



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



In the matter of:)	
)	
)	ISCR Case No. 20-03265
)	
Applicant for Security Clearance)	

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
 Andre M. Gregorian, Esq., Department Counsel
 For Applicant: *Pro se*

02/07/2023

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not deliberately falsify his security clearance application, so personal conduct security concerns are not established, but he failed to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 19, 2021, 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). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on October 29, 2021, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 17, 2022, scheduling the matter for a hearing on September 13, 2022. I convened the hearing as scheduled.

At the hearing, I admitted Government Exhibits (GE) 1 through 12 and Applicant's Exhibits (AE) A and B without objection. Applicant testified. At Applicant's request, I kept the record open until October 11, 2022, for additional documentation. Applicant did not submit additional documentation. DOHA received the hearing transcript (Tr.) on September 22, 2022.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a-1.l, 1.n, and 1.s-1.w, and he denied SOR ¶¶ 1.m, 1.o-1.r, 1.x-1.z, and 2.a.-2.c. He is 33 years old. As of the date of the hearing, he was engaged to be married. He has two minor children. He graduated from high school in 2009. He has attended college since 2019, but he has not yet earned a degree. He served honorably in the U.S. Army Reserve from January 2010 to July 2018. He deployed overseas in 2013. As of his April 2020 security clearance application (SCA), he worked as a fuel distribution operator and controller for his employer, a DOD contractor, since June 2014. He was granted a security clearance in 2014. (Answer; Tr. at 7-10, 26-29, 33-36, 82-83, 85, 95, 107-109; GE 1)

The SOR alleged that Applicant failed to file, as required, his federal income tax returns for tax years (TY) 2013, 2015, 2017, and 2018, and that his federal income tax returns for TY 2013 and 2015 remained unfiled as of the date of the SOR. (SOR ¶ 1.a) It also alleged that he failed to file, as required, his state income tax returns for TY 2013, 2015, 2017, 2018, and 2019, and that his state income tax returns for TY 2013 and 2015 remained unfiled as of the date of the SOR. (SOR ¶ 1.b) It also alleged that he was indebted to the federal government for delinquent taxes in the amounts of \$7,418, \$10,340, \$1,560, and \$1,144 for TY 2016, 2017, 2018, and 2019, respectively. (SOR ¶¶ 1.c-1.f) It also alleged that he was indebted to the state tax authority for delinquent taxes in the amounts of \$6,949, \$612, \$621, and \$263 for TY 2015, 2016, 2017, and 2019, respectively, and that a \$5,538 state tax lien was entered against him in 2017 and remained unpaid as of the date of the SOR. (SOR ¶¶ 1.g-1.k)

The SOR also alleged that Applicant's employer garnished his wages from around 2016 to 2020 for \$1,701, to satisfy a judgment entered against him by a consumer creditor. (SOR ¶ 1.l) It also alleged that his employer was garnishing his wages for \$8,531 since 2020 to satisfy a judgment entered against him, and that the garnishment order remained in effect as of the date of the SOR. (SOR ¶ 1.m) It also alleged that he had 8 delinquent consumer debts totaling \$30,020. (SOR ¶¶ 1.n-1.r, 1.v-1.x) It also alleged that he had three delinquent debts with the U.S. Department of Veterans Affairs (VA), totaling \$4,158. (SOR ¶¶ 1.s-1.u) It also alleged that he had two delinquent medical debts totaling \$357. The SOR allegations under Guideline F are established by Applicant's admissions in his Answer, his 2020 SCA, his June 2020 interview with a background investigator, his July 2021 response to interrogatories, documentation from the state tax authority, four credit bureau reports from 2020 to 2022, and court records. (Answer; GE 1-12)

The SOR also alleged that Applicant falsified his responses to section 26 of his SCA, when he marked "No" and failed to disclose: (1) his failure to file his federal and state income tax returns and his failure to pay his federal and state income taxes, as set

forth in SOR ¶¶ 1.a-1.k; (2) SOR ¶¶ 1.c-1.f and 1.k-1.m, in response to questions that inquired whether he had any delinquency involving enforcement; and (3) SOR ¶¶ 1.l through 1.z, in response to questions that inquired whether he had any delinquency involving routine accounts.

