



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



In the matter of: )  
)  
) ISCR Case No. 20-00059  
)  
Applicant for Security Clearance )

**Appearances**

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

03/23/2022

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**Decision**

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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 March 30, 2021, 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 10, 2021 and he requested a hearing before an administrative judge. The case was assigned to me on October 21, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 5, 2021, and the hearing was convened as scheduled on December 15, 2021, using the video capabilities of the Microsoft Teams platform. The Government

offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. The Government's exhibit list was marked as a hearing exhibit (HE I). Applicant testified, but did not offer any exhibits at his hearing. The record was kept open until January 13, 2022, to allow him to submit additional evidence. He submitted AE A (attachments A-1, B-1 to B-3, C), which were admitted without objection. DOHA received the hearing transcript (Tr.) on December 30, 2021.

### **Findings of Fact**

Applicant denied all the SOR allegations with explanations. After a review of the pleadings and evidence, I make the following findings of fact.

Applicant is a 61-year-old employee of a defense contractor. He began working for his current employer in March 2015. From 1994 to 2015, he worked for a different defense contractor before he was laid off in February 2015. He is a contract specialist. He has held a security clearance for 38 years. His higher education includes an associate's, a bachelor's, and two master's degrees. He is married (since 1993) and has one adult daughter. (Tr. at 6, 20, 22-23, 25; GE 1)

The SOR alleged that Applicant failed to timely pay his 2016-2019 federal and state taxes, and that he failed to timely file his 2017-2019 federal and state tax returns. (SOR ¶¶ 1.a-1.d).

While Applicant denied the allegations in his SOR answer, he previously admitted the allegations in his 2020 SCA. Specifically, he admitted that he failed to timely file his 2016-2019 federal and state tax returns and that he failed to pay the taxes owed for each of those years to both the state and the federal governments. He confirmed these admissions about his tax delinquencies when he spoke to a defense investigator in May 2020 during his background investigation. Applicant explained that he failed to file his 2016 returns because he was required to provide documentation to support his health savings account (HSA) deductions and he claimed he could not find the paperwork so he did not file that year's return. This led to a snowball effect on his 2017-2019 returns, which he did not timely file because he had not filed his 2016 returns. At that time, he was preparing his taxes himself without professional assistance. He also stated that he did not give the time and priority to working his taxes. He rationalized that because he was having taxes withheld from his paycheck he was satisfying his tax requirement even if he was not filing his returns on time. (Tr. 22-23, 28; GE 1-2)

Applicant claims he began working with a tax preparation firm (TPF) in December 2020 to resolve his tax problems. He provided documentation for some of the results from his work with the TPF, but several questions remain open. He testified that all of his 2016-2019 federal and state tax return were filed. However, he failed to provide any documentation of the filing of those returns, either by providing copies of the actual returns or by providing tax transcripts from the IRS or state tax authority. (Tr. 21; AE A) He provided the following:

(1) a receipt from his state tax authority showing that on January 22, 2022, he paid \$11,407 toward his 2018 state tax debt. (See AE A, attachment B-1, Ex. 2) (There is no information about whether this amount paid satisfied the entire debt);

(2) a receipt from his state tax authority showing that on January 26, 2022, he paid \$1,733 toward his 2021 state tax debt. (This debt was not alleged in the SOR) (See AE A, attachment B-1, Ex. 3);

(3) a receipt from the IRS showing that on July 23, 2021, he paid \$5,541 toward his 2016 federal tax debt. (See AE A, attachment B-2, Ex. 1) (There is no information about whether this amount paid satisfied the entire debt);

(4) a receipt from the IRS showing that on July 23, 2021, he paid \$20,318 toward his 2017 federal tax debt. (See AE A, attachment B-2, Ex. 2) (There is no information about whether this amount paid satisfied the entire debt);

(5) a receipt from the IRS showing that on December 14, 2021 (one day before his security clearance hearing), he paid \$13,290 toward his 2018 federal tax debt. (See AE A, attachment B-2, Ex. 3) (There is no information about whether this amount paid satisfied the entire debt);

(6) a receipt from the IRS showing that on December 14, 2021 (one day before his security clearance hearing), he paid \$13,835 toward his 2019 federal tax debt. (See AE A, attachment B-2, Ex. 4) (There is no information about whether this amount paid satisfied the entire debt).

Applicant's documentation showed that as of January 22, 2022, he had not timely filed his 2020 federal or state tax return, due on or before April 15, 2021. This tax filing delinquency was not alleged in the SOR and I will not consider it for disqualification purposes, but I may consider it to assess Applicant's credibility, in the application of any mitigating conditions, and in considering the whole-person factors. The documentation also shows that Applicant intended to hire the TPF to prepare and file his 2021 federal and state tax returns. However, this information conflicted with his hearing testimony where he stated that he intended to prepare his own taxes because he did not need assistance from tax professionals. The large tax payments that Applicant made, as noted above, came from funds in his retirement accounts. (Tr. 36, 38; AE A, attachment C)

Applicant also presented two written character recommendations from work supervisors. They expressed their belief that Applicant is a trusted employee and a valuable team member. Applicant also documented his active civic involvement, which included: receiving The President's Volunteer Service Award, recognition for ten years of service to Junior Achievement, and participating in the American Heart Savior program as CPR qualified. (AE A, attachment B-3)

Applicant testified that his financial assets included a \$700,000 home that was nearly completely paid for and a retirement account valued at approximately \$100,000. (Tr. 30)

### **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 failed to timely file his 2017-2019 federal and state income tax returns, or make timely payments toward his 2016-2019 federal and state tax debt. 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 documented that he has paid some amounts toward his delinquent income tax debt to both the IRS and the state taxing authority. However, he failed to produce documentation to show that the federal and state tax debts were completely paid. Additionally, all his documented payments came after the issuance of the SOR. Timely filing his yearly tax returns and paying what he owed was not beyond Applicant's control and also shows irresponsibility on his part. While there is evidence of late payments for tax years 2016-2019 of his federal returns and 2018 of his state returns, he did not provide documentary evidence of filed federal or state tax returns for those years. 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.

### **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 long civilian work history, his supervisors' letters of support, and his civic activities. However, his handling of his tax issues over a multi-year period 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:                      **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