



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



In the matter of: )  
)  
) ISCR Case No. 20-03742  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeffrey T. Kent, Esq., Department Counsel  
For Applicant: Daniel P. Meyer, Esq.

09/21/2022  
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**Decision**  
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RIVERA, Juan J., Administrative Judge:

Applicant's evidence is sufficient to demonstrate financial responsibility. He resolved the 15 delinquent accounts alleged in the Statement of Reasons (SOR) and demonstrated good-faith efforts to correct his failure to timely file his 2017, 2018, and 2019 Federal income tax returns. The evidence is sufficient to mitigate the financial considerations security concerns. Clearance is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on December 20, 2019, and was interviewed by a background investigator from the Office of Personnel Management (OPM) on June 10, 2020. After reviewing the information gathered during the background investigation, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DOD CAF) issued a SOR alleging security concerns under Guideline F (financial considerations) on March 13, 2021. Applicant answered the SOR on May 20, 2021, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

The case was assigned to me on November 2, 2021. The scheduling of the hearing was delayed due to COVID 19 health considerations and travel restrictions. DOHA issued a notice of hearing (NOH) on February 15, 2022, scheduling the hearing for March 10, 2022.

The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted into the record without objection. GE 5 is the Government's discovery letter, dated June 21, 2021, which was marked and admitted into the record, but it is not substantive evidence.

Prior to the hearing, by emails dated March 3 and 4, 2022, Applicant submitted his proposed exhibits, comprised of six documents, marked AE A through F. (169 pgs.) Applicant testified, as reflected in the transcripts received on March 16, 2022 (Tr.) and April 20, 2022 (Tr2.). Post-hearing, he submitted an email dated March 30, 2022, marked AE G, comprised of Tabs F-1 through F-4y, supplementing the record. All exhibits were admitted without objection.

### **Procedural Issue**

At the end of the March 3, 2022 hearing, Department Counsel moved to amend the SOR to conform it with the evidence presented. The Amended SOR added 10 allegations under Guideline F (¶¶ 1.p through 1.y), alleging that Applicant failed to file Federal income tax returns for tax years 2016 through 2020, and that he owed the Federal government delinquent taxes for the same tax years. I granted the motion and postponed the hearing. Applicant was served with the Amended SOR, and I reconvened the hearing on April 13, 2022. A copy of the Amended SOR was marked Hearing Exhibit (HE) 1, and it was added to the pleadings of the case. Hereinafter, all references will be to the "SOR".

### **Findings of Fact**

The SOR alleges 15 delinquent debts totaling about \$113,000; that he failed to file Federal income tax returns for tax years (TY) 2016 through 2020; and that he is indebted to the Federal government for delinquent taxes for TYs 2016 through 2020. In his answers to the SOR, Applicant denied the factual allegations in SOR ¶¶ 1.a through 1.p, 1.r, and 1.t. He admitted the allegations in SOR ¶¶ 1.q, 1.s, and 1.u though 1.y.

Applicant's SOR admissions, and those at his hearing, are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is 42 years old. He graduated from high school and enlisted in the Marine Corps in 1997. He completed his term of service and was honorably discharged with the rank of corporal in August 2001. He testified that he possessed a secret clearance during some of his time in the service, and that he has held a clearance for 20 years. (Tr. 23) He earned an associate's degree and has completed a number of

Information Technology (IT) certifications. He married in January 2010 and divorced in June 2014. He has been in a domestic partnership relationship since 2011 and has a stepson, age 12, and a daughter, age two.

Applicant's employment history shows he worked as a security guard between September 2001 and April 2007. He worked at restaurants between April 2007 and December 2010. He resumed working as a security guard between November 2009 and August 2013. He worked IT support between August 2013 and May 2016. He started a house flipping business in 2015. He left his IT job to concentrate on his house flipping business and was self-employed between May 2016 and May 2017. He worked as a security guard between May 2017 and December 2019. Applicant became a licensed realtor in 2018, seeking a second job to increase his earnings. (Tr. 28) He has been working as a cyber-analyst for his current employer and security sponsor, a federal contractor, since June 2020. (Tr. 28)

Applicant's fiancé was working in 2012. She stopped working when she moved in with him in 2014. This resulted in a loss of \$75,000 income to the household when he became the sole provider. She started working again in 2020, and she is making about \$93,000 a year. Applicant testified she has been helping him address his financial obligations. (Tr. 30, 40)

In response to questions in Section 26 (Financial Record) of his 2019 SCA, Applicant disclosed that he had financial problems and revealed four of the accounts alleged in the SOR in which he had established payment agreements. He was interviewed by an Office of Personnel Management (OPM) investigator in June 2020, and discussed most of the accounts alleged in the SOR.

