



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



In the matter of: )  
)  
) ISCR Case No. 20-00417  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

October 27, 2022

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**Decision**  
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TUIDER, Robert, Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (financial considerations). National security eligibility is denied.

**Statement of the Case**

On March 28, 2019, Applicant submitted a Questionnaire for National Security Positions (SF-86). On September 11, 2020, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The SOR detailed reasons why the DCSA CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On February 24, 2021, Applicant submitted his Answer to the SOR. On June 17, 2021, Department Counsel was ready to proceed. On that same day, Department Counsel issued an Amendment to the SOR to Applicant detailing one additional allegation under Guideline F. On August 5, 2021, Applicant submitted his Answer to the Amendment to the SOR.

On August 5, 2021, the Defense Office of Hearings and Appeals (DOHA) assigned the case to another administrative judge. On August 24, 2021, DOHA issued a notice of hearing scheduling the hearing for September 30, 2021. On September 27, 2021, DOHA reassigned the case to me. On September 30, 2021, at Applicant's request, DOHA rescheduled his hearing October 13, 2021. The hearing commenced as scheduled. I admitted Government Exhibits (GE) 1 through 5 without objection. Applicant testified, but did not call any witnesses or offer any exhibits.

I held the record open until December 15, 2021, to afford Applicant an opportunity to submit additional evidence. (Tr. 53-63) Applicant did not submit any post-hearing evidence. However, on September 30, 2020, he sent an email to all parties concerned, marked as Hearing Exhibit (HE) I. HE I stated in part, "Please note, I am not seeking any additional extensions. I will resign my current position with [defense contractor], effective today." On October 18, 2021, DOHA received the hearing transcript. (Tr.).

## **Findings of Fact**

### **Background Information**

Applicant is a 56-year-old senior management specialist integrated master schedule, employed by a defense contractor since June 2021. He currently holds an interim Secret security clearance. He seeks a permanent Secret security clearance, which is a requirement of his continued employment. (Tr. 11-12, 14; GE 1)

Applicant graduated from high school in June 1985. He was awarded a Bachelor of Science degree in business management in March 2015, and was awarded a Master of Business Administration degree in April 2017. (Tr. 13; GE 1) Applicant served honorably in the U.S. Navy from April 1986 to April 2006, and retired as a yeoman first class (pay grade E-6) (Tr. 14-15; GE 1) While in the Navy, Applicant made five deployments while serving on the East Coast, and "about five, [or] six" deployments while serving on the West Coast. He estimated that "[a]bout 14 [to] 15 years" of his 20-year Navy career were at sea. (Tr. 15-17) He successfully held a clearance when he was in the Navy. (Tr. 12, 22)

Applicant was married from March 2001 to November 2002. That marriage ended by divorce. He remarried in October 2017. He has a 16-year-old daughter from a previous relationship, and has an informal arrangement with his daughter's mother to pay her \$750 a month for child support. (Tr. 17-21) Applicant's wife is employed full-time as a certified nursing assistant. (Tr. 46)

### **Financial Considerations**

The SOR lists four allegations, and the Amended SOR lists one allegation under this concern. The first one deals with his indebtedness to the Federal government for delinquent taxes, and the remaining four are a combination of delinquent student loans

and consumer loans, all of which are discussed in further detail below. (SOR ¶¶ 1.a – 1.e)

The SOR allegations are established by Applicant's March 28, 2019 SF-86; his April 11, 2019, November 6, 2019, and June 17, 2021 credit reports; his Office of Personnel Management (OPM) Report of Investigation (ROI) conducted from May 8, 2019 to June 14, 2019, to include summarized results of his Personal Subject Interview (PSI) on May 16, 2019; his February 24, 2021 SOR Response; and his August 5, 2021 Amendment SOR Response. (GE 1 through 5; SOR and Amendment Answers)

Applicant attributed his financial problems, in part, to his being unemployed from July 2017 to January 2018, and helping pay for his sister's funeral expenses. He did not recall when his sister passed away. He stated that his financial issues began in June 2017. (Tr. 33-36; GE 1, GE 2)

**SOR ¶ 1.a: Indebted to the Federal government for delinquent taxes in the approximate amount of \$29,000 for tax years 2015, 2016, and 2018.** Applicant admitted this allegation. In his SOR Answer, he stated, "Currently, I am working with my Financial Institute to refinance my home, in order to acquire the proper funds to completely pay off my unpaid debts to the Federal Government, as it is my responsibility to do so." (SOR Answer)

During his hearing, Applicant stated that he got into debt with the IRS because he was making too much money. He added that he was, "working it out with the IRS," and . . . "pay(ing) over \$400 a month that they take out of my account." He always filed his Federal income tax returns, but was unable to pay the taxes owed. His payment plan with the IRS covers all three years alleged. He did not know how much he currently owes the IRS. He filed his 2019 and 2020 Federal income tax returns on time, and owes additional taxes for both of those years. His current payment plan with the IRS covers delinquent taxes for all tax years owed. He initiated this payment plan with the IRS the "beginning of the year (2021)." (Tr. 21-26)

