



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



In the matter of: )  
)  
) ISCR Case No. 21-00730  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esquire, Department Counsel  
For Applicant: *Pro se*

02/10/2022

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance is denied.

**Statement of the Case**

On March 1, 2018, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On August 12, 2020, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued him a set of interrogatories. On December 9, 2020, he responded to those interrogatories. On May 13, 2021, the DCSA CAF issued him a Statement of Reasons (SOR) under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), effective June 8, 2017.

The SOR alleged security concerns under Guideline F (Financial Considerations) and detailed reasons why the DCSA adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On July 20, 2021, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by DOHA on September 2, 2021, and he was afforded an opportunity after receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, he was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. He received the FORM on September 8, 2021. His response was due on October 8, 2021. Applicant chose not to respond to the FORM, for as of October 27, 2021, no response had been received. The case was assigned to me on February 8, 2022. The record closed on October 8, 2021.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted, with comments and attachments, most of the factual allegations (SOR ¶¶ 1.c. through 1.e., 1.h., and 1.i.). He also offered comments and attachments regarding the allegations he denied. Applicant's admissions, comments, and the information in the attachments are incorporated herein. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is a 46-year-old employee of a defense contractor. He has been serving as a manager with his current employer since January 2011. He previously worked for another employer as a lead mechanic (May 2004 – January 2011). He is a 1994 high school graduate. He enlisted in the U.S. Navy in November 1994, and served on active duty until April 1998, when he was administratively discharged with a general discharge. He has held a secret clearance since 1994. He was married in 2001. He has two children, born in 2002 and 2006.

### **Financial Considerations**

Applicant self-reported a number of federal income tax issues on his SF 86. He acknowledged that he had failed to timely file his federal income tax returns for 2011, 2012, 2013, 2014, 2015, and 2016. In addition, he had failed to pay federal income taxes for those years which he estimated to total \$10,000. He reported that he had an installment agreement in place with the Internal Revenue Service (IRS) under which he was making monthly payments of \$200. (Item 2 at 38)

On August 14, 2018, Applicant was interviewed by an investigator from the U.S. Office of Personnel Management (OPM), and he explained the background for his failed filings and delinquent payments. He acknowledged that he had failed to timely file a number of his federal income tax returns over a multi-year period, essentially because of

a combination of procrastination and moving around a lot which caused him to misplace the majority of his paperwork. He initially intended to file his federal income tax returns for 2016, and had obtained an extension, but he still failed to follow through with the filing. At the time of the interview, he still had not timely filed the federal income tax return for 2017. He again noted that he had an installment agreement in place with the IRS since 2015, but corrected the monthly payment amount that he had reported in his SF 86, noting that it was actually \$150 per month. He stated an intention to file his income tax returns for 2016 and 2017 by the end of 2018. (Item 3 at 4)

Applicant was questioned about other financial issues, but he initially denied having any. He was subsequently confronted with a number of accounts that had been reported as delinquent, and although he again denied having any knowledge of those accounts, he did acknowledge that a vehicle had been temporarily repossessed in 2014. The matter was later resolved. He indicated that his wife handles all the family finances, and she had never mentioned any issues regarding their accounts. He stated that he would obtain a credit report to determine if there are any financial issues remaining, and that he would resolve any issues that he found. (Item 3 at 4-5)

In his response to the interrogatories, he again stated that his wife was “overseeing” their finances, and while he was aware that the federal income tax returns for 2016, 2017, and 2018, had not been timely filed, he claimed he was unaware that payments had also been missed. He stated that his base salary is \$110,000 and that her hourly salary adds up to about \$30,000 per year. He also receives between \$10,000 and \$30,000 a year extra due to extra hours worked. (Item 4 at 3) He attached account transcripts furnished to him by the IRS.

The SOR alleged nine different financial issues associated with his failures to either timely file federal income tax returns or pay income taxes over a multi-year period, as well the fact that one tax lien had been filed, essentially supported by the account transcripts that Applicant submitted in response to the interrogatories. Those transcripts reflect the following data:

The 2011 income tax return was filed on April 8, 2013 (reflecting a taxable income of \$103,236). A lien was placed on his assets in 2015. The lien was removed in October 2015 when the final payment was made. There is now a zero balance;

The 2012 income tax return was filed on September 26, 2016 (reflecting a taxable income of \$97,685). Although there is an account balance of \$4,418.68, as of October 15, 2020, the account currently considered collectable was zero;

The 2013 income tax return was filed on May 16, 2016 (reflecting a taxable income of \$84,474). Although there is an account balance of \$2,357.25, as of October 15, 2020, the account currently considered collectable was zero;

The 2014 income tax return was filed on May 16, 2016 (reflecting a taxable income of \$87,380). The balance as of that date was zero;

The 2015 income tax return was filed on May 16, 2016 (reflecting a taxable income of \$98,256). Although there is an account balance of \$4,728.48, as of October 15, 2020, the account currently considered collectable was zero;

The 2016 income tax return was still not filed as of December 23, 2019;

The 2017 income tax return was still not filed as of December 23, 2019;

The 2018 income tax return was still not filed as of March 23, 2020; and

The 2019 income tax return was filed August 17, 2020 (reflecting a taxable income of \$121,926). As of December 21, 2020, there was an unpaid balance due of \$92.16.

