



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



In the matter of:)	
)	
)	ISCR Case No. 21-00948
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

04/06/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On May 10, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on May 18, 2022, and requested a hearing before an administrative judge. The case was assigned to me on October 3, 2022.

The hearing was convened as scheduled on January 11, 2023. Government Exhibits (GE) 1 through 8 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A through C, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted an email and attached documents that I have marked AE D through H and admitted without objection.

Findings of Fact

Applicant is a 33-year-old employee of a defense contractor. He served on active duty in the U.S. military from 2008 until he was medically retired with an honorable discharge in October 2017. He served two combat deployments to Afghanistan. He was injured on one of his deployments, and he has post-traumatic stress disorder (PTSD). He is rated at 70% disabled by the Department of Veterans Affairs. He has worked for his current employer or a predecessor contractor on the same contract since shortly after his discharge from the military. He seeks to retain a security clearance, which he has held since his military service. He attended college for a period without earning a degree. He married in 2009 and divorced in 2018. He has two children from the marriage who live with him. He married his current wife in 2018. (Transcript (Tr.) at 16-17, 20, 29-38, 60, 66-67; GE 1-3)

Applicant did not file his federal income tax return for tax year 2017 when it was due (SOR ¶ 1.a). He explained that his tax returns were simple while he was in the military. There were more forms and other documents required for his 2017 return, he was pending a divorce, and he missed the filing deadline. In his January 2019 Questionnaire for National Security Positions (SF 86), he reported that he failed to file in 2018. (Tr. at 23-26; Applicant's response to SOR; GE 1-3) His 2018 tax return was not yet due when he submitted the SF 86. His 2017 tax return should have been filed in 2018. I am satisfied that he meant his tax-year 2017 returns, which should have been filed in 2018.

Applicant was interviewed for his background investigation on March 19, 2019. He admitted that he had not filed his 2017 federal income tax return. He stated that he planned to file the return by the end of March 2019. Applicant was interviewed again in October 2019. He stated that he had not filed his 2017 return as he was still attempting to obtain the necessary documents. He stated that he filed his 2018 federal return and recently went through an audit in which the IRS determined that he owed a 10% penalty for a withdrawal from his Thrift Savings Plan. (GE 2, 3)

The IRS tax account transcript for 2018 shows Applicant's federal income tax return was filed in March 2019; an amended return was filed in September 2019; there was an examination of the return; and additional tax was assessed in December 2019. His 2018 IRS wage and income transcript reports that he had taxable income of \$8,177 and \$8,836 due to distributions from retirement accounts, with \$1,635 withheld for taxes. The extra taxes owed were apparently due to the retirement-account distributions. The remaining taxes, penalties, and interest owed for 2018 were paid in April 2020 with the withholding of his refund from his 2019 taxes. (AE A, B)

Applicant wrote in his response to the SOR that he filed his 2017 federal income tax return "the following year in 2018 and was even audited." Applicant testified that he filed his 2017 federal return in late 2018 or early 2019. However, he admitted in his October 2019 interview that he had not filed the return. He presented as evidence his 2018 IRS wage and income transcript and 2018 tax account transcript. He was informed that he presented transcripts from the wrong year, and that a 2017 tax account

transcript would clarify the matter and establish when the 2017 return was filed. (Tr. at 23-28, 40-41; Applicant's response to SOR; AE A, B)

Applicant stated in his post-hearing submission that his 2017 tax account transcript does not show up on the IRS portal. He stated that he attempted to call the IRS, but "[t]rying to get them on the phone is like pulling teeth." He presented his 2017 wage and income transcript as proof that he filed his 2017 return and paid a penalty. That document does not state whether a return had been filed. I note that unlike his 2018 wage and income transcript, his 2017 wage and income transcript does not report any distributions from retirement accounts. (AE D, F)

The SOR alleges Applicant's unfiled 2017 federal income tax return and ten delinquent debts totaling about \$23,915. The debts are reported on one or more credit reports.