Applicant sought financial counseling in August 2021 at his bank and "came to the decision that selling my property would be the best thing to do and get – be a renter and just make the payments flat out and just get rid of all my debts that I owe." (Tr. 26, 44-45, 47-49) Applicant stated that he increased his deductions, "and it still doesn't help because of what I make and – so I just try to work the best that I can to get, you know, this taken care of and everything that needs to be done." (Tr. 27; GE 2) Applicant stated when he met with his financial counselor, his counselor told him that "because of [his] credit scores" it would take "about a year" to refinance his home. He stated that his house is worth \$500,000 and he owes \$340,000 on his mortgage. (Tr. 29-31) Applicant stated that he wants to sell his house within six months. (Tr. 48)

Applicant's IRS tax transcript reflects that he made a \$120 payment towards his 2015 taxes. According to his IRS tax transcript, he established a \$239.03 monthly payment plan by direct debit from his checking account payable towards his 2015 taxes starting in January 2019. His available tax transcripts only went to February 1, 2020.

He stated that he had increased that amount to \$400 a month, but did not provide any documentation verifying that amount. He was not sure whether he had paid all of his 2015 tax debt. (Tr.27-29; GE 2) Applicant did not submit any mitigating documentary evidence, during his hearing or post-hearing, pertaining to this allegation. **DEBT NOT RESOLVED.**

SOR ¶ 1.b: **Collection account with the Department of Education (DoED) in the approximate amount of \$21,306.** Applicant admitted this allegation. In his SOR Answer, he stated, “Currently, I am working with my Financial Institute to refinance my home, in order to acquire the proper funds to completely pay off my unpaid debts to the DEPT OF EDUCATION, as it is my responsibility to do so.” (SOR Answer)

During his hearing, Applicant reiterated what he said in his SOR Answer. (Tr. 31-33, 50) As of his hearing date, he had not looked into any student loan rehabilitation programs. His student loans had gone into a delinquent status in August 2019. (Tr. 34-35) Applicant did not submit any mitigating documentary evidence, during his hearing or post-hearing, pertaining to this allegation. **DEBT NOT RESOLVED.**

SOR ¶ 1.c – **Collection account with DoED in the approximate amount of \$8,286.** Applicant admitted this allegation. In his SOR Answer, he stated, “Currently, I am working with my Financial Institute to refinance my home, in order to acquire the proper funds to completely pay off my unpaid debts to the DEPT OF EDUCATION, as it is my responsibility to do so.” (SOR Answer)

During his hearing, Applicant reiterated what he said in his SOR Answer. (Tr. 31-33) As of his hearing date, he had not looked into any student loan rehabilitation programs. His student loans had gone into a delinquent status in August 2019. (Tr. 34-35, 50) Applicant did not submit any mitigating documentary evidence, during his hearing or post-hearing, pertaining to this allegation. **DEBT NOT RESOLVED.**

SOR ¶ 1.d – **Charged-off jewelry store account in the approximate amount of \$5,834.** Applicant admitted this allegation. In his SOR Answer, he stated, “As of this date, I have been working with [creditor] and making a monthly payment of \$200.00. The approximate remain balance is \$3,034.18. I am working with my Financial Institute to refinance my home, in order to acquire the proper funds to completely pay off my unpaid debts to [creditor], as it is my responsibility to do so.” (SOR Answer)

During his hearing, Applicant stated that he paid this debt in full. He incurred this debt to purchase wedding rings when he got married in October 2017. He further stated that he made payment arrangements with this creditor “[a]round 2020” to pay them \$237 a month in February 2021. (Tr. 37-38) Applicant did not submit any mitigating documentary evidence, during his hearing or post-hearing, pertaining to this allegation. **DEBT NOT RESOLVED.**

SOR ¶ 1.e – **Charged-off credit union automobile loan account in the approximate amount of \$24,942.** Applicant admitted this allegation. In his Amendment to SOR Answer, he stated, “I, [Applicant] am providing additional information that

explains that my intentions is [sic] to pay-off the remaining delinquent amount of \$24,942.00 in full, once I have completed and received the funds that I am due to receive from my Home Financing.” (Amendment to SOR Answer)

During his hearing, Applicant stated that he stopped making his \$719 monthly car payments when he lost his previous job and had a three-month gap of unemployment before starting his current job in June 2021. He claimed that he received “relief through the COVID,” and is in the process of rehabilitating this loan. (Tr. 38-44) Applicant did not submit any mitigating documentary evidence, during his hearing or post-hearing, pertaining to this allegation. **DEBT NOT RESOLVED.**

Applicant was alerted to the Government’s concerns regarding his indebtedness to the Federal Government and his other debts during his May 16, 2019 OPM PSI. During that interview, he stated that he was refinancing his house to address his debts. (GE 2) Applicant was also alerted to the Government’s concern regarding these financial issues when he received his September 11, 2020 SOR and his June 17, 2021 Amendment to the SOR.

