



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



In the matter of:	)	
	)	
	)	ISCR Case No. 19-03509
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Kent, Esq., Department Counsel  
For Applicant: *Pro se*

03/06/2023

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**Decision**

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HYAMS, Ross D., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations security concerns arising from his unfiled tax returns and delinquent debts. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on June 3, 2018. On April 22, 2020, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant answered the SOR on August 12, 2021, and requested a hearing before an administrative judge. The case was assigned to me on September 6, 2022.

The hearing convened on October 26, 2022. Department Counsel submitted Government Exhibits (GE) 1-6, which were admitted in evidence without objection. Applicant did not present any documentation at the hearing. After the hearing, I held the record open for three weeks to provide Applicant with the opportunity to submit additional documentary evidence. He timely submitted documents that I marked as Applicant's Exhibits (AE) A-O and admitted into evidence without objection.

## Findings of Fact

In his answer, Applicant admitted all the SOR allegations (§§ 1.a-1.j). His admissions are incorporated into the findings of fact. Based on my review of the pleadings, evidence submitted, and testimony, I make the following additional findings of fact:

Applicant is 37 years old. He has never been married and has no children. He attended trade school in 2014. He has worked for a government contractor as a maritime electrician since 2018. (Tr. 11-12; GE 1)

The SOR alleges Applicant's tax filing issues and delinquent debts. He cited different reasons for his financial problems. He stated that he had unstable living circumstances between 2013-2018 because he did not earn enough money to be able to lease a place of his own. He asserted that in 2014 he had an injury which kept him out of work for several weeks. He reported that he lived in his car for about five months in 2014 while attending trade school. He rented rooms and stayed with friends for several years after. He claimed that he was depressed at the time and his finances were not on his mind. He also did not file his income tax returns during that time period. (Tr. 21-25, 59-60)

The SOR alleges failure to file six years of Federal and state tax returns, and about \$14,052 of delinquent debt including \$11,745 of student loans, \$601 of consumer debt, and \$1,706 of medical debt. The status of the allegations is as follows:

SOR §§ 1.a and 1.b concern Applicant's failure to file Federal and state income returns for tax years (TY) 2013-2018. Applicant admitted that he had not yet filed these returns, but claimed that he was working on it. He stated that he did not file these returns because it was not on his mind, and thought that he had five years to file. He claimed that he tried to file his 2019 tax returns, but they were rejected. He claimed that he was able to file his 2020 returns, and stated that he filed his 2021 returns late. He submitted three unsigned and undated Form 1040s for tax years 2019-2021. These forms show that he should be due refunds for 2019 and 2020, but owes about \$2,500 for 2021. He did not submit sufficient documentation to show that these returns were filed or that his tax debt from 2021 was paid. He also submitted W-2 wage and tax statements for tax years 2016-2021, which do not show whether his returns were filed for these years. His tax issues remain unresolved. (Tr. 26-39, 55-58; GE 2; AE G-O)

SOR §§ 1.c-1.f and 1.j are medical debts placed for collection for \$136, \$406, \$574, \$292, and \$352, respectively. The debts originate from the 2012–2018 timeframe. Applicant claimed that he paid these debts in 2019 or 2020, but did not provide any documentation supporting this claim. These debts remain unresolved. (Tr. 39-42, 48-49; GE 3, 4, 5)

SOR § 1.g is a debt in collection for cellular phone service for \$601. Applicant stated that this debt became delinquent in 2015, and he forgot about it. He claimed that

it was paid in October 2022, but did not provide any documentation supporting this claim. This debt remains unresolved. (Tr. 42-44; GE 3, 4, 5)

SOR ¶¶ 1.h and 1.i are student loans in collection, for \$4,217 and \$7,528, respectively. Applicant incurred these loans when he attended trade school in 2014. He admitted that he never made any payments on these loans. He claimed that when he checked on the loans a couple of years ago the balances were zero and he was told that he did not owe anything on them. He did not provide any documentation supporting this claim. In his post-hearing submission, he stated that he found out that he was still responsible for these loans, and he will sign-up for relief. These debts remain unresolved. (Tr. 44-48; GE 3, 4, 5)

Applicant's budget shows that he is meeting his monthly expenses, and that his current monthly income exceeds his expenses by about \$1,500. He has not had any credit counseling. Applicant submitted three employment records showing that since 2020, he has received two merit increases and a cash award from his employer. (Tr. 52-53; AE C, D, E, F)

### **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:

- (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.

The SOR allegations are established by the credit reports, tax records, and Applicant’s admissions. AG ¶¶ 19(a), 19(c), and 19(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; 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(a) does not apply. Applicant failed to provide sufficient documentation showing that any of the alleged debts are resolved, or that any became delinquent under such circumstances that are unlikely to recur. His failure to pay his delinquent debt and file his past-due income tax returns is both long-term and recent, as well as ongoing and unresolved. This continues to cast doubt on his current reliability, trustworthiness, and good judgment.

Applicant did not provide sufficient evidence showing that his debts or unfiled tax returns occurred largely due to circumstances beyond his control or that he acted responsibly under the circumstances. AG ¶ 20(b) does not apply.

AG ¶ 20(g) does not apply. Applicant has at least six years of unfiled Federal and state income tax returns. He has known about his tax issues for several years, and he has not made any documented effort to resolve them.

### **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 incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility for a security clearance. He did not provide sufficient evidence to mitigate the security concerns under Guideline F arising out of Applicant's delinquent debts and unfiled Federal and state income tax returns. Eligibility for access to classified information is denied. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for eligibility for access to classified information in the future.

### **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**

It is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Ross D. Hyams  
Administrative Judge