In July 2021, Applicant submitted a cryptic email reportedly conveying information from the IRS regarding his current income tax liabilities by tax year: 2012: info; 2013: zero; 2015: \$422.73; 2016: zero; 2017: zero; 2018: zero; and 2019: \$99.73. There were no explanations regarding the word "info" or inconsistencies from the data in the account transcripts. (Item 1 at 4)

As of July 20, 2021, Applicant claimed that his family adjusted gross income was \$119,152 in 2018, and that it had increased to \$146,326 in 2019. (Item 1 at 3) He did not indicate the amount of his 2020 adjusted gross income. His current financial situation is unknown, for he has not submitted any information regarding his monthly net income; his estimated monthly expenses; or if he has any monthly remainder available for discretionary spending or savings. There is no evidence of financial counseling.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)) As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "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 and modified.)

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence." "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)) "Substantial evidence" is "more than a scintilla but less than a preponderance." (See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994))

The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005))

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials." (*Egan*, 484 U.S. at 531)

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." (See Exec. Or. 10865 § 7) Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

## 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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.

Applicant failed to timely file his federal income tax returns for the tax years 2011, 2012, 2013, 2014, 2016, 2017, and 2018, and he failed to pay his federal income taxes for 2011, 2012, 2013, 2015, and 2019. In some cases, the federal income tax returns were not filed until several years later, well after the required filing dates. He admitted that he did not file his 2017 and 2018 federal income tax returns until May 31, 2021, after the SOR was issued. A tax lien was filed against his assets in 2015 for the delinquent 2011 income tax. His adjusted gross income in 2019 was \$146,326, but he submitted few verified efforts other than the initiation of periodic installment agreements that were later cancelled to resolve his federal income tax issues. AG ¶¶19(a), 19(b), 19(c), and 19(f) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20:

(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; 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(d) and 20(g) minimally apply. A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)). The nature, frequency, and recency of Applicant's delayed failure to voluntarily and timely resolve his delinquent federal income tax issues for several years, despite repeated promises to do so, make it rather easy to conclude that they were not infrequent. This case involves two separate issues: the failure to timely file federal income tax returns, and the failure to pay federal income taxes. Furthermore, considering his continued failures and delayed actions in addressing both issues despite earning a rather healthy wage, his federal income tax issues are likely to remain unchanged in the future. Applicant attributed his financial issues essentially to a combination of procrastination and moving around a lot which caused him to misplace the majority of his paperwork. He indicated that his wife handles all the family finances, and she had never mentioned any issues regarding their accounts. However, he obviously learned about some of the tax issues before he completed his SF 86. Nevertheless, additional issues arose after he submitted the SF 86. Applicant's failure to more timely address his federal income tax issues leads to a conclusion that his actions or inaction were irresponsible.

An applicant who begins to resolve his or her financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. (See, e.g., ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018).

Applicant completed his SF 86 in March 2018; underwent his OPM interview in August 2018; and completed his responses to interrogatories in December 2020. The SOR was issued in May 2021; and the FORM was issued in September 2021. Each step of the security clearance review process placed him on notice of the significance of the financial issues confronting him. With respect to his unfiled federal income tax returns, he filed the 2011 income tax return in 2013; and the 2012, 2013, and 2014 income tax returns in 2016, before the security eligibility process commenced. However, the 2016, 2017, and 2018 income tax returns were not filed until 2019 and 2020 – well after the process began. It is difficult to understand how he could fail to focus on his 2018 income tax return when he was already in the security eligibility process. By failing to be aware of the status of his federal income tax return filings and non-payments over such a lengthy multi-year period, Applicant did not demonstrate the high degree of good judgment and reliability required of those granted access to classified information.

The DOHA Appeal Board has observed:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, 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. *Id.* 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. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 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. 14-04437 at 3 (App. Bd. Apr. 15, 2016). See ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

The Appeal Board clarified that even in instances where an applicant has purportedly corrected his or her federal tax problem, and the fact that the applicant is now motivated to prevent such problems in the future, does not preclude careful consideration of an applicant's security worthiness in light of his or her longstanding prior behavior evidencing irresponsibility including a failure to timely file federal income tax returns. (See ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. June 15, 2016) (characterizing "no harm, no foul" approach to an Applicant's course of conduct and employed an "all's well that ends well" analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR).

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not



require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time. Mere promises to pay debts in the future, without further confirmed action, are insufficient. In this instance, there are some promises, but no actual resolution efforts.

There is no evidence of financial counseling or a budget. It remains difficult to determine if Applicant is currently in a better position financially than he had been, Applicant's actions, or inaction, under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment. (See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).)

### **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 SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the 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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. (See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006))

There is some evidence in favor of mitigating Applicant's financial concerns. Applicant is a 46-year-old employee of a defense contractor. He has been serving as a manager with his current employer since January 2011. He previously worked for another employer as a lead mechanic (May 2004 – January 2011). He is a 1994 high school graduate. He enlisted in the U.S. Navy in November 1994, and served on active duty until April 1998. He has held a secret clearance since 1994. Applicant candidly acknowledged in his SF 86 that he had some continuing federal income tax issues. He eventually filed

all of his delinquent his federal income tax returns and has made payments for some of his delinquent taxes.

The disqualifying evidence under the whole-person concept is simply more substantial. Applicant failed to timely file his federal income tax returns and make income tax payments for multiple tax years. Although he was eventually aware of the non-filings and non-payments in 2018, some of those issues were not resolved and subsequent identical issues arose. His 2016 and 2017 federal income tax returns were not filed until December 2019; and his 2018 federal income tax return was not filed until 2020. For unexplained reasons, while he still owes the IRS unpaid income taxes for several years, the accounts were “currently considered collectable” was zero. Applicant was administratively discharged from active duty with a general discharge.

Overall, the evidence leaves me with substantial questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations. See SEAD 4, App. A, ¶¶ 2(d) (1) through AG 2(d) (9).

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as amended, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.i:	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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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ROBERT ROBINSON GALES  
Administrative Judge