



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



In the matter of:	)	
	)	
	)	ISCR Case No. 19-02664
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

09/30/2022

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**Decision**

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HYAMS, Ross D., Administrative Judge:

The Statement of Reasons alleges security concerns under Guideline F (financial considerations) due to Applicant’s various delinquent debts and Guideline E (personal conduct) due to his alleged failure to disclose his debts on his security clearance application. Personal conduct security concerns are resolved. Applicant did not provide sufficient information to mitigate the financial considerations security concerns arising from his delinquent debt and tax debt. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on August 9, 2018. On December 6, 2019, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. Applicant answered the SOR on an undetermined date, and requested a hearing before an administrative judge. After a delay because of the COVID-19 pandemic, the case was assigned to me on June 13, 2022.

On June 27, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for July 14, 2022. The hearing convened as scheduled. The parties offered Government Exhibits (GE) 1-6 and Applicant’s Exhibits (AE) A-C,

respectively, and I admitted them in evidence without objection. After the hearing, I held the record open until August 1, 2022, to provide Applicant with the opportunity to submit additional documentary evidence. He timely submitted documents that I marked as AE D-G, and admitted into evidence without objection. The record closed on August 1, 2011. DOHA received the hearing transcript (Tr.) on July 21, 2022.

### **Amendment to the SOR**

At the hearing, one of Applicant's exhibits (AE B) was his IRS account balance. This exhibit shows that Applicant has an unpaid IRS tax debt of \$22,926 for tax years 2014, 2015, and 2021 combined. Department Counsel had not seen this information prior to the hearing, and moved to amend the SOR, pursuant to DoD Directive 5220.6 E3.1.17 of the Additional Procedure Guidance of the Directive, and add the following allegation:

¶ 1.i. You are indebted to the federal government in the approximate amount of \$22,926 for unpaid taxes for tax years 2014, 2015, and 2021.

Applicant objected to the motion because he said that he was just trying to be honest. His objection was overruled because the basis for the amendment was a document that he provided. The motion to amend the SOR was granted. Applicant admitted new allegation ¶ 1.i. I left the record open until August 1, 2022, to provide Applicant an opportunity to respond to the amended allegations and to submit documentary evidence. See ISCR 02-23365 at 5 (App. Bd. Mar. 22, 2004) (“[A]s long as there is fair notice to an applicant about the matters that are at issue in his case, and the applicant has a reasonable opportunity to respond, a security clearance case should be adjudicated on the merits of the relevant issues and should not be overly concerned with pleading niceties.”); See also ISCR Case No. 05-05334 at 4 (App. Bd. Jan. 10, 2007) (“The government and the Judge are free to amend the SOR at any time, but must permit Applicant time and an opportunity to respond to the adverse reason upon which any adverse decision is based.”). In his post-hearing submission, Applicant did not provide any further information about this tax debt. (Tr. 24-29, 42-44, 64-67; AE B)

### **Findings of Fact**

In his answer, Applicant admitted all the SOR allegations (¶¶ 1.a-1.h and 2.a). 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 37 years old. He was married in 2021. He has a minor son and step-son with his wife and an adult daughter from a prior relationship. He has taken college courses, but has not earned a degree. He has worked as a material handler for a defense contractor since 2009. He stated that he previously held a security clearance, but it is no longer active. (Tr. 18-20; GE 1)

Applicant cited different reasons for his financial problems and the debts in the SOR. He reported that a few years after his daughter was born, he was required to pay monthly child support and part of her daycare expenses, which impacted his finances. He

paid child support between about 2004 and 2020, and claimed that in 2014 it increased to about \$1,000 monthly for the last five years. (Tr. 29-32, 68-69)

Applicant reported that for a time he was living beyond his means, had maxed out his credit cards, and was getting behind on his bills. In the 2013-2014 timeframe, he was suspended from work without pay on a few occasions, for mistakes he made at work. In about October 2020, his girlfriend (now his wife) lost her job, and he was the sole income earner in their household for about a year, until 2021. (Tr. 22, 61-62)

Under Guideline F, the original SOR alleges eight delinquent debts, including five student loans totaling about \$15,856, and three delinquent consumer debts totaling about \$4,981. Under Guideline E, the SOR also alleges that Applicant falsified material facts on his 2018 SCA. The status of the allegations is as follows:

SOR ¶¶ 1.a, 1.c, 1.d, and 1.g are student loans in collection totaling \$13,308, and ¶ 1.e is a student loan that has been charged off for \$2,548. Applicant attended college classes from about 2010-2013. He stated that after finishing his courses, he was unable to afford the loan payments. He reported that he has never made any payments on these loans. He claimed that he requested a payment plan a couple of times, but never followed through with payments. These student loans are unresolved. In a post hearing submission, he provided payoff and settlement information for a debt with a student loan creditor that was not alleged in the SOR. He did not provide evidence showing that he has made payments to resolve this other student loan. (Tr. 20-22, 35-38, 41, 63-64; GE 2, 4, 5)

SOR ¶ 1.b is an auto loan placed for collection for \$4,527. Applicant stated that the vehicle was totaled in an accident in 2020. After the accident, he never reached out to the insurance company or the lender to resolve this debt. This debt remains unpaid. (Tr. 20-21, 38-40, 67-68; GE 4, 5).

