



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



In the matter of:)	
)	
)	ISCR Case No. 21-00098
)	
)	
Applicant for Security Clearance)	

Appearances

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

04/21/2022

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 April 9, 2021, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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 with an undated response, and he requested a hearing before an administrative judge. I was assigned the case on October 20, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on

October 28, 2021, and the hearing was convened as scheduled on December 16, 2021. The Government offered exhibits (GE) 1-4, which were admitted into evidence without objection. Applicant testified, but offered no exhibits at the hearing. DOHA received the hearing transcript (Tr.) on December 30, 2021. The record remained open until January 31, 2022, to allow Applicant to submit documentary evidence. He submitted two character letters (AE A and B), which were admitted without objection.

Findings of Fact

Applicant admitted all of the allegations with explanations, except for SOR ¶¶ 1.n-1.q, which he denied. The admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 46 years old. He has worked for a defense contractor since January 2020, as a satellite controller. From 2016 to 2019, he was self-employed with either his own or his wife's business. From 2010 to 2016, he worked as a laborer in oil fields located throughout the Western United States.

He served honorably in the U.S. Marine Corps for eight years (2000-2008), including two combat deployments to Iraq. He also deployed to Syria as a contractor shortly after he was discharged from the Marine Corps.

He is a college graduate. He is married and has two adult children from a previous marriage and two stepchildren from his current marriage, ages 14 and 15. (Tr. 6, 18-20; GE 1)

The SOR alleged Applicant: (1) failed to file his 2019 federal and state income tax returns, as required (SOR ¶ 1.a); (2) owed the federal government approximately \$388,950 in delinquent taxes for tax years 2011-2018 (SOR ¶ 1.d); and (3) owed his state tax authority approximately \$24,819 in delinquent taxes for tax years 2014-2015, and 2017-2018 (SOR ¶ 1.e). There were two other tax-related allegations in the SOR (¶¶ 1.b-1.c), however, I find that they are duplicative of the underlying facts alleged in SOR ¶¶ 1.d-1.e, and I find for Applicant on SOR ¶¶ 1.b-1.c.

In addition to the tax-related allegations, the SOR also alleged Applicant owed 12 collections, charged-off, and past-due accounts totaling approximately \$98,382. Applicant admitted in his July 2020 security clearance application (SCA), in his March 2021 answers to interrogatories, in his answer to the SOR, and during his hearing testimony that he failed to pay his 2011-2018 federal taxes and owed over \$300,000. He admitted owing approximately \$24,000 in state taxes in his interrogatories response, his SOR answer, and his testimony. He also admitted that he has not yet filed his 2019 federal and state income tax returns. His SOR answers, his hearing testimony, and credit reports from September 2020 and December 2021 establish the remaining delinquent debts. (Tr. 22-24, 34-35, 39-41; GE 1-4)

Applicant's tax difficulties started when he was working in the oil fields from 2010 to 2016. He was an independent contractor and was required to file quarterly estimated federal income tax returns because he was not subject to employer withholding. He was required to file IRS Form 1099s. (See [irs.gov/businesses/small-businesses-self-employed/self-employed-individuals-tax-center](https://www.irs.gov/businesses/small-businesses-self-employed/self-employed-individuals-tax-center).) He filed timely Form 1040s for several years, but did not pay the federal taxes owed. This practice continued when Applicant and his wife owned and operated their small businesses. He has not filed his 2019 federal or state income tax returns. He explained that his non-tax delinquent debts resulted from his wife's overspending when he was away from home working in the oil fields and when they used credit cards and short-term loans to fund their small businesses. (Tr. 22-24, 32, 35, 39, 41)

The status of the SOR debts is as follows:

SOR ¶¶ 1.a, 1.d and 1.e (non-filed 2019 federal and state income tax return; federal and state tax debt)-\$388,950 and \$24,819. Applicant testified that he still has not filed his 2019 federal and state income tax returns. He explained that because he sued his former business partner in state court when the partner refused to accept responsibility for the company's debts as he took over the business from Applicant, he has been unable to file those returns. He has hired a tax professional (TP) to handle his tax returns. He stated that his TP is working with the tax authorities on payment plans. He failed to produce documentation of any agreements or plans. He further averred that he paid approximately \$80,000 toward his federal tax debt in 2016. He did not provide corroborating documentation. He also failed to produce documentation evidencing his lawsuit against his former business partner. His stated plan to address this tax debt is to sell a home he owns with a market value of between \$575,000 and \$650,000. His current mortgage on the house is approximately \$275,000 and he owes between \$25,000 and \$40,000 for delinquent monthly payments. (Tr. 23-24, 28, 34-35, 39-40, 51)