Applicant explained that his financial problems resulted from a combination of factors. His fiancé has been suffering from chronic Lyme disease since 2011. The doctors did not realize she was suffering from it until 2016 or 2017, when it really started to affect her being able to live. She could not work and was in constant pain. She required special medical treatments and medicines. He stated that most chronic Lyme disease treatment is not covered by insurance. He had to make the majority of the medical payments out of his savings. (Tab F-1; Tr. 18-19)

Applicant has been working two jobs since about 2012. He was a full-time security guard during the week and worked a house flipping business (construction/repairing investment properties) during the weekends. (Tr. 19) In 2016, he purchased three out of state properties, two in state (1) one in state (2). He had trouble with construction crews completing the jobs on time, and one of the properties burned down. The insurance did not cover the full amount of the loss and he used personal funds to pay the creditor for the property. He sold the properties between 2017 and 2018. He is no longer in the house flipping business.

Applicant's financial problems exacerbated in 2018. He sought financial counseling and assistance from an insurance company and a debt resolution company.

The insurance company helped him understand credit worthiness and how to work with credit companies to mitigate his debt. He contacted his creditors, established payment agreements, and started to settle and pay his delinquent debts. He is now concentrating on saving money for his fiancé's medical expenses and repairing his credit. Applicant started making payments on his delinquent debts after his fiancé started working in 2020. Prior to that, he was the sole source of income and his income was insufficient to pay the delinquent accounts and their living expenses. (Tr. 73-75)

The status of the SOR allegations is as follows:

SOR ¶¶ 1.a alleged a charged-off account for \$16,193; 1.b a charged-off account for \$14,220; and 1.c a charged-off account for \$12,569, all of which were resolved via cancellations of debt (IRS Form 1099-C). (See, Tabs F-4a, E, and F-4c; Tr. 52-53)

SOR ¶ 1.d alleged a collection account for \$11,594. Applicant and the creditor established a settlement agreement in January 2019, and he is making payments as agreed. (See, Tabs F-4d; Tr. 53)

SOR ¶ 1.e alleged a charged-off account for \$8,910. Applicant settled the account and paid it off in April 2021. (See, Tab F-4e)

SOR ¶ 1.f alleged a charged-off account for \$8,300. Applicant settled the account for less than owed in April 2021 and paid it off in May 2021. (See, Tab F-4f)

SOR ¶ 1.g alleged a collection account for \$7,851. Applicant settled the account for less than owed in April 2021, and paid it off. (See, Tab F-4g; Tr. 57)

SOR ¶¶ 1.h, 1.i, and 1.j alleged collection accounts for \$7,846, \$7,801, and \$7,796, respectively. Applicant's evidence shows he established payment plans in January 2019 for the three accounts and made 27 consecutive payments of \$50 monthly, until March 2021 for each account. He submitted evidence of three additional \$50 payments made on each of the three accounts during January through March 2022. He testified he is still making his payments as scheduled. (See, Tabs E, F-4h, F-4i, and F-4j; Tr. 59-63)

SOR ¶ 1.k alleged a charged-off account for \$7,783. Applicant settled the account for less than owed in June 2020 and paid it off in April 2021. (See, Tab F-4k)

SOR ¶¶ 1.l and 1.m alleged the same account in collection for \$950. Applicant settled the account in February 2021 and paid it off in April 2021. (See, Tab F-4n; Tr. 66)

SOR ¶ 1.n alleged an account in collection for \$733. Applicant paid it off in April 2021. (See, Tab F-4l; Tr. 64-65)

SOR ¶ 1.o alleged an account in collection for \$109. Applicant settled it for less than owed and paid it off. (See, Tab F-4o; Tr. 67)

SOR ¶¶ 1.p through 1.t alleged that Applicant failed to timely file Federal income tax returns for tax years (TY) 2016 through 2020. He claimed that he timely filed his TY 2016 income tax return. At hearing, Applicant presented a Form 1040X (amended filing) for TY 2016, filed in 2019. During his testimony, Applicant explained his 2016 tax preparer made some mistakes with his 2016 income tax return and the IRS returned it to be corrected. He asked the IRS what was wrong with his initial 2016 tax return, and it took the IRS until 2019 to answer his questions.