Applicant attributed his financial difficulties, to include his outstanding federal and state taxes, to being underemployed. He acknowledged, however, that he also mismanaged his finances, and he did not seek help when he should have. His finances spiraled in 2018, when he was hurt on the job and out of work for 11 months. In 2020, he was hurt on the job again and he was out of work for eight months. During both periods, he supported himself solely through workers' compensation, which amounted to only 66% of his gross annual salary. He testified that he contacted his creditors and informed them about his inability to pay his debts after he suffered both on-the-job injuries, but only three of them, whose names he could not recall, were willing to work with him. Although he and his fiancée have lived together since October 2017, and she contributes to the household expenses, he was the primary breadwinner and they maintained separate finances. He returned to work in January 2022. He received a workers' compensation settlement of \$5,000 in April 2022, which he used, in part, to resolve some of his debts. (Tr. at 29-31, 34-39, 48, 50-51, 59-60, 66-67, 71-72, 83-92, 104-105, 107-109, 111-112; GE 2)

IRS tax account transcripts provided by Applicant with his July 2021 response to interrogatories reflect that as of June 2021, he timely filed his federal income tax returns for TY 2012 and 2014, and he did not owe federal taxes for those tax years. The transcripts reflect that he filed his federal income tax returns for TY 2016 in June 2017, for TY 2017 and TY 2018 in May 2020, and for TY 2019 in August 2020. He testified that he filed his federal income tax returns for TY 2013 and 2015 in 2021, with the help of a tax company, but he did not provide documentation to corroborate his claim. He testified that he did not realize he had not timely filed his federal income tax returns for TY 2013 and 2015. Upon returning from his 2013 overseas deployment, he did not think about filing his federal income tax return for TY 2013. He testified that he did not timely file his federal income tax returns for TY 2016 through 2019, because he was "not doing what I was supposed to do at the time," and he acknowledged that he filed his federal income tax returns for those tax years after he completed his SCA, in which he was required to respond to questions concerning his taxes. He also testified that he timely filed his federal income tax returns for TY 2020. He also testified that he did not understand there was a deadline in which he was required to file his federal income tax returns, or that he could have requested an extension to do so. (SOR ¶ 1.a; Tr. at 30-31, 39-44, 51-52, 92-97, 102-103; GE 2, 3)

The transcripts also reflect that Applicant owed federal taxes in the amounts of \$7,418, \$10,340, \$1,560, and \$1,144 for TY 2016, 2017, 2018, and 2019, respectively. He acknowledged in his response to interrogatories that he owed \$20,463 in federal taxes. Although he did not provide tax account transcripts for TY 2013 and 2015, he testified that the tax company that filed on his behalf told him he did not owe any federal income taxes for those tax years. He stated in his response to interrogatories that he unsuccessfully attempted, on multiple occasions, to reach an IRS representative telephonically to discuss a payment plan for his outstanding federal taxes. He stated that

an IRS representative told him that the IRS had a significant backlog and directed him to complete his request online through the IRS website, but did not give him any further information. He submitted an online request for a payment plan for his federal taxes in July 2021, and he was awaiting a response. He testified that he also voluntarily mailed a payment toward his outstanding federal taxes, in the form of a check to the IRS in July 2021, but the IRS had not yet cashed it. As of the date of the hearing, he had not taken any further action since July 2021 concerning his outstanding federal taxes. (SOR ¶¶ 1.c-1.f; Tr. at 39-44, 102-103; GE 2, 3)

Applicant stated in his response to interrogatories that he timely filed his state income tax returns for TY 2012 and TY 2014. He stated that he filed his state income tax returns for TY 2016 in June 2017, for TY 2017 and 2018 in May 2020, and for TY 2019 in August 2020, respectively. He testified that he filed his state income tax returns for TY 2013 and 2015 in 2021, through the same tax company that he used to file his federal income tax returns for the same TY. He stated in his response to interrogatories that he was awaiting transcripts from the state tax authority reflecting that he filed his state income tax returns for TY 2013 and 2015. He testified that he timely filed his state income tax returns for TY 2020 and 2021. (SOR ¶ 1.b; Tr. at 44-53; GE 2, 3, 9; AE B)

Applicant testified that he did not owe state taxes for TY 2013, 2015, 2018, or 2020, and that he paid \$230 in state taxes that he owed for TY 2021 when he filed his state tax returns for that TY. In his response to interrogatories, Applicant provided documentation from the state tax authority reflecting that he owed \$6,949, \$612, \$621, and \$263, for TY 2015, 2016, 2017, and 2019, respectively, for a total of \$8,446. He testified that he received only one notice from the state tax authority, in around 2016 or 2017, about his outstanding state taxes, after which time he made a one-time payment of \$150. In July 2017, a \$5,538 state tax lien was entered against Applicant. (SOR ¶¶ 1.g-1.k; Tr. at 44-54, 102-103; GE 2, 3, 9; AE B)

