



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



In the matter of: )  
)  
) ISCR Case No. 21-02158  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: *Pro se*  
10/24/2022

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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 delinquent debts and federal and state tax issues. National security eligibility for access to classified information is denied.

**History of the Case**

Applicant submitted security clearance applications (SCA) on March 22, 2021 and October 11, 2021, respectively. On February 17, 2022, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on March 6, 2022, and elected to have a hearing. (Answer) The case was assigned to me on June 8, 2022. On June 29, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 10, 2022.

I convened the hearing as scheduled via video teleconference on Microsoft Teams. I marked the July 18, 2022 case management order as Hearing Exhibit (HE) I; Department Counsel’s exhibit list as HE II; and Department Counsel’s June 1, 2022 discovery letter as HE III. Government Exhibits (GE) 1 through 5 were admitted without objection, and Applicant testified. DOHA received the transcript (Tr.) on August 18, 2022. At the hearing, per Applicant’s request, I held the record open until September 7, 2022, to allow him to submit additional documentation. He did not submit documentation, and the record is closed.

## **Amendment to the SOR**

During the hearing, Applicant admitted that he owed additional state and federal income taxes for tax year (TY) 2019. These admissions prompted Department Counsel to move to amend the SOR, pursuant to Paragraph 17 of the Additional Procedure Guidance of the Directive, to add the following allegations:

SOR ¶ 1.l. You are indebted to the Federal Government for delinquent taxes in the approximate amount of \$5,200 for tax year 2019. As of the date of the Statement of Reasons, the taxes remain unpaid.

SOR ¶ 1.m. You are indebted to State A for delinquent taxes in the approximate amount of \$900 for tax year 2019. As of the date of the Statement of Reasons, the taxes remain unpaid.

Applicant did not object to the motion to amend the SOR. I left the record open until September 7, 2022, to provide Applicant an opportunity 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.”). Applicant did not submit any post-hearing documentation.

## **Findings of Fact**

Applicant is almost 47 years old and has an 18-year-old son. He married in July 2006 and divorced in April 2011. He received a high school diploma in 1994, and has been attending college courses since October 2018, studying organizational leadership. He has earned enough credits to be a second semester junior. He enlisted in the U.S. Air Force delayed entry program in February 1997, and served on active duty from February 1998 until 2003, when he was honorably discharged. He then served in the active and inactive Air Force Reserve until January 2009, when he transferred to the U.S. Army. He then served on active duty in the Army until January 2017, when he was medically discharged, and eventually received a 100 percent disability rating. His total military service was 18 years. He was unemployed between June 2022 and the hearing date. He was scheduled to start a new job as a cellular-tower technician for a non-DOD employer the week after the hearing. He previously held a secret security clearance from 1998 until 2019, when it was revoked. (GE 1; GE 2; GE 5; Tr. 10, 22-32, 36, 38-39)

The SOR alleged that Applicant failed to file his state and federal income tax returns, as required, for TYs 2014, 2015, 2017, 2018, 2019, and 2020, and as of the date of the SOR, TYs 2014, 2015, 2019, and 2020 remained unfiled. He denied both of these allegations (SOR ¶¶ 1.a and 1.c). He admitted the remaining allegations, namely, that he is indebted to the federal government for delinquent taxes (\$10,020) for TY 2018 (SOR ¶

1.b), and he had seven credit card accounts that have been charged off, placed for collection, or have outstanding balances that total \$24,342 (SOR ¶¶ 1.d to 1.i, and 1.k). He also had his truck repossessed and the balance of the loan was placed for collection in the amount of \$9,147 (SOR ¶ 1.j).

Applicant attributes his financial problems to being unemployed from April 2019 to February 2020. During this period, he was supported by unemployment benefits, the Servicemen's Readjustment Act of 1944 (GI Bill) benefits he received while attending college courses, and disability benefits. After leaving active duty in 2017, his disability rating increased from 60 to 80 percent, and in July 2022, he was awarded 100 percent disability. (GE 2 at 9; Tr. 32-35)

In Applicant's March 2021 SCA, he disclosed that he had not filed his state and federal tax returns for TY 2019 and 2020 due to the COVID-19 pandemic, and he anticipated that he owed \$1,500. He did not clarify if he owed this amount to one of the tax entities or if this was how much he owed collectively. He also disclosed the delinquent debts alleged in SOR ¶¶ 1.d, 1.f, 1.g, 1.h, 1.i, 1.j, and 1.k. He claimed he was working with a credit specialist to address several of the debts, and they resulted, in part, due to losing his job. (GE 1 at 35-36).

