



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 20-00535  
)  
Applicant for Security Clearance )

**Appearances**

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

01/10/2022

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 26, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD 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 effective June 8, 2017 (AG).

Applicant answered the SOR on June 19, 2020 (which contained attachments that were considered as part of his answer), and he requested a hearing before an administrative judge. The scheduling of this hearing was delayed because of the COVID-19 pandemic. The case was assigned to me on July 13, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 28, 2021,

and the hearing was convened as scheduled on August 23, 2021, using the video capabilities of the Defense Collaboration Services (DCS). The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection, except GE 1 was objected to and overruled. The Government's exhibit list was marked as a hearing exhibit (HE I). Applicant testified, called three witnesses, and offered exhibit (AE) A. The record was kept open until October 1, 2021, to allow him to submit additional evidence. He submitted AE B-G, which were admitted without objection. DOHA received the hearing transcript (Tr.) on September 1, 2021.

### **Findings of Fact**

Applicant denied all the allegations except SOR ¶ 1.a, which he admitted. After a review of the pleadings and evidence, I make the following findings of fact.

Applicant is a 49-year-old employee of a defense contractor. He began working for his current employer as a permanent employee in 2015. He is a network engineer. He served in the U.S. Marine Corps, beginning in 1990, before being honorably discharged for medical reasons after over two years of service. He has a twenty percent Department of Veterans' (VA) Affairs disability rating. He is twice divorced (most recently in 2018) and has two adult daughters. (Tr. at 6, 37, 41; GE 1)

The SOR alleged that in 2019, Applicant filed a Chapter 7 bankruptcy action that was discharged the same year; that Applicant failed to timely file his 2009-2015 federal tax returns; that he failed to timely file his state tax returns for tax years 2009-2015; and that he owes \$5,733 toward his delinquent federal tax debt and \$3,479 toward his delinquent state tax debt (SOR ¶¶ 1.a-1.e).

Applicant's financial difficulties began in approximately 2011, when he left a contractor job in another state because he could not afford to live there and make his child support payments to his children who lived in another state. From 2011 to January 2015, he experienced either short-term employment or periods of unemployment. In 2008, he divorced his first wife. Under the terms of their property settlement, his ex-wife was to refinance several debts, including the mortgage on the marital home, within one year so the debts would no longer be attributed to Applicant. Despite Applicant's filing a Motion to Enforce, for which he received a judgment, his ex-wife still did not refinance the debts. Applicant filed his Chapter 7 bankruptcy primarily to rid himself of those marital financial obligations. A recent credit report indicates that he is current on all his consumer debt. (Tr. at 38, 52; SOR Answer (¶ 1.A); GE 5)

Applicant admitted in both of his security clearance applications (SCA) and during his background investigation interview with a defense investigator that he failed to timely file his 2009-2015 federal and state income tax returns. He claimed several reasons for his dilatory action including that his second wife always handled their finances, including taking care of their taxes, and when they divorced in 2008, he was unprepared to take over that responsibility. Also, he mistakenly believed that if he was paying his taxes through payroll withholding and he was paying more than he ended up owing, he did not have to file a tax return. He also did not know that any tax refund he

might be owed was forfeited if he failed to file his returns and failed to claim the refund within three years of when it arose. In what was essentially a state of mental paralysis, he procrastinated taking any action. He finally contacted a tax preparation service which prepared and allegedly filed his bulk federal and state tax returns for years 2009-2015 in either 2016 or 2017 (he testified that the filing was in 2016, but his statement to the defense investigator claims it was in 2017). He testified that the primary reason for finally acting on his tax situation was because he realized the impact it had on his security clearance after he completed his SCA. Despite being given the opportunity until October 2021 to submit post-hearing evidence, Applicant failed to produce documentation showing that the tax returns for tax years 2009-2014 were filed with the federal and state tax authorities (the record shows that he filed his 2015 federal return late in 2017). Applicant produced documentary evidence showing that he has timely filed his federal tax returns for tax years 2016-2020. (Tr. at 42-45, 50, 55, 57, 65, 74; GE 3; AE B-E)

Applicant documented that he has paid all his delinquent tax debt to both the state and federal tax authorities. He showed the payments that he made in June 2020. He also presented documentation from the Internal Revenue Service (IRS) stating that as of August 2021 he owed \$0. The documentation from the state showed that he had a credit of \$150 as of August 2021. (Tr. at 46, 49, 65; SOR Answer (attachments))

Applicant presented testimony from three of his supervisors (1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> level). All of them were aware of the SOR allegations. All three hold security clearances and are aware of the requirements and responsibilities for those holding or seeking clearances. Applicant was universally described by these supervisors as hardworking, dependable, honest, loyal, and trustworthy. None of the supervisors had any reservations about Applicant holding a security clearance. (Tr. at 20-25, 27-28, 31-34)

Applicant also presented multiple written character recommendations. All express their belief in Applicant's integrity, responsibility, and reliability. They believe that he is an asset to their company. Several specifically recommend that he receive a security clearance. (AE A)

### **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 used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion 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 that an 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.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

AG ¶ 18 expresses the security concern for financial considerations:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a

security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially applies:

(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 filed a 2019 Chapter 7 bankruptcy that discharged all of his included debts in 2019. He also failed to timely file his 2009-2015 federal and state income tax returns. He owed both the IRS and the state tax authority for delinquent income taxes, which he eventually paid in 2020. The record evidence supports all the SOR allegations. I find the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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; 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 bankruptcy was necessitated because his ex-wife refused to honor her divorce commitment of assuming the marital debts as she agreed to do by refinancing the debt and releasing Applicant from it. Applicant acted responsibly by availing himself of the legal process of bankruptcy to rid himself of the marital debt. His recent credit report shows his responsible credit use. AG ¶ 20(b) applies to SOR ¶ 1.a.

Applicant documented that he has paid his delinquent income tax debt to both the IRS and the state taxing authority. AG ¶ 20(g) applies to SOR ¶¶ 1.d-1.e. Timely filing his yearly tax returns was not beyond Applicant's control and also shows irresponsibility on his part. There is no documentary evidence to show that he has ever filed his 2009-2014 federal or state tax returns. While he documented his timely filing of his 2016-2020, his earlier returns remain unaddressed, except for his 2015 federal return, which was filed late. His non-filing and delay in filing shows a lack of reliability, trustworthiness, and good judgment. AG ¶¶ 20(b) and 20(g) do not apply to SOR ¶¶ 1.b-1.c.

## Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's military service, the noncooperation of his ex-wife, his outstanding references from his three work supervisors, and his character letters of support. However, his handling of his tax issues, particularly his protracted delay in filing seven years' worth of tax returns (which has not actually been documented), causes me to question his trustworthiness, reliability, and good judgment.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations.

### Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs: 1.a, 1.d, 1.e:	For Applicant
Subparagraphs: 1.b-1.c:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge