



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



In the matter of:)	
)	
)	ISCR Case No. 21-00692
)	
Applicant for Security Clearance)	

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro Se*

11/03/2022

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations security concerns arising from his delinquent tax debts, delinquent student loans, and consumer debts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 23, 2020. On September 25, 2021, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant provided an undated answer to the SOR, 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 3, 2022.

The hearing was convened on July 11, 2022. Government Exhibits (GE) 1-15 and Applicant's Exhibits (AE) A-J were admitted into evidence without objection. After the hearing, I held the record open for two weeks to provide Applicant with the opportunity to submit additional documentary evidence. He did not make a post-hearing submission.

Findings of Fact

In his answer, Applicant admitted SOR allegations ¶¶ 1.a-1.f, 1.h -1.i, 1.o-1.p, and denied 1.g, 1.j-1.n, and 1.q. He also provided seven pages of explanation and narrative, which I have 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 67 years old. He was married in 1980, and has two adult children. He earned a bachelor's degree in mechanical engineering in 1980. He has worked for a government contractor since 2015, as a senior mechanical engineer. He has previously held a security clearance. (Tr. 63-64; GE 1)

Applicant stated that his financial problems started in the late-2000's. He was working long hours after September 11, 2001, and was exhausted after four years of hard work. He voluntarily left his job of 15 years in 2005. He went on to work for two other employers between 2005 and 2008. In July 2008, he voluntarily left his job before obtaining new employment, because he did not think that his employer's time-card practices were ethical. He was not able to find full-time employment again until June 2010. He pulled money from his retirement accounts to pay some of his expenses, but fell behind on his bills, including his mortgage, and his home went into foreclosure. His wife was steadily employed during that period. (Tr. 64-77, 107-110; AE G; GE 1)

Applicant has been earning about \$150,000 or more a year since 2015. His most recent salary was about \$175,000 yearly when he became unemployed in May 2022. His wife is earning about \$110,000 yearly. His budget while employed shows that Applicant and his wife had about \$24,000 of gross monthly income, and about \$6,800 of disposable income a month. The budget also shows about \$500,000 in retirement accounts. He stated that after losing his paycheck in May, he has been using his inheritance from his parents to pay some of his expenses. (Tr. 64-77, 107-110, 123; AE H)

Applicant testified that money does not mean much to him. He admitted that he did not take his finances seriously, or keep track of his financial assets and accounts. He and his wife have been living beyond their means. While he claims that he does not have the means to resolve his debts, he also stated that he could find lucrative employment working for a private corporation, but does not want to work for them. He stated that if does not get his clearance, he will not resolve his debts or delinquent taxes, and will just live off his social security. (Tr. 17, 40-41, 121, 123-124, 133-134, 142)

Included with Applicant's exhibits are seven character letters, which describe him as patriotic, dedicated to his family, intelligent, a talented engineer, and involved with the military community. (AE H)

The SOR alleges four bankruptcy filings, delinquent tax debts, student loans, and consumer debts. The status of the allegations is as follows:

SOR ¶¶ 1.a-1.d are Chapter 13 Bankruptcy filings from 2013, 2014, and 2015, and a 2016 Chapter 11 Bankruptcy filing. All of the bankruptcy cases were dismissed.

Applicant admitted that he filed these cases to stop the foreclosure of his home. He built the home in the early 90's for about \$240,000. As the value of his home increased, he and his wife refinanced their mortgage about 13 times, seven times for the primary mortgage and six times for the secondary mortgage, and used the equity to pay for private school educations for his children and other expenses. He stated that they "mortgaged the house to the max." He owes about \$867,000 on his current mortgage for the house. (Tr. 43-62, 75-79, 87-91, 137-138; GE 2, 3, 9, 10, 11, 12, 13, 15; AE H)

Applicant could not make mortgage payments when he became voluntarily unemployed in 2008. He requested that his mortgage lender give him forbearance on the loan until he could find new employment. He has been in dispute with his mortgage provider since at least 2009. He claims that the lender did not follow the appropriate guidelines, or offer him the payment plan or loan modification that he believes he was due. In about 2011, he hired an attorney who filed a lawsuit against the lender that was dismissed, and she filed the four bankruptcy cases on their behalf. He believes that all of these filings were appropriate, because it saved his house from foreclosure, but the bankruptcy records show otherwise. (Tr. 43-62, 75-79, 87-91, 137-138; GE 8, 9, 10, 11, 12, 13; AE H)

It is clear from the record that Applicant and his wife used the bankruptcy automatic stay to delay their home foreclosure and gain an advantage in their dispute with their mortgage lender. The 2013 case was dismissed for failing to provide information to the trustee, failing to file tax returns, failure to set up a payment schedule for delinquent taxes, and excessive monthly personal expenses. In the 2014 case, the debtors moved to dismiss on their own. The 2015 case was dismissed for failing to provide information to the trustee. In 2016, the bankruptcy trustee stated that Applicant filed their case in bad faith. In an unopposed motion to dismiss, the trustee also stated that they were mismanaging their estate, hiding their earnings from the court, making unauthorized payments for wedding expenses for their daughter, and failing to provide necessary documentation. (Tr. 43-62, 75-79, 87-91, 137-138; GE 9 (at 122-134), 10, 11, 12, 13; AE H)

SOR ¶¶ 1.e and 1.f are student loans in collection for \$90,023 and \$34,185, respectively. Applicant took out these loans to fund private school college tuition for his two daughters. The loans have not been paid since 2019. He stated that he would like to arrange a payment plan for these loans, but did not provide documentation of any effort to do so. These student loans are unresolved. (Tr. 75-88; GE 2, 3, 15; AE A)

