



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 19-02313 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Raashid S. Williams, Esq., Department Counsel  
For Applicant: *Pro se*

08/29/2022

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**Decision**

\_\_\_\_\_

HYAMS, Ross D., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations security concerns arising from his charged-off and delinquent debts. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant last submitted a security clearance application (SCA) on October 31, 2017. On January 3, 2020, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant answered the SOR on February 13, 2020, and submitted a supplemental answer around October 15, 2020. In his answer, he requested a hearing before an administrative judge. After a delay because of the COVID-19 pandemic, the case was assigned to me on April 5, 2022.

The hearing was convened by video teleconference on June 6, 2022. Government Exhibits (GE) 1 through 6, and Applicant’s Exhibits (AE) A-B were admitted in evidence without objection. After the hearing, I held the record open to provide Applicant with the opportunity to submit additional documentary evidence. He timely submitted documents that I marked as AE C-J, and admitted in evidence without objection.

## Findings of Fact

In his answer, Applicant admitted SOR allegations ¶¶ 1.c-1.e and 1.g, and he denied ¶¶ 1.a, 1.b, 1.f, 1.h, and 1.i. His admissions are incorporated into my findings of fact. Based on my review of the pleadings, evidence submitted, and testimony, I make the following additional findings of fact:

Applicant is 52 years old. He was married in 1992, and has one adult son. He served on active duty in the United States Marine Corps from 1989 – 1993, and in the U.S. Army from 1994 – 2010. His service included overseas deployments in a combat zone. He is now retired from the military. Applicant has been consistently employed since 2012. His only period of unemployment was for three months in 2011. Since 2013, he has worked for a defense contractor as a technical support engineer. (Tr. 17-21; GE 2)

The SOR alleges failure to timely file federal and state income tax returns, and seven delinquent debts, totaling about \$27,534. The status of the allegations is as follows:

SOR ¶¶ 1.a and 1.b allege that Applicant failed to timely file his 2016 and 2018 federal and state income tax returns. In his 2019 background interview with a government investigator, he reported that he failed to file his 2016 income tax returns because he was traveling for work at the time they were due, and then forgot about filing and paying them. He told the investigator that he would file his 2016 return in 2019. Applicant provided a different narrative at the hearing, he stated that his 2016 returns were filed on time, but he did not submit payment along with the filing. He did not provide any documentation substantiating this. He also reported that he had an extension to file his 2018 returns, and that he filed them in 2019. He asserted that his tax return filings for the last five years have been timely. The Government did not submit sufficient evidence to show that Applicant failed to timely file his 2018 federal or state returns, but there is sufficient evidence to find that he failed to timely file his 2016 federal and state returns. (Tr. 22-25; 44-49; GE 3)

SOR ¶ 1.c is a federal tax debt for \$7,266 for tax year 2016. Applicant stated that he contacted the IRS in 2019 to set up a payment plan. His tax account balance records show that he has been making monthly payments of \$200 to the IRS since November 2019, and the current balance for his 2016 tax debt is \$1,975. (Tr. 22-24, 44-49; GE 3; AE A)

SOR ¶ 1.d is a charged-off auto loan for \$10,988. Applicant was unemployed for three months in 2011, after the employment contract he was working on ended. He stated that his next job paid less, and that he became unable to make his car loan payments. In 2012, his car was repossessed. This debt is unpaid. He did not address this debt until 2019, when he made a settlement offer to the creditor. However, he never followed through with any payments. (Tr. 27-29, 49-50; GE 2, 3, 5)

SOR ¶ 1.e is a charged-off auto loan for \$3,634. Applicant purchased a car in 2013, and it was totaled in an accident in 2016. While his car insurance covered the majority of the loss, he claims that his gap insurance did not cover the difference. He claims that he

disputed the coverage with the gap insurance provider, but he did not provide sufficient documentation of the dispute. This debt is unpaid. He did not address this debt until 2019, when he made a settlement offer to the creditor. However, he never followed through with any payments. (Tr. 29-32, 49-51; GE 3, 5, 6)

SOR ¶ 1.f is a debt in collection for cellular phone services for \$2,007. Applicant claimed that this debt resulted from his switch to another service provider in 2018. He claimed that he resolved this debt in 2020, but the settlement documentation he provided is from 2022. This debt is now resolved. (Tr. 32-33, 51-52; GE 3, 5; AE B)

