



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 [Name Redacted] ) ISCR Case No. 20-01016  
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 Applicant for Security Clearance )

**Appearances**

For Government: Carroll J. Connelley, Esquire, Department Counsel  
For Applicant: *Pro Se*  
06/15/2022

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**Decision**

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HOGAN, Erin C., Administrative Judge:

On November 4, 2020, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992); and the adjudicative guidelines (AG) effective within the Department of Defense on June 8, 2017.

On January 18, 2021, Applicant answered the SOR and requested a decision based on the administrative record. On March 14, 2022, Department Counsel prepared a File of Relevant Material (FORM). Applicant received the FORM on March 22, 2022. Applicant had 30 days to submit matters in response to the FORM. He did not submit matters. The case file was forwarded to the DOHA Hearing Office on May 6, 2022. The case was assigned to me on May 16, 2022. The Government attached four exhibits to the FORM which are admitted as Government Exhibits (Gov) 1 – 4. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

## Findings of Fact

Applicant is a 57-year-old employee of a DoD contractor seeking a security clearance. He has worked for his current employer since October 2018. He was divorced in 2012 and remarried in 2013. He has one adult child. (Item 2)

On December 21, 2018, Applicant submitted a security clearance application. (Gov 1) A subsequent security clearance background investigation revealed Applicant had the following financial issues: a \$5,737 account owed to a jewelry store that was placed for collection (SOR ¶ 1.a: Item 2 at 40; Item 3 at 5; Item 4 at 1, 2); Applicant owes the Internal Revenue Service (IRS) approximately \$13,230 for delinquent income taxes from tax years 2014, 2017, and 2018; (SOR ¶ 1.b: Item 2 at 38-39; Item 3 at 10-11, 17); and Applicant failed to timely file federal income tax returns for tax years 2015 and 2016. (SOR ¶ 1.c: Item 3 at 5, 20)

In his response to the SOR, Applicant denied owing the delinquent jewelry store account. (SOR ¶ 1.a) He indicated the account was paid off on January 1, 2022. He did not provide documentary proof that the debt was paid off in full. He denies that he has not filed his federal income taxes for tax years 2015 and 2016. (SOR ¶ 1.c) He claims the tax returns were filed in January 2022. Applicant did not provide documentary proof that his federal income tax returns were filed. Applicant admits that he still owes the debt for delinquent federal income taxes. (SOR ¶ 1.b) Applicant states that he owed the IRS a lot more. He has made payments towards his delinquent federal income tax debts with varying consistency between December 2015 to September 2019. (Item 3 at 17-18) However, Applicant did not provide documents indicating the current balance and status of his federal tax debt.

Applicant listed his federal tax debts and the delinquent jewelry store account on his security clearance application. He encountered financial problems because of low periods of employment in 2018 and his wife suffered from an illness. He had no health insurance and used his money to pay his wife's medical debts. During this time, the jewelry store account became delinquent. Applicant claims he has been making monthly payments towards this debt since obtaining full-time employment in October 2018. He did not provide corroborating evidence such as receipts, or a payment history to verify his payments toward this account, or proof of its resolution in January 2022. (Item 3 at 5-6)

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are useful 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 access 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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).

#### **GUIDELINE F: Financial Considerations**

The security concern relating to the guideline for Financial Considerations 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. 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.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case 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 has a history of financial problems which are primarily delinquent federal income taxes totaling approximately \$13,230 for tax years 2014, 2017, and 2018. He also owes approximately \$5,737 for a delinquent jewelry store debt that was placed for collection. Finally, he did not file his federal income tax returns for tax years 2015 and 2016. AG ¶¶ 19(a), 19(c), and 19(f) apply to Applicant's case.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g. ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018).

With regard to Applicant's federal tax debts, the emphasis of the DOHA Appeal Board on security concerns arising from tax cases is instructive. See ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016) (reversing grant of security clearance and stating, "His delay in taking action to resolve his tax deficiency for years and then taking action only after his security clearance was in jeopardy undercuts a determination that Applicant has rehabilitated himself and does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation's secrets."); ISCR Case No. 14-01894 at 2-6 (App. Bd. Aug. 18, 2015) (reversing grant of a security clearance and emphasizing the applicant's failure to timely file and pay taxes); See also ISCR Case No. 14-03358 at 3, 5 (App. Bd. Oct. 9, 2015) (reversing grant of a security clearance, and stating "A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly, failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information.").

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (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 ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions 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; 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 financial problems are ongoing. His federal tax debt remains unresolved. Applicant provided no proof that he is making regular payments towards this debt. Although he claims to have filed his 2015 and 2016 federal tax returns and resolved his delinquent jewelry store account, he did not provide documentary proof. For this reason, these issues remain unresolved.

AG ¶ 20(b) partially applies because Applicant's financial situation was adversely affected by his under-employment as well his wife's illness. However, he neglected his responsibilities to insure that his federal income tax returns were filed and paid in a timely manner. I cannot conclude that he acted responsibly under the circumstances. For this reason, AG ¶ 20(b) is given less weight.

I cannot apply AG ¶ 20(c) because Applicant did not present evidence that he attended financial counseling. His federal income tax issues and the jewelry store account remain unresolved. I cannot conclude his financial situation is under control.

AG ¶ 20(d) partially applies pertaining to the federal tax debt alleged in SOR ¶ 1.b. Applicant was making payments towards his federal tax debt related to his 2014 taxes owed. However, it appears he stopped making steady payments towards the tax debt. Applicant claims the jewelry store account alleged in SOR ¶ 1.a was paid in January 2022. He did not provide documentation corroborating this assertion. Applicant appears to have good intentions, but he failed to provide sufficient information documenting his good-faith effort to resolve his debts.

AG ¶ 20(g) partially applies in that Applicant was making payments on a payment plan with the IRS pertaining to his federal tax debt. However, he stopped making regular monthly payments to the IRS. While Applicant states that federal tax returns for tax years 2015 and 2016 were filed in January 2022, he provided no additional documentary proof that the tax returns were filed. Applicant's federal tax issues remain unresolved.

### **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 guidelines 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 Applicant's employment history as a federal contractor since 2018. I considered that he provided full disclosure about his financial situation and his tax debts on his security clearance application. I considered Applicant's household income was adversely affected by periods of under-employment as well as his wife's illness. However, at the close of the record, his federal tax debts remain unresolved and there is no proof he filed the federal tax returns for tax years 2015 and 2016. Security concerns under financial considerations are not mitigated.

### **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.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 security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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ERIN C. HOGAN  
Administrative Judge