SOR ¶ 1.f (past-due mortgage)-\$21,062. Applicant admitted this delinquent debt. As stated above, this delinquent mortgage is the house Applicant plans to sell to pay his tax debt. He is \$25,000 to \$40,000 behind on his mortgage payments. The IRS has placed a lien on this property. This debt is unresolved. (Tr. 25, 28, 51; SOR answer)

SOR ¶ 1.g (credit-card debt)-\$9,081. Applicant admitted this delinquent debt. He claimed that his wife set up a payment plan with the creditor. He failed to document any payment agreements or payments made. This debt is unresolved. (Tr. 43; SOR answer)

SOR ¶ 1.h (personal loan)-\$4,468. Applicant admitted this delinquent debt and claimed that he had paid the amount down to around \$1,500. He failed to offer documentation of any payments made to the creditor. This debt is unresolved. (Tr. 44; SOR answer)

SOR ¶ 1.i (credit-card debt)-\$2,112. Applicant admitted this debt, but failed to document any payment agreements or payments made. This debt is unresolved. (Tr. 42; SOR answer)

SOR ¶¶ 1.j and 1.k (medical debts)-\$1,469 and \$779. Applicant admitted these delinquent medical debts, but claimed he paid these debts, and when contacted by the creditor, he wrote a dispute letter. He stated he would provide proof of payments and a copy of the dispute letter, but he did not. These debts are unresolved. (Tr. 42; SOR answer)

SOR ¶ 1.l (consumer debt)-\$435. Applicant admitted this delinquent debt. He has not made any attempts to pay this debt. This debt is unresolved. (Tr. 44; SOR answer)

SOR ¶ 1.m (medical debt)-\$186. Applicant admitted this was a delinquent medical debt and that it was being settled. He failed to produce evidence of a settlement arrangement. This debt is unresolved. (SOR answer)

SOR ¶¶ 1.n-1.q (four debts related to Applicant's small business)-\$12,593; \$26,057; \$6,940; \$13,200. Applicant admitted that he incurred all these debts for his small business that he operated from 2017 to 2019. He claims that his business partner took over the business in approximately 2019 and part of the agreement was for the business partner to assume all the business debt. The partner failed to take on the debt, and Applicant claims he filed a lawsuit against the partner. Applicant claimed he could provide a copy of the court documents to substantiate his dispute with the former partner, but he failed to do so. These debts are unresolved. (Tr. 32; AE B)

Applicant produced character letters from two military officers, a retired Air Force brigadier general and an active duty United States Space Force (USSF) lieutenant colonel. Neither have worked with him, but have had other contacts with him. They both believe Applicant to be an outstanding member of the community and a dedicated family man. (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 apply:

- (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 has delinquent consumer and business debts and federal tax debt that remain unpaid or unresolved. He also has failed to file his 2019 federal and state income tax returns. I find all 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:

- (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 debts are recent and remain unresolved. He did not provide sufficient evidence to show that his financial problems are unlikely to recur. AG ¶ 20(a) does not apply. His overall financial problems really started when he failed to pay his estimated federal income taxes from 2011 to 2019, when he was an independent contractor and small business owner who was required to file IRS Forms 1099. His inaction resulted in a federal tax bill in excess of \$370,000 and a state tax bill of approximately \$24,000. These are not circumstances beyond his control. The evidence does not support that he has taken responsible actions to address his debts or timely pay his federal taxes. AG ¶ 20(b) does not apply. Applicant failed to provide documentation showing efforts to pay or settle any of the debts. There is no evidence of financial counseling. There is no documentary evidence showing he made arrangements with the IRS to resolve his tax issues or with his creditors to pay his delinquent consumer debt. He failed to document his dispute with his former business partner concerning his four business debts. AG ¶¶ 20(c) and 20(d), 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 the facts and circumstances surrounding this case. I considered his military service, including his combat deployments, and his civilian employment, but I also considered his lack of progress in resolving his debts, filing his 2019 federal and state income tax

returns, and paying his federal and state taxes. Applicant has not established a track record of financial responsibility.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, 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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b – 1c:	For Applicant (Duplicative)
Subparagraphs 1.d – 1e:	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.

Robert E. Coacher
Administrative Judge