Applicant cosigned the lease on an apartment in about 2017. He lived with the other tenant previously and thought they could be roommates again. She told him that she did not want him living there, and he never moved in. He later discovered that she broke the lease shortly after moving in. The landlord listed the debt to the three credit reporting agencies as a joint account placed for collection with a balance of \$11,057 (SOR ¶ 1.b). Applicant stated that the monthly rent was about \$700 to \$800, so it is unclear how the landlord arrived at the \$11,057 figure. He stated that he has been in contact with the cosigner, and they are working together to get some type of resolution on the account. The debt is listed by all three credit reporting agencies on the October 2019 combined credit report as a joint account with an activity date of October 2019. It is listed on the June 2020 and February 2021 Equifax credit reports with an activity date of July 2017. It is not listed on the July 2022 Equifax credit report. (Tr. at 18-20, 42; Applicant's response to SOR; GE 1-7)

SOR ¶¶ 1.c and 1.d allege delinquent debts of \$5,535 and \$2,939 for two military exchange credit card accounts. The debts were paid through a combination of attaching Applicant's and his ex-wife's income tax refunds and payments from his paycheck, either through garnishment, voluntary payments, or a combination of the two. Credit reports show mostly declining balances of \$6,703 and \$2,444 in October 2019; \$6,425 and \$2,684 in June 2020; and \$5,535 and \$2,939 in February 2021. The July 2022 credit report lists both debts with \$0 balances and the note, "Paid Collection." (Tr. at 17, 43-44; Applicant's response to SOR; GE 1-7)

SOR ¶ 1.e alleges a \$1,896 delinquent debt to a collection company on behalf of a telecommunications company. Applicant told a background investigator that he planned to dispute the account because he did not know that there were additional fees. He denied owing the debt in his response to the SOR, claiming that it was "due to the spoils of divorce." He testified that he and his ex-wife had an account with the telecommunications company, but he thought that they closed the account and paid the final bill when they divorced. He stated that he attempted to dispute the account. The debt is listed as an individual account on all of the credit reports in evidence. The date

of last activity is September 2017. The credit reports do not indicate that the account was disputed. (Tr. at 44-46; Applicant's response to SOR; GE 2, 4-7)

SOR ¶ 1.f alleges a \$579 delinquent debt to a financial institution. The debt is listed by all three credit reporting agencies on the October 2019 combined credit report as an individual charged-off credit card, assigned in July 2008, with an activity date of October 2019. It is listed on the June 2020 and February 2021 Equifax credit reports with an activity date of November 2014. It is not listed on the July 2022 Equifax credit report. (GE 4-7)

Applicant provided inconsistent explanations about the \$579 debt. During a background interview in March 2019, he stated that he had to use the card following his divorce, and he would take steps to pay the debt. In his October 2019 interview, he stated that he was unaware of any delinquency with the creditor, but he would contact the creditor. He denied owing the debt in his response to the SOR, stating that he was the victim of fraud, and that he would file a fraud claim to get the account resolved. He testified that he had a credit card account with the creditor, but he paid it. When questioned about the apparent inconsistencies, he testified that he let his brother use his bank account and routing number, which resulted in the fraud. Applicant's 2018 IRS wage and income transcript reports that this creditor issued an IRS Form 1099-C (Cancellation of Debt) in 2018, cancelling \$2,144 of Applicant's debt. There is no proof that Applicant paid this debt, but I am satisfied that it is no longer being collected. (Tr. at 47-52; Applicant's response to SOR; GE 2-7)

Applicant admitted that he owed the \$986 debt to a bank (SOR ¶ 1.i) on the financing of a computer purchased from an electronics store in about 2015. The debt is not listed on the most recent credit report. He has not paid it, and he acknowledged that the debt likely fell off the credit report because of its age. He stated that he would pay it, "[i]f need be." (Tr. at 56-57; Applicant's response to SOR; GE 2-7)

Applicant denied owing the remaining four debts, which total about \$923 (SOR ¶¶ 1.g, 1.h, 1.j, and 1.k). None of the debts are listed on the July 2022 credit report. (Tr. at 21, 52-59; Applicant's response to SOR; GE 2-7)

Applicant stated that he is serious about repairing his credit. He retained a financial advisor in February 2023 to provide "[c]redit evaluation and repair; [and] [u]nderwriting." He maintains a budget. He stated that he owes the IRS about \$738 for tax year 2021.¹ He plans to make payment arrangements with the IRS. (Tr. at 23, 47, 68; AE D, E, G, F) He wrote post-hearing:

Since the hearing I have gone back and have been closely monitoring my credit. I have created a budget and am sticking to it. I have sent correspondence to each of the creditors in question as per my rights

¹ The SOR did not allege that Applicant owed taxes from 2021. Any matter that was not alleged in the SOR cannot be used for disqualification purposes. It may be considered in assessing Applicant's credibility, in the application of mitigating conditions, and in the whole-person analysis.

