



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



In the matter of: )  
)  
) ISCR Case No. 21-01222  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Brian L. Farrell, Esq., Department Counsel  
For Applicant: Carl A. Marrone, Esq.

02/14/2023

**Decision**

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concern. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 3, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). 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 November 15, 2021, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice on August 9, 2022, scheduling the matter for a video teleconference hearing on September 15, 2022. I convened the hearing as scheduled.

At the hearing, I admitted Government Exhibits (GE) 1 through 5 and Applicant's Exhibits (AE) A through EE without objection. Applicant testified and called two witnesses. At Applicant's request, I kept the record open until October 13, 2022, for additional

documentation. Applicant submitted additional documentation in a timely manner, which I marked as AE FF through AE QQ and admitted without objection. I marked Department Counsel's discovery letter and exhibit list as Hearing Exhibits (HE) I and II, and Applicant's exhibit lists collectively as HE III. DOHA received the hearing transcript (Tr.) on September 23, 2022.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a and 1.d, and he denied SOR ¶¶ 1.b, 1.c, 1.e, and 1.f. He is 41 years old. He married in August 2012. As of the date of the hearing, he was separated from his spouse since April 2019 and expected to file for divorce. He has four children, ages 10, 9, 7, and 5. As of his August 2019 security clearance application (SCA), he owned his home since January 2014. (Answer; Tr. at 20, 26-36, 60, 84, 124-126; AE A, AA, BB)

Applicant attended college from 2002 to 2008 and earned a bachelor's degree in information science management. He has earned various certificates, to include database and project management certificates in 2008 and a chief data officer executive education certificate in March 2019. As of January 2022, he was pursuing a master's degree in business administration. He worked for several DOD contractors from June 2009 to December 2009, March 2010 to February 2014, and July 2017 to September 2018. He had six periods of unemployment: from January 2010 to February 2010; February 2014 to April 2014; May 2014 to July 2014; October 2016 to December 2016; May 2017 to July 2017; and September 2018 to December 2018. He was a self-employed data architect from April 2014 to May 2014; July 2014 to October 2016; and December 2016 to May 2017. As of his April 2019 SCA, he worked as a manager for his employer, a DOD contractor, since December 2018. He was granted a security clearance in 2009. (Answer; Tr. at 7, 18-26, 115-118, 124-125; GE 1; AE M, N, P, Q, R, S, T, AA)

The SOR alleged that Applicant failed to file, as required, his federal income tax returns for tax years (TY) 2014 through 2020, and that his federal income tax returns for TY 2016, 2017, and 2020 remained unfiled as of the date of the SOR. (SOR ¶ 1.a) It also alleged that he was indebted to the federal government for delinquent taxes in the amounts of \$16,000 and \$14,000 for TY 2014 and 2015, respectively. (SOR ¶¶ 1.b-1.c) It also alleged that he failed to file, as required, his state income tax returns for TY 2014 through 2020, and that his state income tax returns for TY 2016 and 2020 remained unfiled as of the date of the SOR. (SOR ¶ 1.d) It also alleged that he was indebted to the state tax authority for delinquent taxes in the amounts of \$3,973 and \$3,000 for TY 2014 and 2015, respectively. (SOR ¶¶ 1.e-1.f) The SOR allegations are established by Applicant's admissions in his Answer, his August 2019 security clearance application (SCA), his October 2019 background interview, and his December 2020 and July 2021 responses to interrogatories. (Answer; GE 1-3; AE A, B)

Applicant disclosed on his 2019 SCA and during his 2019 background interview that he did not file and pay, as required, his federal and state income tax return for TY 2015; he did not file, as required, his federal and state income tax returns for TY 2016 and 2017; and he owed \$20,000 in federal and state taxes for TY 2015, 2016, and 2017.

In his December 2020 response to interrogatories, he indicated that he made payment arrangements to resolve his outstanding federal and state taxes, and he was paying his outstanding state taxes. In his July 2021 response to interrogatories, he indicated that he mailed his federal and state income tax returns for TY 2018 and 2019 in September 2020. He provided a copy of a September 2020 U.S. Postal Service certified mail receipt addressed to the IRS. He indicated that his federal income tax returns for TY 2014 through 2017 and 2020 were prepared or were in the process of being prepared, and he expected to mail them in July 2021. He indicated that in July 2021, he mailed his state income tax returns for TY 2014, 2015, and 2020, and he anticipated mailing his state income tax returns for TY 2016 and 2017. (Tr. at 105-108, 111-113; GE 1-3)

