



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



In the matter of: )  
)  
) ISCR Case No. 21-02541  
)  
Applicant for Security Clearance )

**Appearances**

For Government: William H. Miller, Esq., Department Counsel  
For Applicant: *Pro se*

03/30/2023

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns, but he did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 13, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). Applicant responded to the SOR on January 12, 2022, and requested a hearing before an administrative judge. The case was assigned to me on November 15, 2022. The hearing was convened as scheduled on February 2, 2023.

## Procedural and Evidentiary Rulings

### Evidence

Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence. Post-hearing, he submitted an email that I have marked Applicant Exhibit (AE) A and admitted without objection.

### Motion to Amend SOR

Department Counsel's motion to amend the SOR by withdrawing SOR ¶ 1.t was granted without objection.

### Findings of Fact

Applicant is a 55-year-old employee of a defense contractor. He has worked for his current employer since June 2019. He served in the U.S. military from 1987 until he was honorably discharged in 1992. He deployed in support of Operations Desert Shield/Desert Storm. He is a high school graduate. He is married for the second time. He has three adult children. (Tr. at 18, 20-22; GE 1; AE A)

The IRS informed Applicant that he owes about \$50,000 in federal taxes for tax years 2008 through 2011. Applicant admitted that he owed the IRS, but he stated that it should be less than \$50,000. He stated that the mothers of his three children permitted him to claim the children as exemptions, but apparently one or more of the mothers also claimed one or more of the children. The current status of the taxes is unclear. He stated that the last letter he received from the IRS indicated that he owed, with penalties and interest, about \$50,134. He is still "battling" with the IRS. He submitted no documentation from the IRS as to the balance owed for his taxes. He has not yet filed his federal income tax return for tax year 2021.<sup>1</sup> (Tr. at 18, 37-41; Applicant's response to SOR; GE 2)

Applicant had a good job in an industry that can be volatile. There was an upheaval in the industry in 2015, which significantly cut his hours and reduced his pay. His annual income went from about \$153,000 down to about \$72,000. He was unable to pay all of his bills, and he stopped paying his debts. (Tr. at 16, 19-20, 28-30; GE 1-4)

The SOR, as amended, alleges the federal tax debt and 19 delinquent consumer debts totaling about \$94,600. Applicant admitted owing all of the debts. The consumer debts are also listed on credit reports.

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<sup>1</sup> The SOR did not allege that Applicant failed to file his 2021 income tax return. Any matter that was not alleged in the SOR cannot be used for disqualification purposes. It may be considered in the application of mitigating conditions and in the whole-person analysis.

Applicant has not made payments toward any of his delinquent debts, and he does not intend to. He rejected bankruptcy because he considers that “the worst thing that you can do.” He is earning a good salary again, about \$146,000 per year, but he stated that he has put his old debts behind him. His wife is a teacher earning about \$36,000 per year. He stated that the debts are “water under the bridge,” he is treating them as a learning experience, and he is “just moving forward.” He is waiting for the debts to fall off his credit report because they are beyond the seven-year reporting period. He believes that his finances have stabilized, and there will be no additional issues going forward. He has not received financial counseling. (Tr. at 16-22, 25, 27-37, 41-43, 46-47; GE 2-4)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in April 2019. This is the only SF 86 in the record. He did not report any specific financial issues, but he reported that he was “currently utilizing, or seeking assistance from, a credit counseling service or other similar resource to resolve [his] financial difficulties.” He wrote that he was using a credit repair service to rebuild his credit, and that he was getting rid of bad debt and rebuilding his credit. Applicant denied intending to mislead the DOD about his finances. He stated the application was long, he could not remember all of his accounts, and he knew that he could discuss the information with an investigator. He discussed his finances and tax issues during his June 2021 background interview. (Tr. at 17-19, 37, 43-44; GE 1, 2)

### **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;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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, including unpaid taxes and delinquent debts. It was initially difficult for him to pay his debts, but he could pay the debts at some point, he just chose not to. AG ¶¶ 19(a), 19(b), 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; 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 financial problems resulted primarily from the loss of income in about 2015. That was a condition that was beyond his control. However, he now has the ability to address his debts. He just chooses not to address them because the debts are

“water under the bridge,” and he is “just moving forward.” He is waiting for the debts to fall off his credit report because they are beyond the seven-year reporting period. The fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. See, e.g., ADP Case No. 14-02206 at 3 (App. Bd. Oct. 15, 2015) and ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015).

Applicant’s tax issues have been ongoing for more than a decade and remain unresolved. 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). A person who fails repeatedly to fulfill his or her legal obligations, such as paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018).

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 taxes and debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. None of the mitigating conditions are applicable.

### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 clearance investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a trustworthiness concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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.

SOR ¶ 2.a alleges that Applicant falsified an SF 86 in 2012. There is no evidence that Applicant ever submitted an SF 86 in 2012. AG ¶ 16(a) is not applicable. SOR ¶ 2.a is concluded for Applicant.

## 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 also considered Applicant's honorable military service.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns, but he 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
Subparagraphs 1.a-1.s:	Against Applicant
Subparagraph 1.t:	Withdrawn
Subparagraph 1.u:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

## **Conclusion**

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

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Edward W. Loughran  
Administrative Judge