SOR ¶ 1.g is a debt to the Department of Treasury for fees owed from his 2016 bankruptcy case. Applicant denies the allegation, but it appears on two of his credit reports. He claims that he contacted the creditor about the debt, but they could not link his or his spouse's social security numbers to any such debt. He did not provide sufficient documentation to support this claim. In his answer, he stated that he will not pay this debt. The debt is unresolved. (Tr. 89-91; GE 3, 15)

SOR ¶ 1.h is a credit card placed for collection for \$24,166. Applicant stated that he used to make payments on this account, but has not paid it for years, and that it is

now charged-off. He did not provide sufficient documentation of any payments. He reported that he has not received a 1099-C (cancelation of debt) from the creditor. This debt is unresolved. (Tr. 91-92; GE 9)

SOR ¶ 1.i is a 2016 judgment for an unpaid credit card debt for \$18,900. Applicant stated that this debt was being garnished from their wages for a time, and that he was making monthly payments for a time, but he did not provide sufficient documentation of those payments. They recently negotiated a settlement, and satisfied the judgment in May 2022, about eight months after receiving the SOR. (Tr. 91-95; GE 6; AE B-F)

SOR ¶¶ 1.j-1.p are delinquent federal taxes owed to the IRS: \$58,741 for tax year 2009; \$2,490 for 2010; \$11,981 for 2011; \$13,684 for 2012; \$17,263 for 2013; \$4,656 for 2015; and \$148,649 for a tax lien filed in 2016, respectively. Applicant denied SOR ¶¶ 1.j-1.n because he disagreed with the amounts owed. Applicant claimed that for tax year 2008 he overpaid his federal taxes by \$21,000 and his state taxes by \$7,000. He stated that he filed his 2009-2011 taxes late, and that the IRS and state would not apply his overpayment to his 2009 tax debt. He also stated that in 2008, he took money out of his retirement account to pay his mortgage, and part of his overpayment went towards the penalty for this withdrawal. He stated that since the IRS and state refuse to apply his 2008 tax overpayments to his tax debts, he considers that they stole this money from him. (Tr. 65-68, 95-106, 110-113, 116, 142; GE 4, 5, 9; AE H)

Applicant stated that he and his wife claim zero deductions on their W-4 form, but the record shows that he owes tax debts for every tax year from 2009 to 2016. He claims that his taxes were filed for tax years 2016-2018, and that he probably owes delinquent taxes for those years as well. He hired an attorney that he pays \$300 monthly to resolve his tax issues and file his returns. He stated that he does not know if his 2019-2021 taxes have been filed yet. He claims that since 2016, his attorney has been trying to get the IRS to negotiate a settlement plan to resolve his back taxes, but the IRS does not have the manpower to have the meeting. He claims that they had a meeting scheduled in 2022, but the IRS did not show up. He asserts that most of the back taxes are penalties and interest, which he believes were tacked on to scare him into compliance, and he claims it will all go away once they negotiate a settlement. He admitted that he has not made any tax payments for at least ten years, and does not send payments with his returns. He stated that he does not have any money to send them now, and that if he does not get his clearance, he will not pay his back taxes. At the hearing, Applicant was asked to provide tax account records and other documentation supporting his claims. He did not provide sufficient documentation to support his testimonial assertions during the hearing, and did not submit any additional documentary evidence post hearing. All of these tax debts remain unresolved. (Tr. 65-68, 95-106, 110-113, 116, 142; GE 4, 5, 9; AE H)

SOR ¶ 1.q is a 2014 judgement for delinquent state taxes for \$19,174. Applicant claimed that this debt resulted from an underpayment in 2009, as well as penalties and interest. He claimed that his tax overpayment in 2008 should have covered this debt, but that the state rejected it. Applicant denies this debt and claims that it was already paid, but he did not provide sufficient documentation to support his claim. This debt is unresolved. (Tr. 103-105; GE 7; AE H)

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;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators; 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, tax records, bankruptcy records, Applicant's testimony and admissions. AG ¶¶ 19(a), (c), (e), and (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;

(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; 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 the alleged debts became delinquent under such circumstances that are unlikely to recur. His failure to pay his delinquent tax debts, student loans, and consumer debts is recent, ongoing, and not isolated. His behavior continues to cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) partially applies because Applicant claims his financial problems started when he lost his job in 2008. However, he voluntarily left his job in 2008, without first securing other employment. He has been consistently employed, but for a few months since 2010, and has earned a substantial salary. The record shows that he has been living beyond his means, and has not been responsible in managing his finances. 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.

Applicant has received financial counseling. However, he did not provide sufficient documentation to show that his financial problems are being resolved or are under control. Only one of the SOR debts is resolved, and that was satisfied after he received the SOR. He did not provide sufficient evidence showing that he had adhered to a good faith effort to repay his creditors. AG ¶¶ 20(c) and (d) do not apply.

AG ¶ 20(e) does not apply. Although Applicant disputes the amount or validity of some of his debts, he failed to provide sufficient documentation to substantiate the basis for his dispute, and he did not provide sufficient evidence of his actions to resolve the issue.

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

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 considered his work contributions to government missions over the years, his community involvement, and his character letters. 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. He did not establish a track record of debt payments and responsibly managing his finances. He has delinquent student loans and consumer debt, and more than a decade of delinquent tax debts. Applicant failed to mitigate the security concerns 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.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.q:	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.

Ross D. Hyams
Administrative Judge