



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



In the matter of: )  
)  
) ISCR Case No. 22-00874  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

12/19/2022

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 14, 2022, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on July 5, 2022, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on August 31, 2022. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 3 through 8 (Item 1 is the SOR and Item 2 is the transmittal letter.). Applicant submitted a response to the FORM that is marked as Applicant Exhibit (AE) A. He provided an additional document that is marked as AE B. There were no objections to any of the documents offered and all were admitted into evidence. The case was assigned to me on October 20, 2022.

### **Findings of Fact**

Applicant admitted the SOR allegations in ¶¶ 1.a, 1.e, 1.f, 1.g and 1.i, with explanations. He denied the SOR allegations in ¶¶ 1.b, 1.c, 1.d, and 1.h, with explanations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 74 years old. He is a college graduate and holds a master's degree. He married in 1969 and was widowed in 2004. He has an adult child from the marriage. He remarried in 2006 and has two adult stepchildren. He was employed by a federal contractor from 1997 until his retirement in 2006. He was unemployed for six months then began work with another federal contractor from 2006 to 2013. He went back to work for his previous employer from 2013 to the present. (Item 4)

In 2010, Applicant withdrew \$100,000 from his pension plan to pay for home improvements and the purchase of two vehicles. In Applicant's November 2011 security clearance application (SCA), he disclosed that he was making payments on his 2010 federal income tax debt and that he owed the IRS \$19,000. He said he had established an installment agreement with the IRS to pay the debt. (Item 10)

In December 2011, a government investigator interviewed Applicant. He explained that when he withdrew money from his pension plan, he asked that the federal taxes be withheld, and he thought it was understood that he wanted to receive \$100,000 after taxes were withheld. He admitted he did not examine the documents as closely as he should have. When he filed his 2010 federal income tax return, he realized the taxes were not withheld, and he owed \$30,000 to the IRS. He said he used the remaining funds he had left from the withdrawal to pay some of the taxes owed and made a payment arrangement with the IRS to pay \$325 a month on the current balance owed at that time of \$19,000. At that time, he said that he intended to continue to make payments to the IRS until the debt was paid. (Item 5)

In Applicant's May 2019 SCA, he disclosed that he filed Chapter 13 bankruptcy in February 2017. It was dismissed in November 2018, and he and his wife planned to refile under Chapter 7. He explained that his mortgage debt was being handled as a deed in lieu of foreclosure and the mortgage company was going to forgive the deficiency owed. He also said the IRS would forgive approximately \$35,000 of "older debt, but not about \$11,000 of new debt." (Item 4) He expected all of his unsecured debts to be discharged in bankruptcy. (Item 4)

Regarding Applicant's tax returns, he said in the SCA, "Always filed tax returns, but owe money to the IRS as described elsewhere." (Item 4) He disclosed that he failed to pay his 2015 federal income tax. He stated, "Loss of income because wife [L] lost her job years ago, remains unemployed, and in recent years had significant medical expenses." (Item 4) He estimated he owed \$11,000 and further stated his actions to resolve the problem were through bankruptcy and by increased withholdings. (Item 4)

In July 2019, Applicant was interviewed by a government investigator. He told the investigator that he intended to resolve his financial problems through bankruptcy. He acknowledged that when his debts were discharged in bankruptcy, he would still be responsible for his student loans. He also discussed that he had tentatively reached an agreement with the IRS. It had agreed to forgive \$35,000 in older tax debt from approximately 2015, but he would still be responsible for his more recent tax debts of about \$11,000. He acknowledged that he had not spoken with an IRS representative since November 2018. (Item 5)

Applicant and his wife filed Chapter 7 bankruptcy in September 2021. Schedule E, priority unsecured claims reflects \$56,727 (federal taxes) and Schedule F, nonpriority unsecured claims reflects \$87,171 of student loans, consumer, and other debts. His bankruptcy documents reflect that his gross monthly income is \$10,172 and after his deductions, it is \$6,346 and his monthly expenses are \$7,945, leaving a monthly deficit of \$1,598. He lists his annual income for 2020 as \$174,712 and 2019 as \$118,000. He listed his income for 2021 from January to the date he filed bankruptcy as \$90,800. His debts were discharged in December 2021. (Item 6 at pages 13, 24-32, 36-42)

In June 2022, Applicant responded to government interrogatories. He indicated that all of his federal income tax returns through tax year 2021 were filed. He stated that he was verbally advised by the IRS in August 2021 that he owed taxes for 2011 (\$37,949), 2013 (\$4,775), 2015 (\$1,964), 2016 (\$5,714) and 2018 (\$6,325). (Item 5)

