



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 19-01624
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: James B. Norman, Esq., Chief Department Counsel  
For Applicant: Patrick J. Hughes, Esq.

06/10/2022

\_\_\_\_\_  
**Remand Decision**  
\_\_\_\_\_

MALONE, Matthew E., Administrative Judge:

Available information on remand is not sufficient to mitigate the security concerns raised by Applicant’s financial considerations. His request for a security clearance is denied.

**Statement of the Case**

On May 24, 2018, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew eligibility for a security clearance required for his employment with a federal contractor. Based on the results of the ensuing background investigation, adjudicators for the Department of Defense Consolidated Adjudications Facility (DOD CAF) could not determine, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended

(Directive), Section 4.2, that it is clearly consistent with the interests of national security to continue Applicant's eligibility for a security clearance.

On July 12, 2019, DOD CAF issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F). The guideline cited in the SOR was part of the current set of adjudicative guidelines (AG) issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017.

Applicant timely responded to the SOR (Answer) and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I first received the case on January 16, 2020, and scheduled a hearing for March 31, 2020. On March 20, 2020, I cancelled that hearing in response to pandemic-related restrictions imposed by the Secretary of Defense. On July 13, 2021, I rescheduled this case for hearing on August 19, 2021, via web-based video conferencing. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 and 2. Applicant testified and proffered Applicant Exhibits (AX) A – I. Additionally, I held the record open after the hearing to allow Applicant to submit additional information. The record closed on September 1, 2021, when I received Applicant's timely post-hearing submissions and Department Counsel's waiver of objection thereto. DOHA received a transcript of the hearing (Tr.) on August 27, 2021.

Applicant's post-hearing submissions consisted of AX J (a two-page statement from Applicant); AX K (three one-page letters of recommendation); AX L (Applicant's four-page IRS transcript for the 2013 tax year); and AX M (Applicant's three-page IRS transcript for the 2014 tax year). All exhibits were admitted without objection.

On November 18, 2021, I issued an unfavorable decision after concluding that Applicant had not met his burden of showing that it is clearly consistent with the interest of national security for him to be eligible for a security clearance. Applicant appealed that decision and, on February 3, 2022, the DOHA Appeal Board remanded the case to me to issue a new decision consistent with the following findings of fact on appeal:

- a. Applicant timely filed his federal income tax returns for the 2014, 2018, 2019, and 2020;
- b. Applicant filed his 2013 federal income tax return in December 2014 and his 2014 federal income tax return in April 2015;
- c. In July 2015, he began a tax repayment plan for the 2013 and 2014 tax years; and
- d. the issue of state taxes was not raised as an SOR allegation.

## Findings of Fact

Under Guideline F, the Government alleged that Applicant did not timely file his federal income tax returns for at least the 2013 through 2017 tax years (SOR 1.a); that he failed to pay, as required, his federal income taxes for at least the 2013 through 2016 tax years (SOR 1.b); and that he owed the IRS \$18,312.85 for unpaid income taxes from the 2014 through 2016 tax years (SOR 1.c). In response to the SOR, Applicant admitted with explanations all of the SOR allegations. He also provided a recent copy of his pay stub and a record of tax payments made between August 2017 and July 2019. (Answer)

On August 17, 2021, after receiving a pre-hearing copy of Applicant's proposed exhibits, Department Counsel moved to amend the SOR. SOR 1.b, as amended, alleged that Applicant's failure to timely pay his federal income taxes occurred between 2013 and 2018. SOR 1.c, as amended, alleged that Applicant owes \$28,451.50 for unpaid taxes from the 2014 through 2018 tax years. Applicant denied SOR 1.b and 1.c, as amended. After reviewing the proposed exhibits and allowing the parties to be heard, I granted Department Counsel's motion and amended the SOR to conform to the evidence as provided by Directive, Section E3.1.17. (Tr. 11 – 18) In view of the foregoing pleadings and according to findings by the Appeal Board on remand, the following facts are established.

Applicant is 55 years old. Since March 2003, he has worked for a defense contractor as an information technology systems field engineer, a position that requires eligibility for access to classified information for access to military facilities at home and abroad. Applicant has held a security clearance since at least March 2004. He also served in the Army on active duty between 1984 and 1993. Thereafter, he affiliated with the Army Reserve until retiring in 2017. After leaving active duty, he earned an associate's degree in applied science and a bachelor's degree in technology management. He has been married since 1987 and has three children, one of whom is still his dependent. (GX 1; Tr. 46 – 48)

Between 2003 and 2017, Applicant was sent at least five times by his civilian employer to work in direct support of U.S. military operations in Iraq, Afghanistan, Kuwait, and Qatar. He disclosed in his 2018 e-QIP that he filed his federal and state income tax returns late for the 2012, 2013, and 2017 tax years, and that he owed a total of \$4,100 in unpaid taxes for those years. Information obtained by investigators and adjudicators during the ensuing background investigation showed that Applicant did not file his federal income tax returns on time for the 2013, 2016, and 2017 tax years. (Answer; GX 1; GX 2; AX A – H; AX J; Tr. 48, 85 – 86)