Applicant testified that he agreed on a payment plan with the state tax authority to resolve the state tax lien and his outstanding state taxes. Documentation reflects that he entered into a payment agreement with the state tax authority in July 2021, consisting of monthly payments of \$230 for 36 months, and that he made an online payment to the state tax authority of \$250 each for TY 2015, 2016, 2017, and 2019, for a total of \$1,000, in July 2021. He testified that he was unable to abide by the plan's monthly payment terms, due to the circumstances discussed above, but that he made payments totaling \$2,000 when he could. As of the date of the hearing, he owed \$6,481 in outstanding state taxes. He agreed on another payment plan with the state tax authority in August 2022, consisting of monthly payments of \$234 for 29 months. His first payment was due within two days of the hearing date. He testified that he expected to be able to abide by this payment plan since he was working full time. (SOR ¶¶ 1.g-1.k; Tr. at 44-53; GE 2, 3, 9; AE B)

Court records reflect that writs of garnishment were issued following three judgments entered against Applicant in the amounts of \$1,701, \$8,542, and \$8,381 in April 2017, February 2020, and August 2021, respectively. (SOR ¶¶ 1.i-1.n) Applicant could not recall which debt was associated with the 2017 judgment. He stated that the

2020 judgment related to his car that was repossessed after he stopped paying the associated loan in December 2019. Court records reflect that the 2021 judgment was also for his outstanding balance on a car loan, and he testified that this loan related to another repossessed car. (Tr. at 55-67, 105-112, 114-116; GE 2, 8, 10, 11)

In January 2020, the garnishment order for the 2017 judgment was dismissed and an order of satisfaction was entered in February 2020. In June 2021, Applicant and the creditor settled the 2020 judgment and associated fees for \$11,700, and Applicant agreed on a monthly payment plan of \$300 for 39 months to resolve the settlement. He testified that he paid the settlement, but he did not provide documentation to corroborate his claim. In May 2021, Applicant and the creditor settled the 2021 judgment and associated fees for \$8,600, and Applicant agreed on a bi-weekly payment plan of \$150 to pay the settlement. He testified that he made only one to two payments, and then the creditor began garnishing his wages. He testified that his wages were being garnished to resolve this settlement as of the date of the hearing. (Tr. at 55-67, 105-112, 114-116; GE 2, 8, 10, 11)

SOR ¶¶ 1.o and 1.p are for two accounts placed for collection by the same insurance company, in the amounts of \$54 and \$556, respectively. Applicant testified that both debts stem from a billing error that has since been corrected. He did not provide documentation to corroborate his claim. (Tr. at 67-69)

SOR ¶ 1.q is for a \$1,061 wireless, internet, television, and phone account placed for collection. Applicant testified that he settled this debt with a one-time payment of \$500 in around March 2022. He did not provide documentation to corroborate his claim. (Tr. at 69-72)

SOR ¶ 1.r is for another wireless, internet, television, and phone account, placed for collection for \$381. Applicant testified that he paid this debt several days before the hearing. He did not provide documentation to corroborate his claim. (Tr. at 72)

SOR ¶¶ 1.s through 1.u are for three debts in collection with the VA, for \$844, \$3,210, and \$104, respectively. Applicant testified that these debts also stem from a billing error that has since been corrected. He did not provide documentation to corroborate his claim. (Tr. at 73-75)

SOR ¶ 1.v is for Applicant's \$9,341 outstanding balance on a third repossessed car. In May 2020, he agreed on a payment plan with the creditor consisting of monthly payments of \$200. He testified that he was complying with his payment plan, but he did not provide documentation to corroborate his claim. (Tr. at 62-67, 105-112, 114-116; GE 2)

SOR ¶ 1.w is for Applicant's \$9,396 outstanding balance on a fourth repossessed car. He testified that after this car was sold at auction in 2021 for \$5,000, he requested that the creditor update his outstanding balance accordingly. He neither heard from nor followed up with the creditor as of the date of the hearing. He testified that he planned to

resolve this debt once he and the creditor agreed on the amount of his outstanding balance. (Tr. at 64-67, 105-112, 114-116)

SOR ¶ 1.x is for a \$631 charged-off account. Documentation reflects that he agreed on a payment plan of \$150 monthly in May 2021 to resolve this debt. He testified that he paid this debt in 2021, but he did not provide documentation to corroborate his claim. (Tr. at 75-77; GE 2)