Applicant further explained that in February 2022, he contacted the IRS and was verbally told that due to his Chapter 7 bankruptcy discharge in December 2021, the IRS eliminated his 2011 and 2013 tax debt and reduced his 2015 and 2016 tax debts. The bankruptcy did not affect subsequent years' tax debts. He believed that the amount the IRS would indicate he owed was approximately \$21,732 for tax years 2015, 2016, 2017, and 2018. The 2017 tax debt included penalties and interest for failing to file on time. Applicant disputed that he failed to file on time. He claimed he mailed his tax return on time. The IRS transcript for tax year 2017 indicates it was not filed on time. The amount of penalties for 2017 were approximately \$6,663. He intended to resolve the disputed amount owed with the IRS. (Item 5)

Included with Applicant's response to interrogatories were IRS tax transcripts, which were from May 2022. The tax transcript for tax year 2021 showed that no tax return was filed. For tax year 2020, it showed an extension was granted until October 2021, and no tax return was filed. For tax year 2019, it showed an extension was granted until October 2020, and no tax return was filed. For tax year 2018, it showed Applicant filed

his tax return late and a penalty was assessed. The balance owed for 2018 was \$6,456. (Item 5)

Applicant provided IRS tax transcripts from June 2022 with this answer to the SOR. His 2011 tax-year transcript showed he did not owe a current balance because in March 2022 the IRS wrote-off the balance owed of \$21,797. His 2013 tax-year transcript showed he did not owe a current balance because in March 2022 the IRS wrote-off the balance owed of \$3,277. His 2015 tax-year transcript reflected that refunds from 2020 and 2019 (which included the pandemic tax credits for these years) were applied to his delinquent balance, and he owed a negligible amount (65 cents). His 2016 tax-year transcript reflected that he owed \$2,537, after a refund from 2019 was applied to the delinquent balance. (Item 3)

Applicant's 2017 tax-year transcript reflects he filed this return in October 2021 and he owes a balance of \$9,289. Applicant disputed the late filing penalty. He did not document a resolution from the IRS regarding the dispute. He provided a paper copy of his 2017 federal income tax return date. The date is illegible and is not proof that the return was mailed and filed timely. His 2018 tax year transcript reflects he owes \$6,477. (Item 3)

In Applicant's answer to the SOR, he provided paper copies of his 2019 federal income tax return dated September 23, 2021. He provided a copy of a request for an extension for his 2019 federal income tax return, which would have extended the deadline to October 2020. His 2019 tax-year transcript reflects his 2019 tax return was filed in September 2021. He was entitled to a refund that was applied to his 2015 and 2016 tax debt. (Item 3)

In Applicant's answer to the SOR, he provided a paper copy of a request for an extension for filing his 2020 tax return. His 2020 tax-year transcript reflects he filed his 2020 return in September 2021, and he did not owe taxes and was entitled to a refund (\$1,156). His refund was applied to his 2015 delinquent tax balance. (Item 3)

Applicant's 2021 tax-year transcript from June 2022 reflects that his federal income tax return had not been filed. The only item noted was he received a tax-relief credit of \$1,400 (due to the pandemic) that was applied to his delinquent tax balance. In his FORM response, he included a paper copy of his 2021 tax return that shows he signed it on April 18, 2022. There is no proof it was mailed and received by the IRS. The tax transcripts are the most probative evidence. (Item 3; AE B)

In Applicant's response to the FORM, he attributed his financial difficulties to his wife losing her job in 2010 and then her medical problems in 2015 or 2016. He also indicated he has provided financial and other support to two adult children and grandchildren. They assist one child, who has a chronic medical condition, with her medical bills and assistance in ensuring she attends appointments and other medical matters. The other child and her three children continue to live with Applicant and his wife and they are helping her become more financially independent. She receives sporadic

child support from the fathers of her children. This has put a financial strain on Applicant and his wife. He believes providing them support is beyond his control. Applicant's 2019 SCA shows he and his wife took an all-inclusive vacation to Jamaica in 2014. (AE A)

Applicant stated that his finances are improving. He notes the significant reduction in the amount he owes the IRS, due largely to its write-off of his older tax debts and because he has received tax refunds in 2019, 2020, and 2021, that were applied to his delinquent tax debts. He said that he has been in contact with the IRS and agreed to an installment agreement to pay \$300 a month beginning in October 2022, toward what he believes is the current balance owed of \$15,880 for tax years 2016 through 2018. He did not provide a copy of the installment agreement. He said he is current on his monthly expenses, and he is paying delinquent gas and electric bills each month that were not discharged in bankruptcy. Applicant did not provide an explanation for why he did not timely pay his federal income taxes for multiple years or timely file others. He also did not comment on his 2017 tax year debt.