Information obtained during Applicant's background investigation shows that he owed \$18,132.85 for unpaid taxes in the 2014 through 2016 tax years. At hearing, Applicant provided information showing that, as of December 9, 2020, he owed \$28,451 for unpaid taxes in the 2014 through 2018 tax years. The same information shows that, as of August 4, 2021, he owed \$19,022 in unpaid taxes for the 2016, 2017, and 2018 tax

years, the 2014 and 2015 tax year debts having been satisfied. In July 2015, Applicant entered into a repayment agreement with the IRS to make \$151 monthly payments to resolve his tax debt. That repayment agreement subsequently has been renewed and adjusted to reflect either subsequent late filings or additional requests to pay through installments or both. His monthly payments were increased with each renewal, first to \$191, then to \$250. He now pays \$350 each month. His tax debts also have been reduced through involuntary diversion of any tax refunds he was due after filing. (Answer; GX 2; AX A – J, AX L; Tr. 66 – 78, 92)

Applicant asserts that he was late in filing some of his federal and state returns starting in 2013 because he found himself owing additional taxes as a result of increased income from working overseas. He was not trying to avoid paying taxes but was confused about how he should file his returns given his unexpected payment obligation even though his 2013 filing requirements were no different than his filing requirements when he worked overseas the previous ten years. He also claims he did not know how to change his income tax withholdings to avoid having to pay additional taxes after filing, and he has acknowledged that he did not properly manage his finances until recently. Nonetheless, as discussed above, after filing his 2013 returns, he started resolving his filing discrepancies and established a repayment plan. He also started using a private tax preparer who helped him file his returns for the 2018, 2019, and 2020 tax years. Applicant is now current on all of his tax reporting obligations, and his tax preparer has helped him adjust his income tax withholdings to a level appropriate for his income so that he is having sufficient tax withheld from his pay throughout the year. (Answer; GX 2; AX F; AX J; AX L; Tr. 43 – 44, 49 – 52, 60 – 66, 81, 85 – 87)

Applicant's current finances are otherwise sound. He has no other outstanding debts, and he brings home in excess of \$10,000 each month after taxes and other deductions. He estimates that, after expenses, he has about \$2,500 remaining each month, funds which he invests in a portfolio worth about \$400,000. He acknowledged at his hearing that he has the means with which to resolve his current tax debt. He prefers not to do so, explaining that he is "kind of okay with [paying the IRS] \$370 a month." (Tr. 53 – 59, 94 – 96)

Applicant has an excellent reputation in the workplace and his community. Associates who have known and worked with him for most of the past 25 years, and who are aware of his tax problems, praise Applicant for his honesty, integrity, trustworthiness, and professionalism. (AX K)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the

factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest for an applicant to either receive or continue to have access to classified information. (See Department of the Navy v. Egan, 484 U.S. 518)

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government’s case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion. (See Egan, 484 U.S. at 528, 531) A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. (See Egan; AG ¶ 2(b))

## **Analysis**

### **Financial Considerations**

Available information in the form of IRS transcripts provided in response to DOD CAF interrogatories and in his hearing exhibits, shows Applicant did not file his federal income tax returns on time for the 2013, 2016, and 2017. He has since brought his filing status current. Available information also shows that Applicant incurred a \$28,451 debt for federal taxes not timely paid with his returns for the tax years 2014 through 2018. He is now current on his tax reporting obligations; however, he still owes about \$19,000 in unpaid taxes and is unwilling to resolve his tax debts more expeditiously outside of his

agreement with the IRS despite having the means to do so. This information reasonably raises a security concern about Applicant's finances that is articulated at 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. 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.

As amended, the allegation at SOR 1.b is resolved for Applicant because it is subsumed by the more informative allegation at SOR 1.c. The allegation at SOR 1.a also is resolved for Applicant because his filing deficiencies have been corrected, and it appears he remains current in his more recent tax filings. Nonetheless, as it pertains to SOR 1.c, as amended, available information requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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.

By contrast, Applicant's response to the Government's information requires consideration of the following pertinent AG ¶ 20 mitigating conditions:

- (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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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.

AG ¶ 20(a) does not apply because Applicant's tax debts are multiple and recent, in that they remain largely unpaid. AG ¶¶ 20(d) and 20(g) apply because Applicant began using installments starting in 2015 to resolve his unpaid taxes. However, the benefit of those mitigating conditions is attenuated by the fact that Applicant chooses not to use the resources he has at hand to more timely resolve his tax debts. At the current \$370 monthly rate of repayment, his \$19,000 remaining balance will take another 51 months to resolve.

AG ¶ 20(b) does not apply because Applicant did not show that his failure to pay his taxes as required arose from circumstances beyond his control. Making more money usually means having to pay more taxes. Although he began repayment agreements with the IRS in 2015, and he adjusted his tax withholdings in 2017, he has not acted to resolve his tax debt consistent with the financial resources at his disposal. As of the close of the record, he still owed past-due taxes from five years earlier in 2016, yet despite having the means to resolve his tax debts almost immediately, his current intent is to make the IRS wait another four to five years for the rest of the taxes owed. His choice to continue investing his disposable income rather than prioritizing resolution of his tax debt weakens any claim that he acted responsibly in the face of any unforeseen circumstances. Applicant's stated reasons for not meeting his tax payment obligations were not plausible. Even if they were, they would not support a finding that his tax problems arose from circumstances beyond his control. On balance, he has not mitigated the security concerns raised under Guideline F.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). The favorable recommendations from Applicant's long-time friends and associates are not sufficient to overcome the security concerns raised by his ongoing tax debt. Those security concerns remain unresolved and sustain doubts about Applicant's suitability for continued access to classified information. Because protection of the interests of national security is the principal focus of these adjudications, those doubts must be resolved against the Applicant's request for clearance.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR (as amended), as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE  
Administrative Judge