In 2019, Applicant retained the services of a professional tax preparer to help him file an amended 2016 tax return. (Tr. 13-14; Tr2. 12) He was not happy with the tax professional work and, in 2021, he retained another tax professional who is currently helping him resolve his tax problems. (Tr. 51)

Applicant filed his Federal income tax returns for TYs 2017, 2018, and 2019 in May 20, 2020. (Tr2. 7; Tab F-4q) He timely filed his TY 2020 income tax return. (Tr2. 7-8)

SOR ¶¶ 1.u through 1.y alleged that Applicant is indebted to the Federal government for delinquent taxes for TYs 2016 through 2020. Applicant anticipated a \$13,000 refund for TY 2016, and he received only \$3,000. He believes that when the IRS finalizes its review of his 2016 income tax return, he will receive a refund of over \$10,000. To claim the refund, a return for TY 2016 must have been filed by July 15, 2020. ([www.IRS.gov](http://www.IRS.gov) - three years after due date)

Applicant admitted he is indebted to the Federal government for delinquent taxes for TYs 2017 through 2020. (Tr2. 7-8) However, his documentary evidence shows that he anticipated a \$9,793 refund for TY 2017. He testified that he did not receive the refund because the IRS applied it to prior years' tax debt. (Tab F-4q; Tr2. 19-20)

Applicant's 2018 income tax return shows that he owes the IRS \$1,404. (Tab F-4r) His 2020 income tax return shows that he owes the IRS \$8,104. (Tab F-4t) He did not pay either his 2018 or his 2020 tax debt. He claimed his tax preparer advised him not to pay them because the IRS allegedly owes him over \$10,000 for TY 2016. Applicant anticipates that when his 2016 taxes are resolved in his favor, anything he owes for other tax years will be offset by what the IRS owes him. Applicant claimed he has set aside \$30,000 in a savings account to pay any possible taxes he may owe the IRS. (Tr. 42; Tr2. 20-28) Applicant could not recall whether he owed taxes or received a refund for TY 2019.

Applicant testified he owed another state (D) \$24,000 for delinquent real estate property taxes not alleged in the SOR. He paid \$8,000 in 2020, \$8,000 in 2021, and agreed to pay \$8,000 in 2022 to settle the debt and avoid losing the property. (Tr2. 26-27)

Applicant believes he has been working diligently to bring all of his accounts current. He noted it was difficult to do so when he was the sole provider for the family. Now that his fiancé is working again, he is confident that if he is allowed to keep his clearance he will be able to resolve all of his financial problems. He highlighted that he served in the Marines and has held a clearance for over 21 years with no issues or security concerns, except for those alleged in the SOR. He believes that his time in the service and his current efforts to resolve his financial problems demonstrate that he is not a security risk.

Applicant stated that his financial situation is getting better, and that he is in decent financial shape. He is able and willing to pay his delinquent debts and promised to be financially responsible in the future. To ensure his financial problems do not occur again, he intends to continue his financial counseling and using the services of a tax professional.

Applicant's net cash flow per month is \$5,800. His expenses per month including short and long-term debt payments are around \$3,300. He noted that he had a lot of things that were out of my control a couple of years ago and those amounts really took a toll on his finances. He believes his debts are currently small because he put myself in payment plans and worked with credit financial institutions that help him get back in the black. He stated that the chance of accruing delinquent debt because of his cohabitant's medical problems and being unable to work outside their home are unlikely to recur.

## **Policies**

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AGs list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AGs should be followed where a case can be measured against them, as they represent policy guidance governing

access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in Security Executive Agent Directive (SEAD) 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered. [First time SEAD used]

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the security concern relating to financial problems: Failure or inability 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.

Applicant's financial problems are documented in the record. He accumulated 15 delinquent debts that were either charged off or placed for collection. He also failed to timely file Federal income tax returns for TYs 2017 through 2019, and is indebted to the IRS for TY 2018 and 2010.

AG ¶ 19 provides 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 . . . annual Federal, state, or local income tax returns . . . or failure to pay annual Federal, state, or local income tax as required." The record established these disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

The following mitigating conditions under AG ¶ 20 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.

