



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



In the matter of: )  
)  
) ISCR Case No. 20-01677  
)  
Applicant for Security Clearance )

**Appearances**

For Government: William Miller, Esq., Department Counsel  
For Applicant: Dan Meyer, Esq.

01/20/2023

**Decision**

Hyams, Ross D., Administrative Judge:

Applicant mitigated the financial considerations and personal conduct security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on October 9, 2018. On October 15, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant responded to the SOR on April 26, 2021, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals. After a delay because of the COVID-19 pandemic, the case was assigned to me on July 21, 2022.

The hearing was convened on September 22, 2022. Department Counsel submitted Government Exhibits (GE) 1 and 2, which were admitted in evidence without objection. Applicant submitted Applicant’s Exhibits (AE) A-O, which were admitted in evidence without objection. After the hearing, I held the record open for two weeks to provide Applicant the opportunity to submit additional documentary evidence. He timely

submitted documents that I marked as AE P-V, and admitted in evidence without objection.

### **Findings of Fact**

In his answer, Applicant admitted SOR ¶¶ 1.a and 1.b, and denied SOR ¶ 2.a. His admissions are incorporated into the findings of fact. After review of the pleadings, testimony, and evidence submitted, I make the following additional findings of fact.

Applicant is 42 years old. He took some college courses, but has not earned a degree. He was married in 2007 and divorced in 2012. He has three minor children with his first wife. He was married again in 2016, and divorced in 2018. He remarried in 2020. He served in the U.S. Marine Corps from 1999-2003, and in the Army National Guard from 2003-2020. He received an honorable discharge. He has worked as a senior financial analyst for a defense contractor since early 2021. He previously worked in finance as a Federal Government employee from 2007-2018. (Tr. 23-27, 39-40; GE 1)

Applicant was deployed with his military unit from August 2016 through September 2017. He married his girlfriend of about four years a few months prior to deployment. He claims that before leaving, he signed a power of attorney so that she could file their joint tax return while he was away. He stated that while overseas he was told by military leadership that he was not required to file his tax returns until after he came home, and that there was an additional grace period to file after he came back. (Tr. 28-31, 67; AE A)

During his deployment, Applicant's wife filed for separation and divorce, and abandoned the home that he owned. He reported that when he returned in September 2017, he found his home in a serious state of disrepair. After she absconded, pipes froze, which created leaks and holes in the ceiling and floors. His vehicle was left non-operable, with mold growing on the inside and requiring major repairs. He also found that she had drained the money in their joint bank account. He stated that he was not spending money while on deployment, so he had not been checking his account balance. He later found out that she did not file their taxes while he was away. (Tr. 28-31, 33-34, 71-72; AE A) These unfiled federal and state income tax returns are alleged in SOR ¶¶ 1.a and 1.b.

Applicant stated that the divorce was not amicable, and caused him considerable depression and stress. He reported that he moved to a new location to get away from the area where they used to live for his mental health, and he had to considerably downsize his possessions. Some of his tax documentation was lost in the move, and some mail was not preserved for him while he was deployed. He stated that he became severely depressed and distressed when he tried to prepare his tax returns from this time period (2016-2018), because it made him think about the failed relationship and a very difficult time in his life. He asserted that he had some kind of PTSD from these events. Further complicating his efforts, he found out that his wife had filed her taxes separately for these tax years. He claimed that he needed to know if she itemized the deductions on her returns, so he could make the same selection, or the returns would be rejected. He

asserted that she was not responsive to his attempts to contact her for this information. (Tr. 28-31, 41-49, 71-74; AE A)

Applicant claimed that he tried to contact the IRS about his delinquent returns, but could not reach them by phone. These attempts were made during the pandemic, when there was reduced staffing. He was able to file his federal and state income tax returns in 2021, but they were not processed by the IRS for about a year because of reduced staffing. His IRS tax account records show that he filed his 2016 and 2017 returns on April 30, 2021, and his 2018 return on May 4, 2021. There is no balance due for these years. IRS account records also show that he timely filed his 2019-2021 returns, and there is no balance due for these years. (Tr. 35-36; AE I, J, K, N, M, R)

The IRS account records for 2016-2018 show that part of Applicant's refunds for these years were transferred out to pay tax debts from 2012 and 2013. He reported that he did not withhold enough from his salary during these years, which resulted in a tax debt. He had been paying these debts on a payment plan. His 2012 account records show that the debt originated at about \$5,400, which he made monthly payments from 2013-2021. His 2013 account records show that the debt originated at about \$7,400, which he made monthly payments from 2014 to 2020. Both debts were paid through the payment plan and the transferring of his yearly refunds, and are now resolved. (Tr. 46-49, 75; AE P, Q)

Applicant reported that he filed his 2016-2018 state tax returns at the same time as his federal returns. State tax records show that he made about \$200 in monthly tax payments in December 2021, and January and February 2022. He paid the remaining balance on his state tax account, about \$5,400, in July 2022. The state tax debt is now resolved. (Tr. 54-56; AE S, T)

Applicant's budget shows that he and his wife's finances are stable and they are able to afford their monthly expenses. Their current monthly income exceeds their expenses by about \$12,000. Records also show that he is current with his child support obligations. (AE O, U, V)

After returning to the U.S. in August 2017, but before returning home, Applicant received non-judicial punishment (NJP) from his command for violating equal employment opportunity (EEO) standards of conduct with a subordinate service member, while intoxicated off-duty. (SOR ¶ 2.a) For the NJP, he was orally reprimanded and forfeited \$1,925 in pay. He claimed that the night before the unit was scheduled to return home, he was out with friends on base for dinner and a few drinks. He reported that during the evening, one friend, who was junior in rank, was acting rude and belligerent towards him. He claimed that he pulled him aside in view of others, to talk with him and find out what the problem was between them. He stated that after the conversation they shook hands. He claimed that the next day, the soldier reported to command that he made a racial and homophobic slur towards him, and was inappropriately calling him names. Applicant denied these allegations. He stated that he was unable to return home with his unit because an investigation needed to be completed. After about a month, he agreed

to NJP so he could finally return home. He asserted that the alleged incident was over five years ago, and that he served in his unit without problem for three years afterwards, and was honorably discharged. (Tr. 31-35, 56-66, 76-77; AE A)

Applicant submitted three letters of recommendation, all of which state that he is a good employee and soldier, and that he is reliable, trustworthy, and fit to hold a security clearance.

## **Policies**

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk

the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern for financial considerations is set out in AG ¶ 18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (c) a history of not meeting financial obligations;
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The SOR allegations are established by the tax records, and Applicant’s admissions. AG ¶¶ 19(c) and (f) apply.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn,

unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) applies. Applicant's tax filing delinquencies began when he was deployed overseas and in an unstable relationship. His delinquent tax returns are limited to those tax years (2016-2018). He has filed his delinquent federal and state tax returns and resolved any outstanding tax debts. His returns for the last three tax years have been timely. The issue started about six years ago, and occurred under circumstances that are unlikely to recur. It does not cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) applies. Applicant was deployed and unable to file his 2016 return, and his second wife did not provide him with documentation and information he required to file his 2017 and 2018 returns. Additionally, the aftermath of his deployment and their relationship caused further personal hardship, which inhibited the timeline of his filing. These were circumstances beyond his control, and he acted responsibly under the circumstances by filing his returns.

Applicant had been on a payment plan with the IRS since 2013 to resolve his outstanding tax debt. He made good faith efforts to file and pay his federal and state taxes. AG ¶¶ 20(d) and (g) apply.

### **Guideline E, Personal conduct**

AG ¶ 15 details the personal conduct security concern:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes

I have considered the disqualifying conditions for personal conduct under AG ¶ 16 and the following is applicable:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse

determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations; and
- (4) evidence of significant misuse of Government or other employer's time or resources;

I have considered the mitigating conditions under AG ¶ 17. The following are potentially applicable:

- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

The offense alleged in the NJP occurred over five years ago, under unusual circumstances that are unlikely to recur, and no longer cast doubt on Applicant's reliability, trustworthiness, and judgement. Applicant denies the behavior, and stated that he agreed to the NJP because he wanted to return home after his deployment. There was no evidence that Applicant has a history of rule violations, inappropriate behavior with subordinates, or EEO violations. AG ¶¶ 17(c) applies.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;

(8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have considered his letters of recommendation and his military service. I have incorporated my comments under Guidelines F and E in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant mitigated the financial considerations and personal conduct security concerns

### **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.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national security interest of the United States to grant Applicant's eligibility for access to classified information. Applicant's eligibility for a security clearance is granted.

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Ross D. Hyams  
Administrative Judge