to file Federal income tax returns for tax years 2017 and 2018 when due (SOR ¶ 1.q); failure to file state income tax returns for tax years 2017 and 2018 when due (SOR ¶ 1.r); and a \$4,290 debt to the Federal government for delinquent taxes owed from tax year 2017. Finally, the SOR alleges Applicant failed to report his tax filing and payment delinquencies in his January 2019 SCA (SOR ¶ 2.a). Applicant admitted all of the SOR allegations with explanations. The government's exhibits support the SOR allegations.

Applicant replied to government interrogatories in June and July 2021, and had not resolved his tax debts or filed in 2017 or 2018 tax returns by that time. Applicant testified at the hearing that he owed the IRS about \$4,290 for tax year 2016. He did not have enough withheld from his pay, did not receive his W-2 forms, and had a mix up with his former girlfriend over his ability to claim his daughter as a deduction. Applicant filed his 2017 and 2018 tax returns in August 2020, and paid his debt through attachment of his federal refunds for those years. Of note, Applicant provided a post-hearing exhibit from the IRS showing a portion of his 2017 refund was applied to a 2015 debt, not 2016. He also owed a state for taxes from 2016, and believes he satisfied the debt through attachment of his 2017 tax refund. After the hearing, Applicant attempted to contact the state tax authority, but was unable to obtain a balance letter in time for his post-hearing reply. Applicant did not report any tax delinquencies or his failure to file his 2017 Federal and state tax returns when due, in his January 2019 SCA. His 2018 tax returns were not yet due when he completed his SCA.

Applicant has student-loan accounts that became past due totaling \$6,858, in about 2017. He testified that he contacted the loan servicing agency, and was requested to submit an income status document and report his income to the agency. He failed to submit the document or report his financial status changes since 2017. As a result of COVID-19 related Executive Order in 2020, his student loans became deferred. They remain in a deferred status with no past-due amounts owed.

Applicant has two past-due car loans. He purchased a 2007 BMW in 2014 for \$16,000. He failed to make payments on the loan in 2017, and the car was repossessed in 2018 (SOR ¶ 1.b). He was offered a settlement amount of \$5,000, but he does not have the funds to pay the debt or the settlement. Applicant bought another car in 2019 for \$22,000 (SOR ¶ 1.a). He made payments on the loan in the first few months, then made occasional payments thereafter. He testified that his work hours were cut in 2020 due to COVID-19, but did not provide evidence of a pay loss. He said he made a \$1,200 payment in September 2021. He is past due about \$10,000 or \$11,000.

Applicant has a credit card debt for about \$1,062, listed in SOR ¶ 1.o. The debt was incurred while he was in college, and he did not pay anything beginning in 2015 or 2016. In about June 2021, he started paying \$15.85 per month in a payment plan with the creditor. He provided post-hearing documentation showing he paid 6 of 67 installments as of October 2021.

Applicant has two other consumer debts (SOR ¶¶ 1.n and 1.p), totaling about \$1,621. He disputed the phone company debt (SOR ¶ 1.p) in 2016, but it remains a past-due debt on his 2020 credit report and Applicant was sent a collection letter. The \$1,379 debt in SOR ¶ 1.n was opened in 2018 and charged off in 2019. The debt is reflected on Applicant's 2020 credit report. Applicant testified that he paid the balance of \$400 in February 2021. Nether debt appears on his 2021 credit report.

Applicant earns about \$101,000 per year, rents a home, and shares custody of his daughter, but his daughter lives with her mother. He has no bank savings and no retirement account savings. He has about \$200 in his checking account. He has not sought financial counseling. He traveled for pleasure to Jamaica in 2015 and 2018, to Dominican Republic in 2019, to Jamaica in 2020, and Dominican Republic and Dubai UAE in 2021.

### **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.

National security eligibility 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 a person's stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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." 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. *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, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

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, e.g., 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; see, AG ¶ 1(d).

