



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-00435
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Erin Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

05/16/2023

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant’s two largest debts and 2021 tax issues are unresolved, and there are clear indications that his financial problems are not under control. He failed to demonstrate a workable plan to resolve his financial delinquencies sooner despite having the financial resources. He falsified an answer on his security clearance application (SCA), and he did not provide a prompt, good-faith effort to correct the omission during his background interview. Resulting security concerns were not mitigated. Based upon a review of the testimony, pleadings and exhibits, national security eligibility is denied.

**History of Case**

On January 27, 2021, Applicant completed and signed his SCA. On August 16, 2022, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR), detailing security concerns under Guidelines F (financial considerations) and E (personal conduct). The action was taken 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) effective within the DOD on June 8, 2017.

On September 12, 2022, Applicant provided a response to the SOR with attached documentation and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on January 26, 2023. DOHA issued a Notice of Hearing on March 17, 2023, setting the hearing for April 12, 2023. The hearing was held as scheduled.

During the hearing, Department Counsel offered Government exhibits (GE) 1 through 6 into evidence and submitted a December 14, 2022, disclosure letter labeled as Hearing exhibit (HE) 1. Applicant testified and offered the documentation provided with his SOR response, which I labeled as Applicant (AE) A through F; and all proffered documents were admitted into evidence without objection. I granted Applicant's request to leave the record open until April 26, 2023, in the event he wanted to supplement the record with additional evidence. DOHA received the hearing transcript (Tr.) on April 19, 2023. Applicant did not submit additional documents, and the record closed on April 27, 2023.

### **Evidentiary Matters**

During the hearing, Department Counsel made a motion to amend the SOR to include relevant information under Guideline F that was developed during Applicant's cross-examination. I gave Applicant two weeks to respond to the 2021 adverse tax information and withheld my ruling on the motion until the record closed. Applicant did not provide any tax information post-hearing. The record closed on April 27, 2023, and I granted Department Counsel's motion to amend the SOR to include the following information under Guideline F:

1.e You failed to timely pay your 2021 federal and state income taxes for tax year 2021.

### **Findings of Fact**

Having thoroughly considered the evidence in the record, including Applicant's admissions to all SOR allegations under Guidelines F and E, (¶¶ 1.a through 1.d, and 2.a.), I make the following findings of fact:

Applicant is 57 years old. After high school, he attended culinary arts school and barber school. He married in 2002 and has four adult children. Since December 2020, he has been employed by a DOD contractor as an armed guard. He makes \$17 an hour and regularly works overtime. This is his first application for a DOD security clearance. (Tr. 16-18, 49-50; GE 1)

### **Financial considerations:**

The SOR alleges four delinquent debts totaling \$37,190, and the record establishes the status of Applicant's accounts as follows:

SOR ¶ 1.a alleges that Applicant owes the Social Security Administration (SSA) \$25,554 for an overpayment of disability benefits referred for collection. During the hearing, Applicant stated he received disability benefits beginning in approximately 2008, after he suffered a neck injury on the job and was unable to work. His benefits were extended after he had shoulder surgery. He listed on the January 2021 SCA that he was self-employed as a barber from January 2008 through November 2019, during the approximate ten-year period he received disability benefits. In about 2018, the SSA determined Applicant no longer met the requirements to receive disability benefits, and that he had been overpaid disability benefits for over two-and-one-half years. Applicant appealed this decision and lost. He testified that he worked as a part-time barber from 2008 to 2019 in an effort to earn a little extra money. Since his neck injury in 2008, he returned to a full-time job in November 2019 after he was hired by another employer as a security guard. (Tr. 21-35-36; GE 2, 3; AE E, I)

During the hearing, Applicant agreed he received disability benefits for about ten years. He received about \$800 monthly from the SSA. When questioned about whether he notified the SSA that he was working as a barber while he was considered disabled and unable to work, he responded, "I'm pretty sure I did." The SSA determined that Applicant was required to repay the overpayment of disability benefits in the amount of \$25,554. In 2021, he requested the SSA forgive this debt. Applicant testified that he is still waiting to hear from the SSA to see if this request will be granted. (Tr. 24-33; AE C)

Applicant first testified that he had been making monthly payments to the SSA for about a year. Based on the evidence he provided, he actually made his first payment of \$100 to the SSA in September 2022. There is no other documentation to show he made other payments to the SSA. Applicant was asked if he could provide documentation of his history of payments and the date he notified the SSA that he was working as a barber, to which he agreed. No documents were submitted by Applicant while the record was held open. This debt is unresolved. (Tr. 24-33; AE C)

SOR ¶ 1.b alleges that Applicant owes a medical provider \$6,851 for an account referred for collection. He provided documentation with his SOR response that in September 2022, the creditor agreed to a settlement of 50% of the debt in the amount of \$3,425. Applicant failed to provide a receipt showing that he paid the settlement, and he agreed that he would provide supporting documentation while the record was held open. He failed to submit documentation and this debt remains unresolved. (Tr. 36-38; GE 6; AE B)

SOR ¶ 1.c alleges that Applicant owes a consumer credit card creditor \$3,617 for an account charged off as a bad debt. He provided documentation with his SOR response that showed the creditor agreed to accept a payment of \$1,900 to settle the account. In August 2022, a payment of \$500 and two payments of \$700 were accepted by the creditor. This account has been settled. (Tr. 38-39; AE A)

SOR ¶ 1.d alleges that Applicant owes a consumer credit card creditor \$1,168 for an account charged off as a bad debt. He provided documentation with his SOR response showing he settled this account (amount unknown) and he made his last payment of \$269 in December 2021 to resolve this account. (Tr. 39-41; GE 2; AE E)

In November 2021, Applicant provided a personal financial statement (PFS). It showed that he and his wife's net monthly income totaled \$9,067. After paying monthly expenses, to include to one of his delinquent credit cards listed in SOR ¶ 1.d, they had a monthly net remainder of about \$1,340. Immediately after the hearing, Department Counsel provided Applicant a new PFS to complete because the 2021 PFS was dated. Applicant agreed he would provide the updated PFS while the record was held open. He did not submit this information. (Tr. 49-54; GE 3)

Applicant provided contradictory information during cross-examination about whether his federal and state income tax returns were filed for tax year (TY) 2021. He stated that he and his wife had hired a consumer tax service to file their 2021 and 2022 income tax returns. He later claimed the 2021 federal and state income taxes were filed, but they owed delinquent 2021 income taxes, amount unknown. Department Counsel made a motion to amend the SOR, and Applicant was given two weeks to respond to the motion and provide updated tax information for TY 2021. He did not provide any information while the record was held open. I granted the Government's motion to amend the SOR after the record closed. (SOR ¶ 1.e) (Tr. 54-56, 61-65)

#### **Personal conduct:**

Applicant completed his SCA in January 2021. He did not disclose any adverse financial information under Section 26 of the application, as required. (SOR ¶ 2.a) He was interviewed in February 2021 by an authorized DOD investigator during his background investigation. When asked if Applicant had any delinquent accounts within the last seven years, he said "No." The investigator confronted him with an unpaid \$6,851 medical account and two charged-off credit card accounts totaling \$4,785. Applicant denied any knowledge of the medical bill, but he did recognize the two credit card accounts. He was unaware that both credit card accounts were delinquent since his wife handled the finances in the household. The investigator also confronted Applicant with the account placed for collection by the SSA in the amount of \$25,554. Applicant stated that this account developed due to an overpayment of disability benefits that were paid to him from approximately 2008 to 2018. He was notified by the SSA in about 2018 of the overpayment and that he was required to reimburse this federal agency. He was unaware that his overpayment account was referred for collection. (GE 2)

During the hearing Applicant testified that he was truthful and upfront with the Government about his debt owed to the SSA. He thought he had listed it on the SCA, but after reviewing the SCA during the hearing, he admitted that he had not disclosed it. He also testified that when asked by the investigator if he had any delinquent debts, he immediately told her about the SSA overpayment debt. He acknowledged that he was

confronted by the delinquent medical and credit card debts because he was unaware that these accounts were delinquent. Applicant received a copy of his background interview with interrogatories sent to him by the Government, and in May 2022, he acknowledged that the background interview report accurately reflected information he provided during the February 2021 background interview. The report in evidence showed that Applicant was confronted about the SSA overpayment account and that he did not voluntarily disclose this information when questioned about delinquent debts by the investigator. (Tr. 41-49; GE 3)

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 says that an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible

extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Exec. Or. 10865, “[a]ny determination under this order adverse to an applicant shall be a determination 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 concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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....

This 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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following three are potentially applicable:

- (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 evidence in the record and Applicant's admissions show unresolved delinquent debt and his failure to pay income taxes for TY 2021. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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, or 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant bears the burden of production and persuasion in mitigation. An applicant is not held to a standard of perfection in his or her debt-resolution efforts or required to be debt-free. "Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017); See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014).

Applicant requested the SSA to forgive the overpayment of \$25,554 in disability benefits that he received for over two-and-one-half years when he was not entitled to receive these benefits. He did not provide any documentation that he is no longer liable for this debt, or that he has been making systematic monthly payments to the SSA. He informed the SSA that the injuries he sustained in 2008 prevented him from working, but he continued to work during the ten-year period he received disability benefits. Applicant claimed he was "pretty sure" he had notified the SSA he was working as a barber, but he did not provide supporting documentation of this notification, as requested.

Applicant's November 2021 PFS showed he had a monthly net remainder of about \$1,340 after paying his monthly expenses. The two largest debts in the SOR were

not addressed until after the SOR was issued in August 2022. He was unable to establish why he was unable to make more progress in resolving these delinquent accounts when he had the financial means to do so. He did not provide documentation to show whether he had resolved the 2021 outstanding tax debt. His financial problems are not resolved. His failure to adequately address his financial issues over time casts doubt on his reliability and good judgment. None of the mitigating conditions apply. Applicant failed to mitigate the financial considerations security concerns.

### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

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 the national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following 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.

Applicant was aware he had an outstanding balance of over \$25,500 owed to the SSA when he completed his SCA. He deliberately failed to disclose this information on his SCA, as required. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

There is no evidence that Applicant made a good-faith effort to correct the omission before he was confronted with the facts during his February 2021 background



interview. During the hearing he claimed that he had listed the SSA overpayment on the SCA, but after reviewing the document, he acknowledged he did not list it. He also denied that he was confronted by the investigator about his SSA overpayment account, but after reviewing the signed interrogatory with an attached summary report, he was confronted by the investigator about this information. Applicant intentionally omitted the SSA overpayment account when he filled out the SCA in January 2021. I find his omission casts doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 17(a) and (c) do not apply. Applicant failed to mitigate the personal conduct security concerns.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant received disability benefits beginning in 2008 that continued for approximately ten years. During the ten years he received the benefits due to his inability to work, he was self-employed as a barber for additional income. The evidence shows that he made a single \$100 payment on this significant government debt, and that first payment was made one month after the SOR was issued. He failed to provide documentation to show the current status of his 2021 unpaid taxes, or that he settled the unpaid medical account, his second largest debt. He intentionally failed to disclose his SSA overpayment debt on his January 2021 SCA. Applicant's finances and personal conduct raise security concerns about his reliability, trustworthiness, and good judgment. I have questions and doubts about Applicant's eligibility and suitability for access to classified material or assignment to sensitive duties. For all these reasons, I conclude Applicant failed to mitigate the security concerns under the financial considerations and personal conduct guidelines.

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a, 1.b, and 1.e:	Against Applicant
Subparagraphs 1.c and 1.d:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

## Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. National security eligibility for access to classified information is denied.

Pamela C. Benson  
Administrative Judge