SOR ¶ 1.f is a credit card placed for collection for \$302. It has been delinquent since about 2013. Applicant stated that he has no recollection if it was ever paid, and he failed to provide any documentation showing that it has been resolved. (Tr. 22, 40-41; GE 4, 5)

SOR ¶ 1.h is a gym membership account placed for collection for \$152. Applicant stated that he was unable to handle the expense after joining. He stated that he last reached out to the creditor in 2017, and has not taken any action since then. This debt is remains unpaid. (Tr. 22, 41-42; GE 5)

SOR ¶ 1.i is an unpaid federal income tax debt for \$22,926 for tax years 2014, 2015, and 2021. The debt is split almost evenly for each tax year. Applicant stated that he was traveling to another state for work for a few weeks in 2015 and 2016 when his 2014 and 2015 tax returns needed to be filed. He reported that he was living with his mother at the time, and that she was supposed to file the returns for him while he was on travel. She did not file the returns, and he did not confirm the filings with her. He stated that he learned that these two tax returns had not been filed and that he owed money for

these years in 2016 or 2017. He learned that he owed money for his 2021 taxes the day prior to the hearing, when he checked his IRS account balance. He reported that his 2014 and 2015 tax returns are still unfiled, and that he has no payment arrangement with the IRS to resolve the debt. (Tr. 24-29, 42-44, 64-67; AE B)

SOR ¶ 2.a alleges that Applicant falsified material facts on his 2018 SCA by failing to report his financial delinquencies involving routine accounts. His narrative in his SOR answer and testimony were the same. He said that his failure to report the debts was not intentional, because he was rushing to complete his SCA. He claimed that since he works in the tool room, he was repeatedly interrupted while completing his SCA. He also asserted that he read the questions too fast and answered the questions without understanding them. He reported some of his delinquent debts in his background interview with a government investigator before being confronted with his other debts. (Tr. 11-12, 23, 56-68; GE 1, 2)

Applicant reported that he earns about \$43 an hour, which has increased from about \$20 an hour when he started in 2009. He and his wife purchased a home in about 2019, and their monthly mortgage is about \$2,000. They do not have a written budget, and he failed to provide any other information about their monthly income and expenses. He reported that they do not have any funds in their joint savings account, but that he has about \$80,000 in his 401K retirement account. He has not had credit counseling. His wife handles their finances, and has recently started a credit repair business. He reported that she has personal debt that she is trying to address as well. (Tr. 45-49, 62)

## **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 are established by the credit reports, IRS account balance record, 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; 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. Applicant failed to provide sufficient documentation showing that any of alleged debts are resolved, or that any became delinquent under such circumstances that are unlikely to recur. He failed to provide sufficient documentation of his current financial situation, evidence which might establish his ability to address his debts responsibly. His failure to pay his delinquent debt, charged-off debt, and his past-due tax debt is recent, ongoing, and not isolated. This continues to cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) partially applies because in 2020, Applicant's wife lost her job, and he was the sole earner in their household for about a year. However, all of the alleged debt became delinquent prior to her job loss, except for his tax debt for 2021. Applicant did not provide sufficient evidence showing that his debts occurred largely due to circumstances beyond his control or that he acted responsibly under the circumstances. AG ¶ 20(b) does not fully apply.

AG ¶ 20(g) does not apply. Applicant has significant unresolved federal income tax debt as well as two years of unfiled federal income tax returns. He has known about his tax issues for several years, and he has not made any payment arrangements with the IRS.

### **Guideline E, Personal Conduct**

AG ¶ 15 details the personal conduct security concern:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes...

I have considered the disqualifying conditions for drug involvement under AG ¶ 16 and the following are potentially applicable

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

SOR ¶ 2.a alleges that Applicant falsified his 2018 SCA by failing to report his financial delinquencies involving routine accounts. Applicant testified that this failure was a mistake, and not intentional. I found his explanation credible. The record also shows that he reported delinquent debt and tax debt in his background investigation before being confronted. The Government did not provide sufficient evidence showing that this was a deliberate omission, concealment, or falsification. ¶ 2.a is not established, and is found for Applicant.

### **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 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 for a security clearance. While personal conduct security concerns under Guideline E are resolved, Applicant did not provide sufficient evidence to mitigate the security concerns arising out of Applicant's delinquent taxes and other 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.i:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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