In May 2021, Applicant was interviewed by a government investigator. He adopted this statement in his October 2021 response to DOHA interrogatories. His finances were discussed as well as many of the debts alleged in the SOR. He also admitted he had not filed his state and federal income tax returns for TY 2019, but he indicated his intent to do so in the next 30 days. (GE 2)

In October 2021, Applicant completed a second SCA. His financial information remained unchanged from his March 2021 SCA. As mentioned above, DOHA sent him interrogatories that he signed on October 5, 2021. He was asked, in part, to provide the status for his state and federal income tax returns for TY 2013 through 2020. He was also asked to provide copies of his IRS account transcripts and documentation from the state tax authority for TYs 2013 through 2020. He provided account transcripts from the Internal Revenue Service (IRS) for TYs 2013, 2016, 2017, and 2018. He provided no other documentation. (GE 2; GE 5)

At the hearing, Applicant testified he filed his federal income tax returns for TYs 2014 to 2015 in a timely manner using an online tax service he has always used. He failed to provide documentation to substantiate this claim in his response to the SOR; in his response to DOHA interrogatories; at the hearing; and after the hearing. He was able to provide evidence that he filed his TY 2016 federal income tax return; therefore, he argued his TYs 2014 and 2015 returns were also filed, because the IRS will not allow a tax payer to file a return for a more recent year if an earlier TY remained unfiled. He provided no evidence to substantiate this argument. (Answer; GE 2; Tr. 18, 40-48, 51)

Applicant filed his TY 2017 return late without an extension, but does not have an outstanding balance with the IRS or his state tax authority. He filed his TY 2018 state and federal income tax return in a timely manner, but owes the IRS \$10,020. He also has an

outstanding balance with his state for TY 2018, but does not know what it is. He has no explanation for why he has not reached out to his state to inquire as to how much he may owe for TY 2018. (Tr. 18-19, 44, 48-49, 51-53, 55-56, 59, 81)

Applicant testified that he had not yet filed his state and federal income tax returns for TY 2019 through 2021. He did not file his federal and state income tax returns for TY 2019 in a timely manner, because he knew he was going to owe money and it was too overwhelming for him at the time to address. He claims the IRS will not allow him to establish an installment agreement until he has filed all his back tax years. His state and federal income tax returns for TY 2021 were not alleged and will not be considered disqualifying; however, I may consider them in determining if mitigation is applicable and in my whole-person assessment. He has not sought help from a professional tax consultant, and could not provide a reason why he had failed to do so. (Tr. 18, 44, 48-50, 53-56, 58-60, 81)

Applicant has not made any payments toward any of the eight non-tax debts alleged in SOR ¶¶ 1.d through 1.k. He opened these accounts between May 2016 and August 2020, and he stopped making payments between January 2020 and August 2021. Many of these debts were incurred for him “to basically survive” and to rehabilitate the house he purchased in December 2016. (GE 1-5; Tr. 61-69)

Shortly before the hearing, Applicant’s disability rating was increased to 100 percent (\$3,458 monthly), and with this increase, he is able to pay his mortgage and utilities. On July 1, 2022, he received an over \$8,000 lump-sum payment from the Veterans Administration (VA) for back payment related to his disability pay. He did not use this to pay any of the debts alleged in the SOR, instead he “spent it on stuff for the house.” Nor had he proactively contacted any of the SOR creditors prior to the hearing to establish payment arrangements. He anticipated that once he started his new position he would be able to start to repay some of his delinquent consumer debts. He has \$1,500 in savings and no other assets, other than his home. He follows a written budget, and the record was held open, in part, to allow him to submit a copy, but he chose not to do so. He has not sought financial counseling. (Tr. 62, 66, 69-71, 77, 80)

Applicant did not have any security violations during the period he held a security clearance. The record was held open, in part, to allow him to submit documentation regarding the awards and decorations he received while serving in the Air Force, Air Force Reserve, and Army. He did not provide this documentation, but testified that he received approximately 21 awards. He deployed to Afghanistan from January 2011 to October 2011 with Special Forces, and to Kuwait and Iraq from June 2014 to January 2015. (Tr. 13, 36-38)

### **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 financial issues started due to a period of unemployment between April 2019 and February 2020; however, he failed to demonstrate that he acted responsibly in the intervening years to address his tax issues and delinquent debts. When he received an over \$8,000 payment from the VA, shortly before the hearing, he used this money for his home, rather than addressing his delinquent taxes or other debts.

Applicant's tax issues are current, ongoing, and recent. He failed to provide documentation to show that he filed his federal and state income tax returns for TYs 2014,

2015, 2019, and 2020. He filed his TY 2017 income tax returns late, and he has admitted to not filing his TY 2021 income tax returns, demonstrating that this pattern is continuing despite the government expressing concern regarding his taxes since at least March 2021.

Given Applicant's history of financial issues, he has not demonstrated he has acted responsibly under the circumstances to address and resolve his tax issues and other financial obligations. Additionally, he provided no proof of payment or resolution for eight 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, including his lengthy years of military service and deployments. I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant failed to provide documentation to establish that he has filed his TYs 2014, 2015, 2019, and 2020 federal and state income tax returns. He owes over \$15,000 in federal taxes and \$33,000 in consumer debt that he is not addressing. 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.m:                      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