placed forth by 15 U.S. Code 1692 from the Fair Debt Collection Practices Act (FDCPA). If it comes back validated that I in fact am lawfully obligated to pay, I will make the arrangements to do so. I never had the intent of not paying my debt. However, as previously stated it needs to be proven to me that the information is accurate, as some was the product of divorce. I desire to continue to repair my credit and regain your trust as well as the trust of the Department of Defense. I desire to make things right so that I may continue to serve my country, something I have done since I was seventeen years old. My wife is picking up extra shifts and is prepared to help me correct this situation. I also have hired a financial advisor to help me navigate through these issues. The sentiment that no progress has been made with my credit repair is simply untrue. Since the onset of these inquiries, I managed to repay my Star Cards, which totaled nearly ten thousand dollars in debt. That alone proves my propensity for repaying debt, as well as the leases I am currently in, all are being paid on time. I also elected to begin placing funds in a 401K. (AE E, G)

Applicant submitted letters attesting to his excellent job performance. He is praised for his calm demeanor, positive attitude, timeliness, and reliability. He is recommended for a security clearance. (AE C)

Applicant provided an eloquent plea to retain his security clearance:

I am a patriot through and through, I am [a] disabled combat veteran. I have always been willing to serve my country and answer the call when needed. I also will state that I joined the [military] during a time of war. I knew exactly what I was getting into, and rose my right hand with pride and honor. I never have and never would do anything that would jeopardize the safety and security of my country nor my brothers and sisters in arms. (Applicant's response to SOR)

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.

Applicant has a history of financial problems and delinquent debts, and he did not file his 2017 federal income tax return when it was due. AG ¶¶ 19(a), 19(c), and 19(f) are applicable.

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;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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 provided inconsistent explanations about his 2017 federal tax return. He stated that it was filed in late 2018 or early 2019, but in his October 2019 background interview, he stated that it had not been filed. He stated that he was audited and paid a penalty. He had additional tax assessed for his 2018 tax year, likely because of his retirement account distributions. There is no evidence of any distributions in 2017. When Applicant stated that he paid penalties for 2017, he was likely referring to the additional taxes and penalties that were owed for tax year 2018. He presented his 2018 transcripts at his hearing. He was told they were the wrong year, but a 2017 tax account transcript would clarify everything. In his post-hearing submission, he stated that he was unable to obtain a 2017 tax account transcript, and he submitted a wage and income transcript, which does not show when or if a return had been filed.

The Appeal Board has held that “it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts.” See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)). It is Applicant’s burden to mitigate established facts. He has not established that his 2017 federal income tax return has been filed. AG ¶ 20(f) is not applicable.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018).

Applicant denied owing the debts alleged in SOR ¶¶ 1.g, 1.h, 1.j, and 1.k, which total about \$923. None of the debts are listed on the July 2022 credit report. Those debts are mitigated.

I am giving Applicant the benefit of the doubt on the \$11,057 debt for an apartment (SOR ¶ 1.b). Applicant stated that the monthly rent was about \$700 to \$800, so it is unclear how the landlord arrived at the \$11,057 figure. It appears the landlord may not have factored in the obligation to mitigate damages. The debt is not listed on the most recent credit report. It is mitigated.

The two military exchange credit card accounts (SOR ¶¶ 1.c and 1.d) were paid through a combination of attaching Applicant’s income tax refunds and payments from his paycheck, either through garnishment, voluntary payments, or a combination of the two. Those debts are mitigated. However, court-ordered or otherwise involuntary means of debt resolution, such as garnishment and attachment of income tax refunds, are entitled to less weight than means initiated and carried through by the debtor himself. See, e.g., ISCR Case No. 17-04110 at 4 (App. Bd. Sep. 26, 2019).

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For the remaining debts, there is no evidence of any voluntary payments. The creditor for the \$579 debt (SOR ¶ 1.f) issued an IRS Form 1099-C, cancelling the debt. While that mitigates the specific debt, it does little to mitigate Applicant's overall history of financial problems. Applicant's case was disjointed and often inconsistent. He admitted that he was at times confused, possibly related to his PTSD. For whatever reason, he did not provide proof that his 2017 tax return had been filed. I am satisfied that he owes the \$1,896 and \$986 debts alleged SOR ¶¶ 1.e and 1.i, and that those debts have not been paid.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that financial considerations security concerns remain despite the presence of some mitigation.

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

I considered Applicant's honorable military service and particularly his combat deployments. He appears to be on the right track financially, but for whatever reason, he did not provide documents that might have been able to mitigate the security concerns. The absence of documents highlighted his inconsistent statements. 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." Without more documentation, I must follow that mandate.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations 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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraphs 1.f-1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraphs 1.j-1.k:	For Applicant

Conclusion

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

Edward W. Loughran
Administrative Judge