The DOHA Appeal Board concisely 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 *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).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant resolved the 15 delinquent accounts alleged in the SOR. Of those, 11 were resolved before the SOR was issued (¶¶ 1.a through 1.d, 1.h through 1.m, and 1.o); and four were resolved after he was issued the SOR (¶¶ 1.e through 1.g, and 1.n). The evidence suggests Applicant timely filed income tax returns for TYs 2016 and 2020. He filed late income tax returns for TYs 2017, 2018, and 2019. (Tabs 4-Fs and F-4t)

Applicant is not indebted to the Federal government for delinquent taxes for TYs 2016 and 2017. The evidence does not establish that he owes delinquent taxes for TY 2019. He owes delinquent taxes for TYs 2018 and 2020. As previously noted, he did not pay his delinquent taxes on the advice of his tax professional. He has a reasonable basis to dispute the amount of taxes he owes, and he has taken actions to resolve the issue. AG ¶ 20(e) is applicable.

Applicant credibly testified that he anticipates a refund for over \$10,000 for TY 2016. His professional tax preparer advised him not to pay the taxes owed for TYs 2018 and 2020, because the debt would be off set against the anticipated TY 2016 refund. Applicant set aside a significant amount of money to pay the IRS and set up a payment plan in the event that the IRS rules against him on the TY 2016 tax return revision.

Applicant was honorably discharged from the Marines after serving four years on active duty. He attributed his financial problems to his fiancé's medical problems and treatment expenses, her inability to work for a number of years, her inability to contribute financially to the household, and his failed business flipping houses, which

was adversely aggravated by a fire that burned one of the houses. All of these factors could be considered as circumstances beyond his control that adversely affected or aggravated his financial situation.

As the DOHA Appeal Board has noted in the past, a clearance adjudication is not directed at collecting debts. 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. On balance, when considered in light of the record as a whole, I find that the evidence is sufficient to establish that Applicant was financially responsible under the circumstances.

Applicant was proactive and diligent resolving his delinquent accounts. He started addressing his delinquent accounts well in advance to the issuance of the SOR. He sought out financial counseling, communicated with his creditors and established payment plans, and has been complying with the agreed payments. He paid off eight of financial accounts alleged in the SOR, and is making payments on three accounts. In doing so, Applicant has demonstrated some financial responsibility.

Applicant was irresponsible when he filed late his income tax returns. He has been working and filing income tax returns for many years. Because of his time in the service and holding a clearance, he knew or should have known that his failure to timely file his income tax returns and pay his taxes would create a security concern.

Notwithstanding, I note that Applicant retained a tax professional and started working on fixing his tax problems before the SOR was issued. The TY 2016 amended tax return was prepared by a tax professional in 2019. He retained a second tax professional when he believed the first one was not doing the work. He filed his TYs 2017, 2018, and 2019 income tax returns in May 20, 2020. (Tab F-4q) His TY 2019 was only six weeks late, and his TY 2020 income tax return was filed on time. He also was candid disclosing and discussing his tax problems during his hearings.

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.

The record evidence shows that Applicant does not has a problem complying with government rules, regulations, and systems. His evidence is sufficient to establish mitigation of the financial considerations security concerns. Applicant acted responsibly under the circumstances, and he made a good-faith effort to file his income tax returns. Applicant's financial issues are being resolved and they do not cast doubt on his current reliability, trustworthiness, and good judgment.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person

concept. SEAD 4, App. A, ¶¶ 2(a) and 2(d). Under AG ¶ 2(c), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant, 42, receives favorable credit for his honorable service in the U.S. military and his work for a federal contractor. He has held a secret clearance during the last 20 years without any issues or concerns, except for those in the SOR. He receives favorable credit for resolving the delinquent accounts alleged in the SOR. He should have been more diligent filing his income tax returns. However, he made good-faith efforts to correct his mistakes. He has a reasonable basis to dispute the amount of taxes he owes, and he has taken actions to resolve the issue. Financial considerations security concerns are mitigated.

### **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:	FOR APPLICANT
Subparagraphs 1.a - 1.y:	For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national security interests of the United States to grant or continue Applicant’s eligibility for a security clearance. Clearance is granted.

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JUAN J. RIVERA  
Administrative Judge