Applicant’s annual salary is \$120,000, and his wife earns \$21 an hour as a full-time certified nursing assistant. (Tr. 46) His monthly mortgage payment is \$2,000. At the conclusion of Applicant’s hearing, I discussed his unresolved debts and my willingness to keep the record open to afford him an opportunity to submit additional mitigating evidence. In particular, I wanted to see further progress made with regard to paying off his tax debt. (Tr. 51-62)

## **Character Evidence**

Applicant has been the Commander of his local American Legion Post for the past three years, and has been a member of the American Legion for over 26 years. His responsibilities as Commander extend also to overseeing the Auxiliary that works with youth groups and provides services to the community. His Local Chapter also has a food giveaway to those in need every Saturday. (Tr. 50-51)

## **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 AG ¶ 2 describing 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 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 clearance 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**

### **Financial Considerations**

AG ¶ 18 articulates the security concern for financial problems:

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 Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes three disqualifying conditions that could raise a security concern and may be disqualifying 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 record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(f). Further inquiry is necessary about the potential application of any mitigation conditions.

The financial considerations mitigating conditions under AG ¶ 20 are as follows:

(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;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

(f) the affluence resulted from a legal source of income; 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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in [full cite here] *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. His debt remains a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)).

AG ¶¶ 20(b), 20(c), 20(d), and 20(g) are partially applicable. Applicant's unemployment from July 2017 to January 2018, and several months of unemployment before he started his current job, no doubt affected his income stream. However, available records indicate that Applicant has been employed for the most part since January 2018, almost four years before his hearing. The length of time that has elapsed since his loss of income does not justify his recent inability to repay his creditors or to remain in contact with them. He does not receive significant credit under these mitigating conditions because of his overall failure to act responsibly under the circumstances, especially with regard to his taxes, and the length of time that has elapsed since incurring these debts. Despite receiving financial counseling, there are no clear indications that the problem is resolved or under control. AG ¶¶ 20(e) is not applicable.

Of significant concern is the fact that Applicant did not timely pay his Federal incomes taxes from 2015 to 2018. He was alerted to the fact that his failure to pay his



taxes and his other indebtedness were of concern to the Government during his May 16, 2019 OPM PSI, and later when he received his September 11, 2020 SOR. Although he claims to have made payments to several of his creditors, the available credit reports do not corroborate his claims of payment nor has he produced any documentation that would verify such payments. He also claimed without corroboration, that he sought financial counseling through his bank and that his counselor was assisting him to refinance his house. In addition to his long-standing Federal tax arrearages, two student loans and two accounts remain unresolved. With so much outstanding debt, and absent additional post-hearing evidence, lingering doubts about Applicant's security eligibility remain.

While the following case is primarily directed to the timely filing of tax returns, the importance the Appeal Board places on fulfilling one's legal obligations is instructive. Such repeated failures to fulfill those obligations do not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. This is particularly pertinent as it pertains to tax matters. The DOHA Appeal Board has commented in ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016):

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. Id.* A person who fails repeatedly to fulfill his or her legal obligations 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. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). (emphasis in original)

See ISCR Case No. 15-01031 at 4 (App. Bd. June 15, 2016) (citations omitted); ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

### **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.

The ultimate determination of whether to grant or continue national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

To review, Applicant is a 56-year-old senior management specialist integrated master schedule, employed by a defense contractor since June 2021. He served honorably in the U.S Navy for 20 years and later worked as a civilian employee in support of the defense industry. He has significant security clearance experience and is familiar with the requirements of maintaining a clearance. Having a Secret security clearance is a requirement of his continued employment. Applicant is married and supports a 16-year-old daughter from a previous relationship. He has held a leadership position with his local American Legion Post for three years and contributes to his community.

However, for at least six years, he has failed to grasp the importance of one of the fundamental hallmarks of U.S. citizenship, which is timely paying his Federal income taxes when due. This is especially crucial for an individual seeking to retain a security clearance and working for a defense contractor advancing the national security of the United States. The importance of maintaining financial responsibility should have been well known to Applicant, having held a clearance for many years in the past.

From the evidence presented, Applicant's history of accruing delinquent tax debt for years is particularly concerning. Neglecting his obligations to repay his student loans and accruing significant additional consumer debt is equally concerning. That said, Applicant recognizes that he needs to take corrective action. Applicant is a bright and talented individual, who is more than capable of addressing his income tax and indebtedness problems in a responsible way. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards establishing a track record of financial responsibility, and a better track record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and

