



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



In the matter of: )  
)  
) ISCR Case No. 21-02678  
)  
Applicant for Security Clearance )

**Appearances**

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

03/01/2023

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**Decision**

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OLMOS, Bryan J., Administrative Judge:

Applicant failed to timely file Federal income tax returns for tax years 2014-2018 and 2020 and state income tax returns for tax years 2014-2020. He owes about \$106,000 in past-due Federal income taxes and has numerous other delinquent debts that remain unresolved. He has yet to establish a sufficient track record of financial responsibility and did not mitigate financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on April 30, 2020. On April 13, 2022, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant answered the SOR on October 28, 2022, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA), in lieu of a hearing. On November 22, 2022, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 7. Applicant received the FORM on December 13, 2022. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM.

The case was assigned to me on February 21, 2023. The SOR and the Answer (Item 1) are the pleadings in the case. Items 2 through 7 are admitted without objection.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a – 1.n without further comment. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 52 years old. He served in the Navy for 20 years, from May 1991 to May 2011. He has taken some college courses but has not earned a degree. He has been employed in a cleared position as an engineer with his current employer or its predecessor since July 2013. He previously underwent security investigations in about March 2007 and July 2012. (Item 2)

Applicant and his first wife married in April 1996. They separated in 2014 and divorced in August 2018. He remarried in September 2018. He has three adult children, and an adult stepson. (Item 2)

The SOR alleges several years of unfiled state and Federal income tax returns, about \$100,000 in past-due Federal income taxes, and several charged off consumer debts, totaling about \$37,000. Applicant admitted all the allegations in the SOR and offered no explanation or subsequent evidence. (Item 1)

On his April 2020 SCA, Applicant disclosed several years of unfiled state and Federal income tax returns (for tax years (TY) 2014-2017). In his July 2020 background interview, and then later in interrogatory responses, he acknowledged additional unfiled state and Federal returns, now encompassing TY 2014-2020. (SOR ¶¶ 1.i, 1.n)

In April 2021, Applicant hired a tax relief service (Service). By contract, the Service was to provide him with recommendations regarding his tax compliance. Applicant did not provide any additional evidence detailing what services were ultimately provided. (Item 3)

IRS account transcripts dated March 2022 reflect that the IRS prepared substitute tax returns for TY 2014-2018. (An IRS tax transcript shows that Applicant timely filed his 2019 tax return and did not owe any past-due taxes.) (Item 4)

IRS transcripts further reflect that Applicant owes about \$106,154 in past-due taxes for 2014-2018. (SOR ¶¶ 1.j-1m) No substitute tax return was submitted for tax year 2020, so any Federal taxes owed for that year are unknown.

Besides W-2 withholdings, the IRS transcripts show that in April 2021, Applicant made a single \$100 payment towards his past-due Federal income tax debt of over \$100,000. (Item 4)

Applicant admitted that he failed to file his state tax returns for tax years 2014-2020. (SOR ¶ 1.n) He provided no evidence to show that those returns have since been filed or what his outstanding state tax liability is, if any. (Item 4)

During his interview, Applicant was initially unable to explain why he did not file or pay his taxes on time. He later disclosed that he thought it was a way to be vindictive towards his first wife. (Item 4)

The remainder of Applicant's debts in the SOR involve charged-off accounts with private creditors, mostly banks. SOR ¶¶ 1.a (\$11,225), 1.b (\$7,390), 1.c (\$5,797), 1.d (\$4,793) and 1.f (\$3,358) are credit-card accounts and loans with a credit union. During his interview, Applicant stated his intent to start a payment plan with the credit union, but there is no evidence that he has done so. The debts are unresolved. (Items 3-7)

SOR ¶ 1.e (\$3,408) is a charged-off credit-card account. During his interview, Applicant stated his belief that the account was paid off. However, there is no evidence in the record of a payment. The debt is unresolved. (Items 3-6)

SOR ¶ 1.g (\$1,271) is a charged-off credit-card account. During his interview, Applicant was unsure whether he owed any amount on this account. The debt is reflected in Applicant's credit reports and it is unresolved. (Items 3-6)