SOR ¶ 1.g is a charged-off account with a jewelry store for \$1,702. The account has been delinquent since 2018. Applicant claimed that this account was paid, but he did not provide sufficient documentation to show that it has been resolved. (Tr. 33-36, 53; GE 5, 6; AE C)

SOR ¶ 1.h is a debt in collection for the Department of Veterans Affairs for \$898. It has been delinquent since 2012. Applicant thought it might have originated as an overpayment. In his testimony, he claimed that this debt was paid through automatic deduction from his military retirement pay. However, the post-hearing documentation he provided shows a settlement agreement for this debt from June 2022, and no documentation showing that any payments had been made. (Tr. 37-39; 53-54; GE 3, 5, 6; AE D)

SOR ¶ 1.i is a debt in collection for cellular phone services for \$1,039. Applicant stated that he did not know why this debt became delinquent in 2017, and claims that he paid it in approximately February 2020. However, he did not provide sufficient documentation showing that it has been paid. (Tr. 39-41, 54; GE 3, 4, AE C)

In addition to the SOR debts, the record shows that Applicant owes the IRS \$1,006 for his 2021 taxes. He claims that the IRS assessed this amount after filing his tax return. He also has a \$2,193 debt for his state taxes. He set up a payment arrangement for his state taxes on May 31, 2022, but did not provide sufficient documentation showing that he has made any payments towards this debt. (Tr. 22-25, 43-49; AE A, H)

Applicant stated that he earns about \$90,000 annually. He reported that he does not have a budget, and he failed to provide any information about his monthly expenses. He asserted that he has chosen to pay his current expenses over his delinquent debts. He claims that he does not have the means to resolve his bigger debts because he is making \$200 monthly payments on his tax debt. He also reported that he does not have a savings account, but that has about \$70,000 in his 401K account. (Tr. 41-43, 54 -58)

### **Policies**

This case is adjudicated 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 (AG), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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(c), 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."

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 the applicant or proven by Department Counsel." The applicant 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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**

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (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.

The SOR allegations (except for the 2018 tax allegations) are established by the interrogatory response, tax records, credit reports, and Applicant's admissions. AG ¶¶ 19(a), 19(c), and 19(f) apply.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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) applies to SOR ¶¶ 1.a and 1.b because applicant has filed his federal and state income tax returns on time since 2017. However, it does not apply to ¶ 1.c because this tax debt is still ongoing, and he has new delinquent federal and state tax debts. It also does not apply to the consumer debts in ¶¶ 1.d – 1.i because these debts (except for 1.f) are ongoing, and he did not provide sufficient documentation showing that any of them became delinquent under such circumstances that it is unlikely to recur. He provided no documentation of his current financial situation, evidence which might establish his ability to address his debts responsibly. His failure to pay his charged-off and delinquent debts is recent, not isolated, and is ongoing. This continues to cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) partially applies to the auto loan charge-offs in ¶¶ 1.d and 1.e. While Applicant claimed these debts occurred due to circumstances beyond his control, he did not provide sufficient documentation showing that he acted responsibly in regard to these debts. There is insufficient evidence to show that his tax debt or other consumer debts (¶¶ 1.c, 1.f - 1.i) occurred under circumstances beyond his control, and that he acted responsibly under the circumstances. AG ¶ 20(b) does not fully apply.

AG ¶ 20(d) applies to ¶ 1.c because Applicant has been making monthly payments on his 2016 tax debt, and to ¶ 1.f because he has resolved that debt. AG ¶ 20(d) does not apply to ¶¶ 1.d, 1.e, 1.g – 1.i because he did not provide sufficient documentation to show that he has undertaken a good-faith effort to repay or resolve the remaining SOR debts.

AG ¶ 20(g) applies to ¶¶ 1.a – 1.c because Applicant has filed his delinquent federal and state returns for 2016, and has timely filed his tax returns since. He also set up a payment plan with the IRS, and has been consistently making monthly payments on his delinquent taxes for 2016.

### **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 relevant 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 also considered the military records provided by Applicant, and his letters of recommendation. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Applicant has new tax debts, and did not provide sufficient evidence to mitigate the security concerns arising out of five of Applicant's unresolved charged-off and delinquent consumer debts under Guideline F.

### **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:  | For Applicant     |
| Subparagraphs 1.d – 1.e:  | Against Applicant |
| Subparagraphs 1.f:        | For Applicant     |
| Subparagraphs 1.g – 1.i:  | Against Applicant |

### **Conclusion**

It is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Ross D. Hyams  
Administrative Judge