Applicant estimated, in his July 2021 response to interrogatories, that he: (1) owed federal taxes in the amounts of \$16,000 and \$14,000, respectively, for TY 2014 and 2015; (2) anticipated a federal refund of \$13,000 for TY 2017, and credits of \$7,837 and \$1,862, respectively, for TY 2018 and 2019; and (3) owed \$7,500 in federal taxes after his federal refund and overpayments from TY 2017, 2018, and 2019 were applied to his outstanding federal taxes. Having not yet filed his federal income tax returns for TY 2016 and 2020, he expected to owe federal taxes for TY 2016, and he anticipated a federal refund for TY 2020. He estimated that he owed state taxes of \$3,973, \$3,000, and \$4,000, respectively, for TY 2014, 2015, and 2016. He also estimated that he was due state refunds of \$3,000, \$3,150, \$2,644, and \$1,600, respectively, for TY 2017 through 2020. (Tr. at 105-108, 111-113; GE 1-3)

Applicant attributed his failure to timely file his federal and state income tax returns for TY 2014 through 2020 and his outstanding federal and state taxes, to problems with his marriage from the onset; his spouse's overspending and his lack of visibility into her finances due to her unwillingness to combine finances; his spouse's health issues related to the births of their children; the financial strain of having four children and purchasing a home; his periods of unemployment and self-employment; becoming the breadwinner in early 2018, when his spouse became a stay-at-home mother; his health issues; and the COVID-19 pandemic. Applicant described the first seven and a half years of his marriage as toxic. He found himself in a state of constant chaos and conflict, in which his spouse subjected him to mental, verbal, and emotional abuse. At times, she threatened to take their children and file divorce, and she reported him to law enforcement on several occasions after they argued. The stress from his marriage impacted his health. He found it difficult to function and was unable to focus on addressing his tax situation. When he attempted to talk to his spouse about filing their income tax returns, she was non-cooperative. (Tr. at 26-36, 51-53, 55-72, 77-81, 84-98, 117-124; GE 1, 3; AE QQ)

Applicant testified that his spouse initially led the effort to resolve their tax situation and reached out to a certified public accountant for assistance with preparing their relevant income tax returns. When her efforts did not materialize, he sought help from an accounting firm in 2016. He testified that the accounting firm helped them file their income tax returns for TY 2013 and 2014, but then was unhelpful with filing their income tax returns for TY 2015, 2016, and 2017 and was non-responsive to his emails beginning in June 2017. He hired another accounting firm in August 2017. He testified that this firm told him it was going to cost him a significant amount of money for the firm to file his

income tax returns, and the firm ultimately did not take the work despite his willingness to pay. In May 2018, he hired a tax resolution company. The company notified him in June 2018 that it contacted the IRS and was ready to begin the process of preparing his income tax returns for TY 2014 through 2017. It also notified him that he had an \$8,383 outstanding federal tax liability on a filed return for TY 2013. It requested that he provide them with additional information that month. He testified that after he paid the company's \$2,000 retainer fee, the company ultimately wanted him to complete the tax forms so that the company could simply file them. He did not complete the tax forms and the company never filed his income tax returns. (Answer; Tr. at 73-75, 85, 93-98, 113-116, 120-124, 129-135; GE 1, 3; AE C, D, E, F)

IRS tax account transcripts from July 2021 and November 2021 reflect that Applicant filed his federal income tax return for TY 2018 in March 2021. He had a zero balance for that tax year. The transcripts reflect that he had not filed his federal income tax returns for TY 2014 through 2017, 2019, and 2020. Applicant testified that he was unsure why the IRS had not received his federal income tax return for TY 2019, since he mailed it in March 2021 along with his federal income tax return for TY 2018, and that he mailed it again in July 2022. (Tr. at 72-73, 75-76, 81-84, 98-106, 124-133; GE 3; AE H, DD-PP)

In July 2021, Applicant made a \$950 payment to the state tax authority. He testified that he believed this was his final payment to resolve his outstanding state taxes. He could not recall for which tax year(s) this payment pertained. He testified that he should no longer owe any state taxes. A February 2022 court record reflects that Applicant satisfied a notice of state tax lien judgment entered against him in June 2019 for \$2,779. He also could not recall for which tax year(s) the lien pertained, but he believed it was for his outstanding state taxes. He learned about the lien when he refinanced his home, and he resolved it through his home's refinancing process. (Answer; Tr. at 76-77, 105-111, 127; AE G, CC)

