



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



In the matter of:	)	
	)	
	)	ISCR Case No. 20-01546
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

05/08/2023

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**Decision**

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MURPHY, Braden M., Administrative Judge:

Applicant is making progress towards addressing his debts, but his tax issues are recent and ongoing. He needs to set forth a track record of compliance with tax filing requirements and steady payments towards his past-due taxes to mitigate financial security concerns. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on November 19, 2018. On February 11, 2022, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. DOD CAF issued the SOR 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* (AG), effective June 8, 2017.

Applicant answered the SOR on March 6, 2022, and requested a hearing. The case was assigned to me on November 1, 2022. On February 7, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for February 28, 2023.

The hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through G, which were admitted without objection. I held the record open until April 4, 2023, to allow Applicant the opportunity to submit additional documentation, which he did. (AE H through AE T) Some of his submissions, his paystubs, could not be opened electronically, so I afforded him the opportunity to provide certain information about them in an e-mail, which he submitted on April 20, 2023. (AE U) Applicant's post-hearing submissions are admitted without objection. They are identified in the Facts section, below. The record closed on April 21, 2023. DOHA received the hearing transcript on March 8, 2023.

### **Amendment to the SOR**

At the end of the hearing, based on Applicant's testimony, Department Counsel moved to amend the SOR under ¶ E3.1.17 of the Directive to add the following allegations:

- 1.g: You failed to file your federal and state income tax returns for tax years 2019 and 2020. As of the date of the hearing, those returns remain unfiled.
  
- 1.h: You are indebted to the IRS for past-due federal income taxes in the approximate amount of \$3,500. As of the date of the hearing, this debt remains unpaid.

The motion was granted without objection. The record was left open (initially to March 21, 2023, a date that was later extended) to allow Applicant to submit relevant documentation. (Tr. 68-74)

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a-1.f, with explanations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and the record evidence, I make the following additional findings of fact.

Applicant is 37 years old. He was married from 2011-2014, when he and his wife divorced. They have an 11-year-old daughter, and he also has a 6-year-old son with his current cohabitant. Applicant has a high school diploma. He joined the Navy in 2007 and was discharged honorably in January 2016. He was in the Navy Reserve until 2019. He was a quartermaster in the Navy and held a clearance, though he does not

hold one currently. (Tr. 12, 32, 33, 52; GE 1) Post-hearing evidence indicates he receives a \$1,700 monthly benefit from the VA. (AE T)

Applicant explained that when he was in the Navy, he consulted a psychiatrist and was advised to leave the Navy. He left the Navy in 2016. This led to economic hardship. He was a full-time student with a growing family, and he had difficulty maintaining employment. He was also in the Navy Reserve. He worked for several months in 2016 and 2017 for a large retailer while pursuing his degree. He earned an associate degree at a community college and then earned his bachelor's degree in May 2019. (Tr. 45-46; GE 1, GE 2)

Applicant's finances improved when he joined the defense industry in software development. He began with contractor C in May 2019. He had a starting annual salary of \$105,000, and then increased to \$107,000. He remained there until moving to contractor H, his current employer, in October 2020, with a \$115,000 starting salary. In December 2022, his salary increased from \$120,000 to \$155,000. (Tr. 27-31, 36-37, 42-44; GE 1)

Applicant disclosed on his SCA that he had been ordered to pay a 12-month child support arrearage of \$1,060 a month, which was being taken out of his pay. He also reported some past-due car payments. (GE 1, GE 2)

The original SOR alleges \$28,742 in delinquent debts. (SOR ¶¶ 1.a-1.f) The debts are established by Applicant's admissions and by credit reports in the record, from January 2019, January 2020, and April 2022. (Answer; GE 3-5)

SOR ¶ 1.a alleges that Applicant owes \$24,347 in past-due child support to a state enforcement agency. He testified that when he left the Navy, he was to pay about \$1,100 a month in child support. He thought his monthly requirement would decrease to \$1,000 when he left the Navy but initially it did not. A judge later reduced the monthly amount to \$800, but he could not make those payments when he was unemployed. (Tr. 33-34)

It was not until 2019, when Applicant began working in the defense industry that he could make consistent child support payments. Since June 2019, he has paid \$860 a month (of which \$60 is payment for arrearages). In December 2019, he attempted to get payments reduced in family court because his daughter was no longer in daycare. The COVID shutdown happened a few months later, and he stopped contesting the amount. He recognizes that he is to notify the court of salary increases, as his child support amount may be affected (up to 25% of his salary), but he has not done this since December 2020. His ex-wife has also been fully employed since October 2016, he says. (Tr. 34, 35, 37-40, 49-52, 66)

Applicant provided documentation from the state that he made \$860 monthly payments during 2020, 2021, and 2022. As of March 2022, he was current, owing \$21,350. (AE A, AE B) After the hearing, he attempted to provide all his paystubs since

2020 to reflect this but they were password-protected and could not be opened and printed. He also was unable to get a letter from the state verifying what he owes. (Tr. 25-26, 39-40, 57; AE K, AE U) He indicated in post-hearing e-mails that he has been making child support payments since 2020 to the present and now owes \$19,830. (AE H, AE I, AE U) This account is being resolved.

The remaining SOR debts were incurred when Applicant was struggling financially. He addressed most of them shortly before the hearing. (Tr. 41, 57-60)

SOR ¶ 1.b (\$1,854) is a debt placed for collection by an old landlord. The debt is paid and resolved. (Tr. 57; AE D, AE L)

SOR ¶ 1.c (\$1,471) is a debt placed for collection by a phone company. The debt was settled for 50% and resolved. (Tr. 41, 57-58; AE C, AE M)

SOR ¶¶ 1.d (\$798) and 1.e (\$308) are medical debts placed in collection by a veterinary clinic. The debts are paid and resolved. (Tr. 41-42, 59-60; AE F, AE G)

SOR ¶ 1.f (\$164) is a medical debt in collection. There is no documentation in the record showing that it is resolved, but Applicant intends to pay it and can afford to so without difficulty. (Tr. 60)

Applicant financed his education with about \$20,000 in federal student loans. He is aware that they are in forbearance status due to the COVID-19 pandemic, but this is soon to end, and when it does, he plans to pay \$200 a month towards his loans. (Tr. 45-47, 67) This is reflected on his monthly budget. (AE T)

Applicant acknowledged during his hearing that his federal and state income tax returns remained unfiled for tax years (TY) 2019 and 2020. The SOR was amended to reflect this. (SOR ¶ 1.g) He acknowledged that he did not have a good reason for not filing beyond the COVID pandemic. He said he is disorganized and has procrastinated. (Tr. 62-65)

Applicant filed his 2019 federal and state tax returns (AE R, AE S) and 2020 federal and state returns (AE O, AE Q) after the hearing. He said he was due a refund of \$3,499 for 2019 (federal and state combined) and owed \$81 for 2020 (federal and state combined). (AE H (e-mail of Mar. 20, 2023))

Applicant also acknowledged during his hearing that he owed about \$3,500 in past-due federal income taxes to the IRS, and the SOR was amended to reflect this. (Tr. 62, 65) (SOR ¶ 1.h) This tax debt concerns tax years 2016 and 2021, according to his payment agreement. (AE J) After the hearing, he provided evidence that he is now on a payment plan with the IRS to address his federal tax debt. He is to pay \$140 per month for the next five years. (AE H, AE J, AE P) This suggests that he owes about \$8,400 in past-due federal income taxes. (\$140 per month X 12 months a year = \$1,680

annually, X 5 years = \$8,400). On March 15, 2023, Applicant made two \$100 payments towards his federal tax debt for TYs 2016 and 2021. (AE J, AE N)

Applicant's ex-wife has full custody of his daughter, and he has visitation rights and some court-ordered custody over the summer and winter school breaks. (Tr. 47-49) His cohabitant works full time. She and Applicant share household expenses. He owns the home, purchased in May 2021. They own separate cars and pay for them separately. Their son often stays with his grandparents, and Applicant provides financial support. (Tr. 52-54)

An April 2022 credit report shows the collection debt at SOR ¶ 1.b, which has been paid, and a \$202 debt in collection to a cable company, also paid. (AE E) All other accounts are listed as "pays as agreed." Applicant had a \$611,000 balance on his \$620,000 mortgage. The child support account is not listed on the April 2022 CBR. (Item 3)

Applicant and his girlfriend will soon visit a financial counselor to put together a budget and improve their savings and finances. They have not done this previously. He has 6% of his pay taken out for a 401(k) retirement plan. (Tr. 55-56) He said that all of his household accounts are current. He has one credit card. (Tr. 61)

A post-hearing exhibit details Applicant's monthly expenses and income. He earns \$9,567 after taxes. He also receives a \$1,700 monthly benefit from the VA. His expenses include his mortgage, car payment, car loan, another loan, a credit card, standard household expenses, as well as \$860 in child support, a \$140 payment to the IRS, \$200 for his student loan, and \$300 into an emergency fund. His monthly budgeted expenses total about \$8,950. He estimates a monthly remainder of \$2,313. (AE T)

### **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court has held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant's eligibility 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 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, these guidelines are applied 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.” 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 not drawn 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 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.

## **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. . . . 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 sets forth 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 incurred several thousand dollars in delinquent child support obligations after leaving the Navy, as well as other delinquent debts. During the hearing he acknowledged about \$3,500 in past-due federal income tax debt, and two recent years of unfiled federal income tax returns. The above disqualifying conditions are satisfied.

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 classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance 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 classified 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).

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis added). See ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

Conditions that could mitigate 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 was briefly married between 2011 and 2014. His largest SOR debt is several thousand dollars in past-due child support for his daughter from this marriage. He had financial issues after he left the Navy in 2016. He was largely unemployed while pursuing his education. He has been gainfully employed in the defense industry since May 2019, with an excellent income, and a good budget in place. The most recent credit report in the record (from 2022) shows financial stability as does his post-hearing budget.

Applicant has been making payments regularly on his child support debt since 2019 or 2020. He pays \$860 a month, with \$60 for the arrearage. He once owed over \$24,000 in child support. He now owes about \$19,830, according to post-hearing e-mails. While it seems from the record that he has not provided the family court with updated information about his income so that his child support obligations can be revised accordingly, he nonetheless has been making payments for several years, in accordance with court requirements. His child support arrearage is being resolved. It is also ongoing.

Applicant also has only recently entered into a payment plan for his federal income tax debt, of at least \$3,500 (as alleged) and likely more (based on five years of \$140 monthly payments, for \$8,400). He filed his 2019 and 2020 federal and state returns but did so only after his hearing. He has not provided sufficient evidence to establish that his debts and tax issues happened so long ago, are so infrequent, or occurred under such circumstances that they are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not fully apply.

Applicant's debts mostly resulted in the aftermath of his divorce, as well as his leaving the Navy. He was unemployed for a period. To his credit, he used the time he was unemployed wisely, earning an associate degree and then a bachelor's degree, in a marketable field. He earns an excellent income. He has a plan in place to resolve his child support arrearage and has been making payments (though it was less responsible not to address his increased income in court, which may lead to increased future obligations). His tax issues, however, are more recent, and cannot be attributed to an outside circumstance. AG ¶ 20(b) does not fully apply.



Applicant has not yet sought credit counseling or tax assistance. AG ¶ 20(c) does not apply. He has now filed his two years of past-due federal and state income tax returns (2019 and 2020), and he has a plan in place to address his federal income tax debt. AG ¶ 20(g) therefore applies, despite the belatedness of his actions. Mitigation does not rise or fall, however, on application of one mitigating condition.

Applicant has resolved the smaller debts in the SOR (SOR ¶¶ 1.b, 1.c and 1.d) and SOR ¶ 1.e, while unresolved, is not particularly significant. However, the timing of these payments, right before the hearing, is a fact that undercuts mitigation. There is also the matter of Applicant's tax returns and tax debt. The fact that Applicant took no action to address his unfiled tax returns (TY 2019 and 2020) and other years of federal tax debt (2016 and 2021) until prompted to do so during his hearing also weighs against a finding that he has acted in good faith.

The fact that Applicant acted only when his clearance was imperiled raises questions about his willingness to follow the sometimes complex rules governing classified information when his personal interests are not at stake. See, e.g., ISCR Case No. 15-01070 at 4 (App. Bd. Mar. 9, 2016). I cannot simply adopt a position of "no harm, no foul" or "all's well that ends well." ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015) It is not enough to establish that he has taken action. He needs to establish a track record of steady payments towards his tax debt as well as a demonstration of compliance with tax filing requirements in order to demonstrate good faith. AG ¶ 20(d) does not fully 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 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.

I considered Applicant's financial hardships, and the fact that he earned a bachelor's degree in a marketable field and is putting it to good use in his career. Applicant has taken some steps towards financial responsibility, but more of a track record is needed. This is not to say that Applicant cannot again be a suitable candidate for classified access in the future. What is needed, though, is a demonstrated track record of payments towards his tax debts and demonstrated compliance with tax filing requirements. Overall, the record evidence leaves me with questions and doubts as to Applicant's continued eligibility for access to classified information. Applicant did not mitigate 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.f:	For Applicant
Subparagraphs 1.g-1.h:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record, it is not clearly consistent with the interests of national security to grant Applicant eligibility for continued access to classified information. Eligibility for access to classified information is denied.

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Braden M. Murphy  
Administrative Judge