SOR ¶¶ 1.y and 1.z are for two medical debts, for \$185 and \$172, placed for collection by the same company. Applicant testified that he paid these debts. He did not provide documentation to corroborate his claim (Tr. at 72-73)

As of the date of the hearing, Applicant earned approximately \$61,000 annually, and his fiancée earned approximately \$42,000 annually. In September 2022, the VA assigned him a 30% disability rating, from which he expected to receive \$532 monthly. He had \$3,200 in his 401(k) retirement account as of August 2022. He used approximately \$3,800 of his \$5,000 workers' compensation claim as the down payment for a car that he purchased in April 2022, and for which his monthly payments were \$532. His fiancée purchased a home solely in her name in December 2021, and he paid the \$1,242 monthly mortgage. He recently established a budget for himself, with his fiancée's help, and he estimated that his monthly net remainder after expenses was \$100. He intends to obtain part-time employment to supplement his income. He intends to timely file his federal and state income tax returns in the future. He understood that it was his responsibility to gain control of his finances. As of the date of the hearing, he had not received credit counseling, but he intended to do so through the VA as suggested by his fiancée. (Tr. at 29-38, 55-57, 66-67, 71-72, 81-82, 84-91, 96-102, 111-113, 116; AE A)

Applicant testified that he did not disclose his outstanding taxes on his SCA because he did not think about them, and he thought he did not have to list those he had already resolved. He testified that he received only one notice from the state tax authority, in around 2016 or 2017, about his outstanding state taxes. He testified that he was unaware of the 2017 state tax lien when he completed his SCA, because he did not receive any notice from the state tax authority about it, and that he first learned about the lien as he underwent the security clearance process. He testified that he did not disclose his three VA debts on his SCA because they were not valid debts since he was erroneously billed. He testified that that he was unaware of most of the judgments entered against him, as he only received notice for one, which he did not think to disclose. He testified that he mistakenly did not disclose his relevant car repossessions or wage garnishments. He testified that he was no longer being garnished for the 2017 judgment when he completed the SCA, so he did not think he had to list it. He indicated during his 2020 interview with a background investigator that he had so many debts that he was unable to list them all on his SCA, and he planned to address them during the interview. (Tr. at 47-48, 53-54, 77-82, 113-114)

Policies

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(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 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 Exec. Or. 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* Exec. Or. 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.

Applicant has a history of not paying his debts. He also failed to timely file his federal income tax returns for TY 2013, 2015, 2017, and 2018, and his state income tax returns for TY 2013, 2015, 2017, 2018, and 2019. He failed to pay \$20,463 in federal taxes and \$8,446 in state taxes, and a \$5,538 state tax lien was entered against him 2017. The evidence is sufficient to raise 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;
- (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.

Conditions beyond Applicant's control contributed to his financial problems. The first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. He did not provide documentation to corroborate his claims that he filed his federal and state income tax returns for TY 2013 and 2015. Since July 2021, he has done nothing to try to resolve his outstanding federal taxes. Although he made payments to his outstanding state taxes after he agreed on a payment plan with the state tax authority in July 2021, he did not abide by the terms of that plan. He did not provide any documentation to corroborate his compliance with the payment plan he entered with the state tax authority in August 2022. Writs of garnishment were issued following judgments entered against Applicant for the balances owed on several of his repossessed cars. He did not provide documentation to corroborate his claims of payment, billing errors, payment plans, or other efforts to resolve his consumer and medical debts, as well as his debts with the VA. He had not received any credit counseling. Applicant's finances are not under control and they continue to cast doubt on his judgment, trustworthiness, and reliability. I find that ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(g) are not established.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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. . . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant does not have a handle on his finances. He did not have a handle on them when he completed his SCA. He indicated as much during his 2020 interview, when he explained that he had so many debts that he was unable to list them all and he resigned to just addressing them during the interview. His testimony that he was unaware of, he did not think he had to, or he did not even think about disclosing, relevant information about his finances on his SCA, further demonstrate his lack of control over his finances.

As such, I find that he did not deliberately falsify his responses to section 26 of his SCA. AG ¶ 16(a) is not established.

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 and Guideline E in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant did not deliberately falsify his SCA, but he did not mitigate the financial considerations security concerns arising from his history of unfiled tax returns and unpaid taxes and other delinquent debts.

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.z:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a - 2.c:	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 interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge