



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



In the matter of:	)	
	)	
	)	ISCR Case No. 20-00531
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

01/24/2023

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**Decision**

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MURPHY, Braden M., Administrative Judge:

Applicant has several years of unfiled federal income tax returns (2006-2018) as well as several delinquent debts. He did not provide sufficient evidence to mitigate the resulting financial considerations security concerns. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on January 15, 2018. Subsequently, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The SOR is unsigned and undated. (This suggests that a draft of the SOR was erroneously issued, due to a clerical error, instead of the final, signed version). The DOD issued the SOR under Executive Order 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 National Security Adjudicative Guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on June 6, 2021, and elected to have his case decided by an administrative judge of the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record, in lieu of a hearing. On September 1, 2022, DOHA Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 4. DOHA mailed the FORM to Applicant the next day, and on September 21, 2022, he signed a receipt for it. He was afforded 30 days to file objections and submit material in refutation, extenuation, or mitigation.

Applicant did not respond to the FORM, so he did not note any objections to the Government's proposed evidence. On January 6, 2023, the case was assigned to me for a decision. The SOR and the answer (combined as Item 1) are the pleadings in the case. Items 2 through 4 are admitted into evidence without objection.

### **Findings of Fact**

In his response to the SOR, Applicant admitted SOR ¶ 1.c but denied all of the other allegations (SOR ¶¶ 1.a, 1.b, and 1.d through 1.j), all with brief explanations, but no documents. His admission is incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 65 years old. He served on active duty in the U.S. Navy from 1979-1993. He earned his GED while in the Navy. He was married from 1982-2010, when he and his wife divorced, and he indicated that they separated several years earlier. He has one adult step-daughter. Applicant is a computer database developer. He submitted his SCA in January 2018 when employed or sponsored by one defense contractor, but he has had several employers since then. The file reflects that Applicant received the SOR through his current clearance sponsor, a large defense contractor. (Item 3, 4; SOR receipt)

When Applicant submitted his most recent SCA, in January 2018, he disclosed several years of unfiled federal income tax returns, from 2006-2016. In his explanations, he said his tax filing problems began after separating from his wife, in about 2006. He asserted that he had always been a "W-2" employee and that his taxes were paid. For several of his earlier unfiled returns (2006-2010), he said (on his 2018 SCA) that he was working with an accountant and that he expected to have those returns satisfied "by the end of July 2012." (Item 2 at 46-47) (This date suggests those items were left unedited from an earlier SCA, not in the record here). For later returns (2011-2016), he said that "due to questions from previous years unfiled returns, this year could not be filed." (Item 2 at 48-50).

Applicant had a background interview in May 2019. He discussed his unfiled tax returns (expanding the timeframe from "2006 to present")(Item 3 at 17). Applicant authenticated his interview summary as accurate (making some changes not related here) in an August 2020 interrogatory response to DOHA. (Item 3 at 1-5)

In the same interrogatory response, Applicant also confirmed that his federal income tax returns for tax years (TY) 2006-2019 were still unfiled. (Item 3 at 6-7) SOR ¶ 1.a covers TY 2006-2018. (TY 2019 was omitted, likely in error).

In denying SOR ¶ 1.a, Applicant stated, “I am currently working with a CPA [name redacted] to rectify this. Of note, I’ve always been a W-2 employee so my taxes have always been deducted and paid by my employers.” (Item 1) (This, of course, is beside the point, as the issue is Applicant’s unfiled federal returns, not unpaid federal taxes, which are not alleged). Applicant provided no details, and no documents to show that any of his unfiled federal tax returns since TY 2006, have, even now, been filed.

The remaining SOR allegations concern various delinquent debts. He denied all but one of them. The debts are established by an October 2019 credit report. (Item 4) The SOR debts are detailed as follows: SOR ¶ 1.b (\$7,559) is a charged-off debt to a military credit union. SOR ¶¶ 1.c (\$2,334) and 1.d (\$1,838) are debts in collection with the same collection agency. SOR ¶ 1.e (\$796) is an account placed for collection. SOR ¶ 1.f (\$496) is a charged-off debt to a credit card company. SOR ¶ 1.g (\$217) is a charged off debt to a credit union. SOR ¶ 1.h (\$159) is an account placed for collection by a gas company. SOR ¶ 1.i (\$136) is an account placed for collection by a bank. SOR ¶ 1.j (\$72) is a medical debt placed for collection. (Items 1, 4)

Applicant said most of the SOR debts (SOR ¶¶ 1.b, 1.d, 1.f, 1.g, 1.i, and 1.j) had been paid in full. He denied SOR ¶ 1.e without explanation. He said SOR ¶ 1.h was incurred by his former wife but charged to his account. He admitted SOR ¶ 1.c and said it was being resolved under a monthly repayment plan. (Item 1) He provided no documents to corroborate any of his assertions with his SOR response. He also did not respond to the FORM, so he provided no updated information.

### **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(a), 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 access to classified information 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. Under Directive ¶ E3.1.15, 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.

## **Analysis**

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

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

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. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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

Applicant had a duty to file his annual state and Federal income tax returns in a timely manner, and the fact that he did not do so for several years is a security concern. As the Appeal Board has held, in ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016):

Failure to file tax returns suggests that an applicant has a problem 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 towards 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.

Applicant failed to timely file his Federal and state income tax returns for several tax years, including 2006-2018, as alleged. This establishes AG ¶ 19(f) specifically, as well as, more generally, AG ¶ 19(c). AG ¶¶ 19(a) and 19(c) are also satisfied by his various delinquent debts, established by his 2019 credit report.

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 person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or 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 delinquent debts are established by an October 2019 credit report – a document that is now over three years old. Applicant says most of them have been paid, but he did not provide documentation to show it. It is his responsibility to provide independent documentation of his assertions, such as evidence of payments, or a new credit report showing updated status of the accounts. Applicant did not provide any documents in answering the SOR, and he did not respond to the FORM, so he did not meet his burden of rebutting or mitigating the delinquent debts in the SOR. No mitigating conditions apply to his delinquent debts.

Independently, there is the matter of Applicant's unfiled federal income tax returns. Applicant has not filed his federal income tax returns, on time, or at all, since at least TY 2006. The fact that he says he has money withheld from his pay by his employer, as a W-2 employee, even if true, makes no difference. He has an independent responsibility to file his federal income tax returns every year, and to do so on time.

Applicant asserts that his tax filing failures began in 2006 when he and his wife separated. He asserts, without support, that this caused a cascading series of problems, year after year, on the premise that each of his tax filings are contingent on filing(s) in prior years. Applicant provided no documentation about any of this, nor did he provide any documentation to establish that any of his unfiled federal returns have now been filed, even belatedly. To whatever extent Applicant's separation had to do with the origin of his tax filing problems (something which is not established), that does not excuse his pattern of inaction for years afterward. Applicant's unfiled tax returns are ongoing and unresolved. They continue to cast doubt on his current reliability, judgment, and trustworthiness. He has not shown any reasonable, good-faith efforts to resolve them. No mitigating conditions apply to his unfiled federal tax returns.

### **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(a), 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.

Applicant is an employee of a defense contractor seeking eligibility for access to U.S. government classified information as part his job. He has not filed federal income tax returns for many years. He did not provide any documentation of any tax filings and gave little indication that he has undertaken any action to address his tax issues, even belatedly. He is not an appropriate candidate for access to classified information. He also did not establish that he has paid his delinquent debts. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance. Applicant did not provide sufficient evidence to mitigate the security concerns arising under Guideline F, financial considerations due to his delinquent debts and years of unfiled federal income tax returns.

### **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
Subparagraphs 1.a-1.j:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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Braden M. Murphy  
Administrative Judge