



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-01226
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel  
 For Applicant: *Pro se*  
 11/18/2022

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. He failed to timely file Federal income tax returns for multiple tax years, and he has unresolved tax delinquencies. He did not provide supporting documentation to demonstrate any good-faith efforts to remedy his outstanding financial issues. National security eligibility for access to classified information is denied.

**History of the Case**

Applicant submitted a security clearance application (SCA) on February 2, 2018. (Item 3) On June 29, 2021, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). (Item 1) On July 15, 2021, Applicant provided an answer to the SOR, and requested a decision based upon the administrative record (Answer). (Item 2)

A copy of the file of relevant material (FORM), dated April 12, 2022, was provided to Applicant. Department Counsel attached as evidence to the FORM Items 1 through 6. Applicant received the FORM on April 28, 2022, and he was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. He did not respond to the FORM. On August 4, 2022, the case was assigned to me. Without objections, I admitted and considered all of the FORM's proffered evidence.

## Findings of Fact

Applicant is 62 years old. He married his wife in 1986, and they have two adult sons. He earned a bachelor's degree in 1982. He has worked for a defense contractor since 1982 as a supply-chain analyst. He has held a DOD secret clearance since approximately 2004. (Item 3; Item 4)

The record evidence shows that Applicant has significant outstanding financial obligations, to include: (1) approximately \$43,729 in delinquent Federal income taxes for tax years 2008-2012, 2014-2015, and 2018-2019 (SOR ¶¶ 1.a-1.e, 1.g, 1.h, 1.j, and 1.k.); (2) \$3,247 in outstanding State A taxes for tax year 2018 (SOR ¶ 1.l.); and (3) various consumer and mortgage debts delinquent in the approximate amount of \$16,534. (SOR ¶¶ 1.m-1.p) The record evidence further demonstrates that, with the exception of tax years 2011 and 2017, Applicant has failed to **timely** file his Federal income tax returns for years 2008 through 2019. (Item 1; Item 2; Item 3; Item 4; Item 5; Item 6)

In his response to the SOR, Applicant admitted all SOR allegations, except SOR ¶¶ 1.f. and 1.i, in which he denied that that he failed to file his 2013 and 2016 Federal income tax returns. He also claimed he had entered into a repayment plan with one of his consumer creditors (SOR ¶ 1.n), and that he had executed a deed in lieu of foreclosure for his delinquent timeshare. (SOR ¶ 1.p.) He did not provide any supporting documentation to corroborate his assertions regarding SOR ¶¶ 1.f, 1.i, 1.n and 1.p. (Item 2)

In his February 2018 SCA, Applicant disclosed several delinquent accounts and his unpaid Federal taxes for tax years 2008-2015. He claimed he was in a repayment plan with the Internal Revenue Service (IRS). In his January 2021 response to Interrogatories, he provided Federal tax account transcripts for tax years 2008 through 2019, except for tax years 2013 and 2016. Several of the transcripts showed that he had entered into multiple installment agreements with the IRS, but failed to adhere to the payment arrangements. (Item 3; Item 4)

Applicant was placed on notice that he had 30 days after receipt of the FORM to supply additional information to mitigate the Guideline F security concerns. His failure to submit any material would result in me making a determination based on documentation provided solely by the Government. Applicant chose not to submit any documentation. (FORM cover letter; Government's FORM brief)

## 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 . . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The record evidence establishes 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;
- (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 or provides evidence or 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.

Applicant bears the burden of production and persuasion in mitigation. He has failed to provide supporting documentation to demonstrate his good-faith efforts to remedy his significant amount of outstanding taxes, as well as his other delinquent accounts alleged in the SOR. He failed to provide Federal transcripts for tax years 2013 and 2016 to verify that he had filed his Federal income tax returns, as claimed. There is insufficient information to determine that he no longer owes delinquent Federal or state taxes. He has a long pattern of filing Federal tax returns late, and entering into installment agreements with the IRS to pay his tax delinquencies. The documents in evidence show that the IRS terminated several agreements because of his failure to pay as agreed.

Access to classified and protected information requires faithful adherence to the rules and regulations governing such activity. A person who fails to address concerns, even after having been placed on notice that his or her access or security clearance is in jeopardy, may lack the willingness to follow rules and regulations when his or her personal interests are at stake. Financial considerations security concerns are not mitigated.

### **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 Applicant's lengthy career as a Defense contractor and the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. I conclude

Applicant has not met his burden of proof and persuasion. He did not mitigate the financial considerations security concerns or establish his eligibility for a security clearance.

**Formal Findings**

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

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a – 1.p: Against Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson  
Administrative Judge