## Analysis

### Guideline F: Financial Considerations

The security 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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (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's admissions, testimony, and the documentary evidence in the record are sufficient to establish the disqualifying conditions AG ¶¶ 19(a), (c), and (f).

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's history of debt accumulation with little concurrent effort to resolve it until his security eligibility was in jeopardy shows a history of financial irresponsibility. His financial problems have been longstanding and remain a concern. A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)). Applicant has not shown a willingness or ability to address his largest debts despite a history of full employment since 2018 and a substantial salary. He has little in financial assets, yet has vacationed overseas on a regular basis.

Applicant failed to file his 2017 and 2018 Federal and state tax returns when due, and incurred delinquent tax debts since 2015. Although he has paid his tax debts and filed his tax returns, he did not do so in a timely manner, and satisfied his tax debts through involuntary relinquishment of future tax refunds. With regard to his education loans, they are currently deferred by law, however, Applicant did not take action as required to report his financial status to the loan servicing agency as required in 2017 when his delinquencies began. Although these accounts are no longer in a past-due status, payment requirements will eventually resume, but Applicant does not appear to have the funds to pay, and given his reluctance to pay since 2017, these continue to concern me and reflect poorly on his financial responsibility. I will give him the benefit of the doubt on the SOR allegations as written, as these debts are technically not past due, however I continue to have concerns about his overall financial responsibility.

Applicant failed to resolve his two car loan debts, and has shown no inclination to do so in the future. Applicant is credited with recently obtaining a credit card debt repayment plan, but as of October 2021, compliance has only lasted 6 months out of a 67-month plan. He has also appeared to have successfully disputed another account, and paid on a third. I will give him the benefit of the doubt regarding resolution of these accounts.

I am unclear about Applicant's financial status as he earns a sizable income for a single individual with joint custody but not living with the child. He appears to have sufficient money to travel, but claims he has a total of \$200 to spend. Overall, some debts have been resolved or are not a current concern, however, Applicant's financial responsibility overall is doubtful and has not been mitigated.

## **Guideline E: Personal Conduct**

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

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified 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. The following disqualifying condition is potentially applicable:

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

Applicant did not disclose on his SCA, his failure to file Federal and state tax returns for tax year 2017, and failure to pay as required for previous tax years (2016), despite being fully aware of the matter. The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). The record evidence establishes that Applicant intentionally falsified his 2019 SCA. The evidence shows that Applicant clearly was aware of the existence of the tax issues when he completed his SCA, although he may not have been aware of the exact total amount of taxes he owed. He did not adequately explain why he failed to report the tax issues on his SCA, and did not provide documentary evidence to mitigate the allegation. AG ¶¶ 16(a) applies.

AG ¶ 17 provides conditions that could mitigate security concerns in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(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.

No mitigating condition applies. Applicant was well aware of his failure to file tax returns and pay taxes, but failed to disclose them. This knowing and willful behavior is strongly disfavored in security eligibility determinations. In addition, I am considering that he did not voluntarily disclose the extent of his tax-related debts to include a 2015 Federal tax debt disclosed in his post-hearing submission, not for disqualification purposes but in my evaluation of Applicant's credibility, mitigation, rehabilitation, and whole-person analysis. Applicant's intentional falsification casts doubt on his reliability, trustworthiness, and good judgment. Overall, the personal conduct security concern is not mitigated.

### **Whole-Person Concept**

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guidelines F and E in my whole-person analysis. I also considered Applicant's employment status, short-term lay off, potential loss of income during COVID-19 cutbacks, and financial stress due to being a single parent. However, I remain unconvinced of his overall financial responsibility, and his ability, intent, and desire to meet his financial obligations in the future, as well as his candor in the investigation process.

Accordingly, I conclude Applicant has not carried his burden of showing that it is clearly consistent with the national security interest of the United States to grant him eligibility for access to classified information.



## 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.b, 1.q, 1.r:	Against Applicant
Subparagraphs 1.c-1.p, 1.s:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

## Conclusion

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

---

Gregg A. Cervi  
Administrative Judge