Applicant eventually used tax software to complete his federal and state income tax returns for TY 2012 through 2021 himself. He was required to file his income tax returns by mail rather than electronically, given their untimeliness. He testified that he mailed his federal and state income tax returns for TY 2014 to 2021, and he provided a copy of a September 2022 FedEx receipt addressed to the IRS. He testified that he was unaware whether his April 2022 request for an extension to file his federal and state income tax returns for TY 2021 was granted, and he agreed that he untimely filed his federal and state income tax returns for that tax year when he mailed them in September 2022. (Answer; Tr. at 72-73, 75-77, 81-84, 98-106, 124-133; AE DD-PP)

Applicant's completed tax documentation reflects that he was due federal refunds of \$4,367, \$9,604, \$7,837, \$1,862, \$2,795, and \$4,555, for a total of \$31,020, for TY 2012 and 2017 through 2021, respectively. It also reflects that he owed federal taxes in the amounts of \$5,679, \$13,597, \$12,357, and \$8,377, for a total of \$40,010, for TY 2013 through 2016, respectively. In November 2021, he made a payment of \$1,811 to the IRS for his outstanding federal taxes for TY 2013. He anticipated that his refunds would offset any outstanding federal taxes once his federal income tax returns were processed. His

completed tax documentation also reflects that he was due state refunds of \$717, \$3,800, \$3,150, \$2,644, \$360, and \$2,940, for a total of \$13,611, for TY 2012 and 2017 through 2021, respectively. It also reflects that he owed state taxes in the amounts of \$1,592, \$4,174, \$2,661, and \$1,704, for a total of \$10,131, for TY 2013 through 2016, respectively. (Answer; Tr. at 72-73, 75-77, 81-84, 98-106, 124-133; AE DD-PP)

Applicant's annual salary was \$211,328 as of October 2021. His November 2021 budget reflects a monthly net income of \$10,600 and a monthly net remainder of \$3,591 after expenses. It also reflects assets totaling \$811,000. He testified that he and his spouse continued to maintain separate finances. His 2021 credit reports reflect a fair credit score with only a few minimal delinquent debts. He was current on his mortgage. He testified that he takes his finances seriously, and he is resolved to remain prudent to avoid similar situations in future. He indicated during his background interview that he received financial counseling from the tax company in 2018. (Tr. at 77-81, 116-117, 124; GE 2, 3; AE I, J, K, L)

Two individuals testified on Applicant's behalf. One was his best friend of almost 30 years, and the other was a friend of 20 years. The former, who described Applicant as frugal, learned about Applicant's spouse's overspending habits while Applicant was self-employed. Both described Applicant as dedicated, loyal, and determined, a man of faith, trustworthy and reliable. Applicant provided letters of support from four individuals attesting to his trustworthiness, reliability, and judgment. He received favorable input regarding his work performance from 2020 to 2021. He is actively involved in his profession and community. (Tr. at 36-53; AE O, U, V, W, X, Y, Z, AA, QQ)

### **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 failed to timely file his relevant federal and state income tax returns. He also owed delinquent federal and state taxes. The evidence is sufficient to raise AG ¶¶ 19(a), 19(c), and 19(f).

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 seek help with filing his relevant delinquent income tax returns until around 2016. While he worked with two accounting firms and a tax resolution company between 2016 and 2018, and he received credit counseling from the tax resolution company in 2018, he did not follow through on the tax resolution company's request, in 2018, for additional information. His own efforts at filing his relevant delinquent income tax returns only occurred between 2020 and 2022.

Applicant untimely filed his federal and state income tax return for TY 2018 in 2021. His completed tax documentation, and copies of his September 2020 and September 2022 receipts addressed to the IRS, do not corroborate his claims that he filed his federal and state income tax returns for TY 2014, 2015, 2016, 2017, 2019, and 2020. Even if I were to accept that they do, he has not demonstrated that the IRS or the state tax authority have accepted his income tax returns. Moreover, while his tax documentation, 2021 payment to the state tax authority, and 2022 satisfaction of a state tax lien appear to demonstrate that he has resolved his outstanding state taxes, he continues to have outstanding federal income taxes. He has not demonstrated that he has arranged with the IRS to resolve his outstanding federal income taxes. Applicant's tax situation is not under control, and it continues to cast doubt on his judgment, trustworthiness, and reliability. I find that AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(g) are 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 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 mitigate the financial considerations security concerns arising from his history of unfiled tax returns and unpaid taxes.

### **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.f:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Candace Le'i Garcia  
Administrative Judge