



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



In the matter of: )  
)  
) ISCR Case No. 19-03701  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: *Pro Se*  
09/26/2022

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**Decision**

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HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns raised by his state and federal tax issues and other delinquent debts. National security eligibility for access to classified information is denied.

**History of the Case**

Applicant submitted a security clearance application (SCA) on October 16, 2018. On April 29, 2020, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). Applicant received the SOR on May 18, 2020, and in his undated response he indicated that he “did not believe a hearing before an Administrative Judge [was] required, unless recommended by the DoD.” (Answer) A Department Counsel sent him an email on December 14, 2020, to clarify his undated response and his two options. Applicant responded on January 5, 2021, and elected to have a hearing.

Due to the COVID-19 pandemic the processing of Applicant’s case was delayed, and the case was assigned to me on February 23, 2022. On March 8, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 30, 2022. I convened the hearing as scheduled via video teleconference on Microsoft Teams. I marked the email correspondence related to Applicant’s decision to have a hearing as Hearing Exhibit (HE) I; the March 3, 2022 case management order as HE II; Department Counsel’s May 27, 2021 discovery letter as HE III; and Department

Counsel's exhibit list as HE IV. Government Exhibits (GE) 1 through 5 and Applicant Exhibits (AE) A through E were admitted without objection, and Applicant testified. DOHA received the transcript (Tr.) on April 6, 2022. At the hearing, per Applicant's request, I held the record open until April 20, 2022, to allow him to submit additional documentation. He did not submit any post-hearing documentation, and the record is closed.

### **Findings of Fact**

Applicant is 41 years old and has no children. He was married to his first wife from August 2004 to June 2005, and married his second wife in February 2020. Since graduating high school in 1999, he has attended a number of college courses but does not know how many credits he has earned. He has worked for his current employer since April 2021, and, shortly before the hearing, he was promoted to crew supervisor at the local airport. This company is not sponsoring his security clearance, and this is his first security clearance application. (GE 1; GE 2; Tr. 12, 20-21, 39-1; AE A)

The SOR alleged Applicant failed to file his state and federal income tax returns in a timely manner, as required, for tax years (TY) 2013 through 2018. Additionally, he failed to pay, as required, his federal income taxes for TY 2015 and 2016, and he owes \$12,543 to the IRS. Applicant admitted these SOR allegations and claimed he has filed all relevant state and federal income tax returns and established accepted payment plans with the IRS and State A. The SOR also alleged Applicant has seven delinquent non-tax debts totaling an additional \$8,950. He admitted these seven allegations as well.

In Applicant's October 2018 SCA, he disclosed he failed to file his federal and state income tax returns for TY 2013 through 2017, as required. He estimated he owed approximately \$1,000 for each TY, and his explanation for failing to file his returns and pay his taxes was, "Money was extremely tight and I was irresponsible." He also indicated he had been "in contact with the IRS and [he was] going to ... establish monthly payments." In his SCA, he also revealed a number of other delinquent debts, and claimed they were the result of slow work, irresponsible behavior, and issues related to his 2005 divorce. (GE 1 at 35-42; Tr. 22)

In February 2019, Applicant was interviewed by a Government investigator, and his financial issues were discussed. At that time, he had not resolved his outstanding tax issues. Additionally, Applicant acknowledged the debt alleged in SOR ¶ 1.d, a charged off credit card account for \$6,722, and that he had not taken steps to resolve or address it. The debts alleged in SOR ¶¶ 1.e through 1.j were also discussed. The alleged non-tax-related debts appear in Applicant's 2018 and 2019 credit bureau reports (CBR), but they do not appear in his March 2022 CBR. They were placed for collection between approximately 2012 and 2018. (GE 2 at 11-21; GE 3-5)

DOHA sent Applicant interrogatories at an unspecified date, and he responded on January 31, 2020. In his response, he adopted the summary report of the February 2019 security interview, discussed *supra*, and he answered additional questions regarding the status of his unfiled returns and delinquent taxes. He claimed he filed his federal income tax returns for TY 2013 through 2018 on January 23, 2020, but provided no substantiating

documentation. He was asked to provide copies of his IRS account transcripts for TY 2011 through 2018, and was given information as to how to obtain the transcripts. He did not provide copies of the transcripts in his response to the interrogatories, in his Answer to the SOR, at the hearing, nor did he provide post-hearing submissions, despite his request to leave the record open. In his interrogatory response, he admitted that he had not filed his state income tax returns for TY 2012 through 2018. (GE 2 at 24-26; Tr. 15, 25-26)

In Applicant's Answer to the SOR, he indicated his financial issues were the result of being in the construction industry that caused a fluctuation in his income. He provided a copy of an April 17, 2020 Internal Revenue Service (IRS) online payment agreement (OPA) in which he agreed to pay by Electronic Funds Transfer (EFT) \$284 monthly. This one-page document does not indicate when the agreement was established, how many payments have been made, or what tax years the payments are being applied toward. In his Answer, he indicated that his wife is an accountant, and she filed all of his federal tax returns for him on January 20, 2020, and his State A tax returns for him on February 6, 2020.

At the hearing, Applicant testified that he has filed all of his federal income tax returns, and he is paying \$221 monthly to the IRS. Additionally, he testified that his payments started in approximately January 2020, but he did not provide substantiating documentation at the hearing or after the hearing. He also testified that he has been making payments to State A (since an unrecalled date) for his outstanding taxes, and his payments are approximately \$35 or \$50 monthly. He provided no proof of these payments as well. (AE A; AE C; Tr. 24-27, 29-30)

Applicant's state and federal tax information is detailed in the chart below:

	<b>Answer Re: Federal Taxes</b>	<b>Status</b>	<b>Source</b>	<b>Answer Re: State Taxes</b>	<b>Status</b>	<b>Source</b>
<b>2013</b>	Return Dtd: 1/20/20 Mailed: 1/23/20 Salary: \$2,848 Refund: \$60	No Account Transcript; No proof of payment agreement; No proof that return was accepted; <u>No proof of filing</u>	Answer; GE 1; GE 2 at 11, 24; Tr. 27	No Proof of Return Submitted	Claims he has filed, but No Proof of Return Submitted	GE1; GE 2 at 11, 26; AE A; Tr. 32
<b>2014</b>	Return Dtd: 1/20/20 Mailed: 1/23/20 Salary: \$298 Refund: \$0	No Account Transcript; No proof of payment agreement; No proof that return was accepted; <u>No proof of filing</u>	Answer; GE 1; GE 2 at 11, 24; Tr. 27	No Proof of Return Submitted	Claims he has filed, but No Proof of Return Submitted	GE 1; GE 2 at 11, 26; AE A; Tr. 32

	<b>Answer Re: Federal Taxes</b>	<b>Status</b>	<b>Source</b>	<b>Answer Re: State Taxes</b>	<b>Status</b>	<b>Source</b>
<b>2015</b>	Dtd: 1/20/20 Mailed: 1/23/20 Business Income: \$30,415 Owes: \$6,158	Applicant provided no proof of Tax Return; Account Transcript; Proof of Payments toward Agreement; No proof that return was accepted; <u>Balance: \$4,924.47</u>	Answer; GE 1; GE 2 at 11, 24; AE B; Tr. 23-2	Dtd: 2/6/20 Mailed 2/6/20 <u>Owes \$992</u> Income: \$30,415	<u>Outstanding Balance: \$992</u>	GE 1; GE 2 at 11, 26; AE A; Tr. 30, 42-43
<b>2016</b>	No Docs, but claims he filed 1/20/20	Applicant provided no proof of Tax Return; Account Transcript; Proof of Payments toward Agreement; No proof that return was accepted; <u>Balance: \$11,322.67</u>	Answer; GE 1; AE B; Tr. 27, 41	Dtd: 2/6/20 Mailed 2/6/20 <u>Owes \$984</u> Income: \$33,989	<u>Balance as of 11/2021: \$372</u>	GE 1; GE 2 at 11, 26; AE A; AE C; Tr. 31, 42
<b>2017</b>	No Docs, but claims he filed 1/20/20	Applicant provided no proof of Tax Return; Account Transcript; Proof of Payments toward Agreement; No proof that return was accepted; Balance: \$0	Answer; GE 1; GE 2 at 11, 24; AE B; Tr. 27, 41	Dtd: 2/6/20 Mailed 2/6/20 <u>Owes \$165</u> Income: \$48,516	<u>Balance as of 11/2021: \$260</u>	GE 1; GE 2 at 11, 26; AE A; AE C; Tr. 31, 42; AE C
<b>2018</b>	No Docs, but claims he filed 1/20/20	No Return; No Account Transcript; No proof of payment agreement; No proof that return was accepted; Balance: \$0	Answer; GE 2 at 11, 24; AE B; Tr. 27, 41	Dtd: 2/6/20 Mailed 2/6/20 <u>Owes \$130</u> Income: \$53,695	<u>Balance as of 11/2021: \$209</u>	GE 2 at 11, 26; AE A; AE C; Tr. 31, 42; AE C
<b>2019</b>	Return Accepted: 3/28/20 Income: \$54,265 Refund: \$414	Not alleged	AE B; Tr. 42	<u>State A/Owes: \$136</u> State B/Refund: \$90	Not alleged	AE A; Tr. 42

According to the November 2021 IRS statement that Applicant provided at the hearing, his outstanding balance with the IRS is \$16,247.14. He testified that he is exploring bankruptcy to address his debts totaling over \$115,000, most of which are unalleged and do not appear as delinquent in his 2022 CBR. At the hearing, he submitted a spreadsheet containing some of alleged debts and his previously mentioned unalleged debts. He indicated that he had contacted several of his creditors, and if he had paid any of the debts, his wife would have scanned the proof of payments. Although the alleged SOR debts no longer appear on most recent CBR, he admitted that he has not paid or

resolved any of them, rather the creditors had “written off” or “forgiven” the debts. (AE D; Tr. 19, 32-38, 45)

Applicant currently earns \$35 an hour, his wife owns her own accounting business, and they keep their finances separate. He follows a written budget but did not provide a copy of it. He anticipates attending credit counseling if he files for bankruptcy, but he had not attended counseling as of the hearing date. (Tr. 39)

## **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 concern under Guideline F (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 . . . .

Applicant's admissions and the documentary evidence establish the following disqualifying conditions under AG ¶ 19:

- (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.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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.

Applicant's tax issues are current, ongoing, and recent. Although he testified that he has been making payments toward his state and federal tax debt since early 2020, he failed to provide substantiating documentation, despite the record being left open to allow him to do so. His failure to file his state and federal income tax returns in a timely manner was admittedly due to his own irresponsibility. The record still lacks concrete evidence that he filed his federal income tax returns for TY 2016, 2017, and 2018 and his state income tax returns for TY 2013 and 2014. He has failed to provide documentary evidence of payments toward a payment plan with the IRS or State A. His outstanding balance in November 2021 with the IRS was over \$16,000.

According to Applicant, his wife is an accountant and she helped him file all of the relevant state and federal income tax returns and establish payment arrangements. However, he failed to provide proof in his February 2020 response to interrogatories, in which he was specifically requested to obtain copies of his IRS account transcripts; his Answer to the SOR; at the hearing; and after the hearing. Applicant has not demonstrated he has acted responsibly under the circumstances to address and resolve his self-created tax issues in a timely manner. Additionally, he provided no proof of payment or resolution for any of his delinquent consumer debts. Mitigation under AG ¶¶ 20(a), 20(b), and 20(g) was not established.

### **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. Applicant's failed to file his state and federal income tax returns on time for at least seven years. Overall, he has not demonstrated the actions of a responsible, reliable, and trustworthy person. I conclude he did not meet his burden of proof and persuasion. He failed to mitigate the financial considerations security concerns.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:                      AGAINST APPLICANT

Subparagraphs 1.a - 1.j:                      Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national interest of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

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CAROLINE E. HEINTZELMAN  
Administrative Judge