The SOR alleges that in 2018 Applicant misused his company's travel credit card for an ATM cash withdrawal. He admitted in his answer to the SOR that this happened, but said it was inadvertent and he repaid the amount. He told the government investigator in his July 2019 interview that in June 2018, he was short on money to pay some of his wife's medical bills and decided to take money from his account and inadvertently used his work credit card and withdrew \$400. His employer notified him and he was given a verbal and written warning from his supervisor. He repaid the amount in December 2018. (Item 5)

Any derogatory matters that were not alleged in the SOR will not be considered for disqualifying purposes. They may be considered when applying mitigating conditions, in making a credibility determination, and in a whole-person analysis.

### **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a

security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust; 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.

Applicant had more than \$50,000 of delinquent debts discharged in Chapter 7 bankruptcy in December 2021. He had delinquent federal income taxes written off by the IRS, due to their age and his bankruptcy. He still owes delinquent federal income taxes for multiple tax years. Applicant did not timely file his 2019. I find for Applicant regarding his 2021 tax return filing. They were not due until April 2022, and it is not unusual for IRS transcripts to not reflect filings for months after their receipt. AG ¶¶ 19(a), 19(c) and 19(f)

Applicant misused a work credit card for personal use. He told the government investigator that he was short on cash to pay his wife's medical bills and said he inadvertently used his work credit card. It took him six months to repay the credit card. If he had inadvertently used his work credit card, he would have paid it back immediately. It took him six month to reimburse his employer, supporting that he was short on cash. I did not find his statement believable. AG ¶ 19(d) applies.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. 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 persons 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; 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 misuse of his employer's credit card happened four years ago and there is no evidence that additional misuse has recurred. I find this conduct was infrequent and unlikely to recur. AG ¶ 20(a) applies to SOR ¶ 1.i and is mitigated.

Applicant began having tax issues in 2010, when he withdrew money from his pension and incurred a tax debt. He attempted to resolve it, but he repeatedly failed to timely pay subsequent years' income taxes, including 2013, 2015, 2016, 2017 and 2018. Applicant stated his wife's loss of her job in 2010, her medical expenses in 2015 or 2016, and financially supporting their children affected his finances. These were conditions beyond his control. For the application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. It has been 12 years since his wife lost her job. It has been seven years since she developed medical issues. Applicant has repeatedly failed to ensure he paid his taxes timely, or provide evidence that he made appropriate adjustments to ensure his tax debt was minimized, and he has failed to timely file for certain tax years. Some of his tax debts were resolved because the IRS wrote-off the delinquent amounts owed, not because Applicant paid the debts. Applicant stated in his response to the FORM that he had an agreement with the IRS to make monthly payments to begin in October 2022. He did not provide documentary evidence of an agreement or that he is in compliance. He did not provide evidence that other than recent tax refunds being applied to previous years' tax debts, that he has been making payments. AG ¶ 20(b) has minimal application. AG ¶ 20(g) does not apply.

There is no evidence Applicant has received financial counseling. I cannot find under the circumstances that his finances are under control. In his bankruptcy documents, he disclosed that his monthly expenses exceed his monthly income. AG ¶ 20(c) does not apply. Some of Applicant's tax debts were resolved because the IRS wrote them off. Some were resolved or reduced by the IRS applying subsequent years' refunds to his tax



debts. I find these are not good-faith efforts to resolve his tax debts. AG ¶ 20(d) does not apply.

### **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.

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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

The DOHA Appeal Board has held that:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with these things is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Someone 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. August 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). ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

Applicant has not met his burden of persuasion. He does not have a reliable financial track record of paying his debts, and filing and paying his federal income taxes. Although some tax year debts are resolved, the fact that they were written off by the IRS does not reflect he acted responsibly. The fact that other delinquent tax years were paid

from refunds of subsequent tax years, also does not reflect Applicant made a good-faith effort to pay the taxes. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

### **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

Subparagraph 1.a:                         Against Applicant

Subparagraphs 1.b-1.d:                 For Applicant

Subparagraphs 1.e-1.h:                 Against Applicant

Subparagraph 1.i:                         For 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 Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge