



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



In the matter of: )  
)  
) ISCR Case No. 22-00862  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andre M. Gregorian, Esq., Department Counsel  
For Applicant: *Pro se*

March 28, 2023

**Decision**

TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns under Guideline F (financial considerations). Clearance is granted.

**Statement of the Case**

On April 28, 2021, Applicant submitted a Questionnaire for National Security Positions (SF-86). On July 15, 2022, the Department of Defense, Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The SOR detailed reasons why DOD CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

On August 13, 2022, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated October 3, 2022, was provided to him by letter on the same day. Applicant received the FORM on October 11, 2022. He was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation.

Applicant timely submitted additional evidence in response to the FORM. On November 29, 2022, the case was assigned to me. Department Counsel submitted three documents with his FORM, marked as Items 1 through 3. Applicant submitted eleven documents in response to Department Counsel's FORM, marked Items 4 through 15. Items 1 through 15 are admitted into evidence.

## **Findings of Fact**

### **Background Information**

Applicant is a 56-year-old facilities plant maintenance specialist (electronics technician) employed by a defense contractor since June 2001. (Item 1) He seeks to continue his national security eligibility, which is a requirement of his continued employment. (Items 1, 2)

Applicant received his high school diploma in May 1984. He attended two different colleges, the first from August 1984 to May 1986, and the second from August 2005 to May 2006, and did not earn a degree. He attended a trade school from September 1986 to July 1988 and was awarded a certificate in consumer electronics. (Items 2, 3) Applicant has never married and has no dependents. (Item 2)

### **Financial Considerations**

Applicant's SOR lists six allegations: (1) that he failed to file his Federal income tax returns for tax years 2016, 2017, 2018, 2019, and 2020; (2) that he failed to file his state income tax returns for tax years 2016, 2017, 2018, 2019, and 2020; (3) that he owes the Federal Government approximately \$5,821 for tax year 2016; (4) that he owes the Federal Government approximately \$9,178 for tax year 2017; (5) that he owes the Federal Government approximately \$4,252 for tax year 2018; and (6) that he owes the Federal Government approximately \$4,584 for tax year 2019. In his SOR Answer, Applicant denied all of these allegations. (SOR ¶¶ 1.a – 1.f (Item 1))

These allegations are established by Applicant's April 28, 2021 SF-86; his June 22, 2022 Defense Office of Hearings and Appeals (DOHA) Response to Interrogatories, including his tax history, IRS delinquency notices, IRS direct payment receipts; and his July 16, 2021 Office of Personnel Management (OPM) interview. (Items 1, 2)

Applicant self-reported that he had not filed his 2016, 2017, 2018, and 2019 Federal and state income tax returns when he completed his April 28, 2021 SF-86. During his July 16, 2021 OPM interview, he stated that he did not list his failure to file his 2020 Federal and state income tax returns on his SF-86 because at the time he completed his SF-86 he intended to file his 2020 returns, but when the deadline came, he did not have the funds. (Items 1, 2)

Applicant described circumstances beyond his control that led to his tax problems in his April 28, 2021 SF-86, in his June 22, 2022 DOHA interrogatories, in his July 16, 2021 OPM interview, and in his August 13, 2022 SOR Answer. (Items 1, 2, 3)

Applicant's financial difficulties began in the summer of 2014 when his mother collapsed due to a brain aneurism, which was then followed by multiple heart attacks. After her last heart attack, she went into a coma. After several surgeries and continuous treatment, she awoke from her coma and appeared to be recovering. Just when she she appeared to be recovering, she developed a lung infection and died in May 2017. From the time of her brain aneurism in 2014 until she passed away from a lung infection in 2017, she was continuously in a hospital or care facility. (Item 1)

In August 2018, a few months after Applicant's mother passed away, his father was diagnosed with prostate cancer. Fifteen months later, his father died in November 2019. Throughout this process Applicant's mother and father accrued numerous and substantial medical bills and funeral expenses. Although Medicare paid their portion of the bills, Applicant and his siblings found themselves responsible for the balance. Since Applicant was not married, his married siblings prevailed upon him to pay the majority of these bills. (Item 1)

In the summer of 2019, Applicant's girlfriend was laid off from her job and shortly thereafter was diagnosed with breast cancer. In addition to her breast cancer diagnosis, she developed a heart condition that required medical treatment. Since his girlfriend was no longer employed, she did not have health care insurance and Applicant paid for her medical bills. (Item 1)

To pay for these unplanned medical and funeral expenses, Applicant drew credit card cash advances and took out a personal bank loan to offset his credit card debts. He made the decision to pay off his credit card balances and personal loan rather than paying his taxes because his credit cards had higher balances when compared to the taxes he owed. He has since paid off all of his credit card debt and personal loan as well as his automobile loan. (Item 1)

Department Counsel's FORM noted that Applicant filed his tax returns for the tax years at issue; however, he emphasized that his returns were not timely filed. Department Counsel also said that Applicant did not submit any evidence that he is on a payment plan with the IRS. A review of the FORM indicates that Applicant e-filed his 2016 Federal and state tax return on June 19, 2017, that he mailed his 2017 and 2018 Federal and state tax returns on February 1, 2022, and that he e-filed his 2019 and 2020 Federal and state tax returns in January 2022. (Item 1)

Applicant stated in his Response to Interrogatories that he is working with an IRS approved collection agency (CA) and that as soon as they received updates from the IRS regarding his 2017 and 2018 income tax returns, they would set up a payment plan for him. Although Applicant was unable to set up a payment plan with the CA at the time he submitted his FORM response, he did provide evidence that he made direct payments to the IRS as follows: (1) a \$2,000 payment to the IRS on December 3, 2021 for tax year 2016; (2) a \$2,000 payment to the IRS on June 6, 2022 for tax year 2016; and (3) a \$2,000 payment to the IRS on June 6, 2022 for tax year 2019. (Item 3)

To accelerate that repayment process, Applicant has taken on a part-time job working 45 to 70 hours per pay period in addition to his full-time job to earn extra income. (Items 1, 4) In his FORM response, Applicant submitted evidence of his direct payments to the IRS as follows: (1) a \$2,000 payment to the IRS on June 6, 2022 for tax year 2016; (2) a \$1,000 payment to the IRS on August 12, 2022 for tax year 2016; (3) a \$2,000 payment to the IRS on August 12, 2022 for tax year 2017; (4) a \$3,000 payment to the IRS on October 13, 2022 for tax year 2017; (5) a \$1,000 payment to the IRS on August 15, 2022 for tax year 2018; (6) a \$2,000 payment to the IRS on June 6, 2022 for tax year 2019; (7) a \$1,000 payment to the IRS on August 15, 2022 for tax year 2019; and (8) a final payment of \$2,634.81 to the IRS on September 26, 2022 for tax year 2019. Applicant has paid all taxes owed for tax year 2019 and his account reflects a zero balance. (Items 5 to 14) Since November 2022, he set up a payment plan with the CA and is making payments of \$1,000 a month to the CA by direct debit. He provided a schedule of past and future payments with the CA. (Item 12)

### **Character Evidence**

Applicant submitted three reference letters from his coworkers: (1) an engineer/scientist; (2) an operations and maintenance manager; and (3) a lead engineer. All three references described the invaluable support Applicant provides in support of the national security in a remote location as a member of their electronics team. In Applicant's recent evaluation, he was rated as "Far Exceeded" in his overall rating, which is their company's highest rating. The references lauded his integrity and job performance. The lead engineer concluded, "Without [Applicant], we wouldn't have the institutional knowledge to keep the [remote location] operational as well as it can be." (Item 1)

### **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 AG ¶ 2 describing 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 clearance 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**

### **Financial Considerations**

AG ¶ 18 articulates the security concern for financial problems:

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 Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes three disqualifying conditions that could raise a security concern and may be disqualifying 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 record establishes AG ¶¶ 19(a), 19(c), and 19(f). Further discussion of the disqualifying conditions and the applicability of mitigating conditions is contained in the mitigation section, *infra*. The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sep. 24, 2013).

The potentially applicable financial considerations mitigating conditions under AG ¶ 20 are as follows:

(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;

(f) the affluence resulted from a legal source of income; 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 described circumstances beyond his control, which adversely affected his finances. In summary, over a four-year period Applicant lost both of his parents to prolonged illnesses. As the only unmarried sibling, he took on the lion's share of the uncovered medical expenses as well as the funeral expenses for his parents. Shortly after Applicant's parents passed away, his girlfriend was laid off from her job and was diagnosed with breast cancer. As she did not have health care insurance, Applicant agreed to pay for her medical expenses. By any objective standard, the loss of both parents after lengthy illnesses in a four-year period followed by one's significant other being diagnosed with breast cancer is not only beyond one's control but is also traumatic. Faced with significant debt, Applicant fell behind not only on his credit card and personal loan debt but neglected to file his income tax returns and pay his taxes. He made the decision to first address his credit card and personal loan debt. In retrospect, Applicant recognizes that this choice was not the most prudent one.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt, and his financial problems are not isolated. His debt remains a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)).

However, "[e]ven if [an applicant's] financial difficulties initially arose, in whole or in part, due to circumstances outside his control, the [administrative judge] could still

consider whether [the applicant] has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)). A component is whether he maintained contact with creditors and attempted to negotiate partial payments to keep debts current. Although Applicant clearly experienced circumstances beyond his control with the passing of his parents and cancer diagnosis of his girlfriend, he neglected his responsibility to remain current on his income taxes. However, since he regained his emotional and financial bearings, he has proceeded with all due diligence to address his tax issues.

A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant’s judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant made a number of direct payments to the IRS before establishing a payment plan with an IRS approved collection agency to pay his delinquent taxes. His payment plan with the CA is measured, paid by direct debit, shows a good-faith effort, and demonstrates his commitment to regaining financial responsibility. AG ¶¶ 20(a) and 20(b) partially apply and AG ¶¶ 20(d) and 20(g) fully apply. Security concerns about Applicant’s finances are mitigated.

Following the Supreme Court’s ruling in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), and the clearly consistent standard, I have no doubts or concerns about Applicant’s reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I have weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. Accordingly, I conclude that Applicant met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

### **Formal Findings**

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a – 1.f:	For Applicant



## **Conclusion**

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant's security clearance. National security eligibility is granted.

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ROBERT TUIDER  
Administrative Judge