SOR ¶ 1.h (\$440) is a charged-off credit-card account. During his interview, Applicant stated his belief that the account was paid off. However, there is no evidence in the record of a payment. The debt is unresolved. (Items 3-6)

During his interview, Applicant explained that most of his financial struggles were the result of his separation and divorce. During this period, he experienced financial strain while attempting to pay for rent, a mortgage, alimony, child support and legal fees. He stated he was now able to keep up with his finances and was taking steps to repay his debts. Applicant said he intends on keeping up with all of his debts going forward. (Items 4, 6)

Applicant has an annual salary of \$100,000 in addition to military retirement and disability benefits. He estimates that he maintains a monthly net remainder of \$2,780. Applicant also contributes to a 401k retirement plan with an estimated balance of \$40,000-\$50,000. (Items 3-4)

Applicant provided no documentation of his efforts to pay or resolve either his \$100,000 Federal income tax debt, state tax filings or delinquent consumer debts.

## **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court 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 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 financial security 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).

In ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis added), the DOHA appeal board detailed the concern about applicants who fail to file their tax returns as follows:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting [sensitive] information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a [trustworthiness] 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 [sensitive] information. *See, e.g.,* ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18,

2015); See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

Applicant failed to timely file his Federal income tax returns for six years, 2014-2018 and 2020. The IRS filed substitute returns for many of these years and calculated that he owes \$106,154 in past-due Federal income taxes. Applicant also failed to file his state tax returns for 2014-2020. Applicant's charged-off consumer debts in the SOR are established by the credit reports in the record and his admissions. AG ¶¶ 19(a), 19(c), and 19(f) all apply.

Accordingly, the burden shifts to Applicant to mitigate the security concerns raised by the above financial considerations. The adjudicative guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's financial difficulties:

(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;

(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 extensive past-due Federal tax debts and consumer debts remain ongoing and unresolved. He has not established that his tax issues or debts are due to circumstances that are unlikely to recur or no longer cast doubt on his judgment, trustworthiness, and reliability. AG ¶ 20(a) does not apply.

Applicant experienced significant financial stress in relation to his marital separation and divorce. AG ¶ 20(b) therefore has some application. However, Applicant chose to stop timely filing and paying his tax obligations in 2015 and he continued to not timely file or pay his tax obligations after the divorce. While these circumstances may

have contributed to Applicant's financial delinquencies, they do not mitigate or extenuate his failure to fulfill his legal obligations to timely file his state and Federal income tax returns and pay taxes when due. Applicant has not established a track record of steady payments on either his past-due taxes or other delinquent debts to warrant full mitigation under AG ¶¶ 20(b) or 20(d).

Applicant hired a tax relief service in April 2021 to assist him with his tax issues. However, he subsequently failed to file his 2020 tax return and did not provide sufficient evidence to establish that his past-due taxes or other delinquent debts are being resolved and are under control. AG ¶ 20(c) does not apply.

Applicant failed to timely file his 2014-2018 and 2020 Federal income tax returns on time as required. He failed to timely file his 2014-2020 state income tax returns on time as required. Instead, the IRS filed substitute returns for 2014-2018. The tax return for 2020 remains unfiled. Except for TY 2019, Applicant has made essentially no effort to file his state and Federal tax returns in a timely, responsible manner. Applicant has over \$100,000 in past-due Federal tax debt and has not established an installment agreement with the IRS, let alone established compliance with such an arrangement. AG ¶ 20(g) does not apply.

### **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.

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 served his country for 20 years in the

Navy and continues to serve in the defense industry. However, what started as a vindictive act of financial sabotage during a period of separation with his first wife turned into a long and ongoing record of tax problems. His tax issues are entirely self-created, but might have been resolvable with some due diligence after his divorce. Applicant's demonstrated pattern of unwillingness to comply with his legal obligations raises serious security concerns. Additionally, he has numerous old and unresolved past-due debts and has yet to implement a reasonable plan to address them. 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 provide sufficient evidence to mitigate the financial 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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.n:	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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Bryan J. Olmos  
Administrative Judge