



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



In the matter of: )  
)  
) ISCR Case No. 22-01994  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Karen Moreno-Sayles, Esq., Department Counsel  
For Applicant: *Pro se*

04/21/2023

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**Decision**

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OLMOS, Bryan J., Administrative Judge:

Applicant failed to file federal and state income tax returns for several years. Although he is resolving some debt, he has chosen not to address delinquent federal student loan debts for which he is a cosigner. He has yet to establish a sufficient track record of financial responsibility and did not 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 January 17, 2020. On November 18, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The CAF issued the SOR under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Security Executive Agent

Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on November 29, 2022, and provided exhibits (AX) 1 through 9. He elected a decision on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA), in lieu of a hearing. On December 27, 2022, Department Counsel submitted the Government's File of Relevant Material (FORM), including exhibits (GX) 1 through 7. Applicant received the FORM on January 5, 2023. He was afforded an opportunity to note objections and to submit material in refutation, extenuation, or mitigation. He responded on January 20, 2023, and provided a statement with additional information. (FORM Response) Department Counsel did not object to the statement.

The case was assigned to me on March 14, 2023. The SOR and the Answer (GX 1) are the pleadings in the case. GX 2-7, AX 1-9, and the FORM Response are admitted without objection.

### **Findings of Fact**

In his Answer, Applicant admitted SOR ¶¶ 1.b-1.f and denied SOR ¶¶ 1.a and 1.g-1.j with explanations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact:

Applicant is 63 years old. He is married and has three adult children. He graduated high school in 1978 and took some college courses through 1982 but did not receive a degree. He obtained his first security clearance in 1987 and has held a security clearance for most of his career. He has been with his current employer as a network engineer since 2018. (GX 2, 3)

The SOR allegations concern a charged-off home equity loan of \$89,482; five delinquent student loans totaling about \$77,000; several years of unfiled federal and state income tax returns; about \$25,000 in delinquent federal income taxes; and about \$4,000 in delinquent state income taxes. The home equity and student loan debts are established by Applicant's credit reports from December 2019, April 2020, and May 2022, as well as his admissions. The tax allegations are established by Applicant's January 2020 SCA, April 2020 background interview summary, and his November 2022 Interrogatory Response. (GX 1-7)

Applicant's financial issues began in 2016 when he started a new job. Within a few months, his company changed the status of his position from W-2 employee to 1099 contractor. As a result, the company stopped taking income tax deductions out of his paycheck, but he did not timely pay the taxes when due. Soon afterwards, his pay from the company became erratic. The company also failed to submit required tax forms for 2016 and 2017. In early 2018, the company abruptly stopped issuing any paychecks.

Applicant resigned in April 2018. In 2019, he sued the company for lost wages and received a settlement of \$45,000, minus attorney fees. (GX 3; AX 3-4)

Also in 2016, Applicant's parents became ill and moved in with him. He began managing their finances and medical appointments. Later that year, his father passed away, and his mother passed away in 2017. Applicant stated that the inconsistent income and time spent caring for his parents led to financial strain. (GX 1-3)

SOR ¶ 1.a (\$89,482) is a charged-off home equity loan that became delinquent in 2018. Applicant claimed he made multiple attempts to contact the creditor and set up a payment plan. Eventually, he was informed the debt had been sold. He did not specify when this occurred. However, in about October 2021, a collection agency sued him for the debt. Later that month, he settled with the agency and agreed to make \$800 monthly payments toward the balance of \$94,282. Records show that he made timely payments from November 2021 through October 2022, and he intends to continue to make payments. (GX 1-3, 5-7; AX 1-2)

SOR ¶¶ 1.b (\$21,128), 1.c (\$19,637), 1.d (\$17,399), 1.e (\$15,907) and 1.f (\$2,884) are delinquent federal student loans in collection. From about 2010 through 2015, Applicant cosigned on student loans for both of his daughters. His first daughter made payments on her loans. His second daughter did not. Applicant knew that his second daughter's student loans were in collection. However, he claimed he was not responsible for the loans because his second daughter had agreed to pay them. (GX 3, 5-7)

In his Answer, Applicant claimed his second daughter was working on a payment plan under which he would be removed from the loans after one year of timely payments. He was not aware of the status of his second daughter's payment plan but claimed the loans had been removed from his credit report. The student loans still show as collection accounts attributable to Applicant in all the credit reports in the record. (GX 1, 5-7)

*Sua sponte* I take administrative notice that, as of this writing, the repayment of several federal student loans has been in forbearance status due to the COVID-19 pandemic under multiple Presidential Executive Orders since March 2020. Federal student loan payments remain paused until at least June 30, 2023. See <https://studentaid.gov/announcements-events/covid-19>.

SOR ¶ 1.g alleges that Applicant failed to timely file his federal income tax returns for tax years 2016, 2017 and 2018. He denied the allegation but admitted that he did not timely file his tax returns for those years, as alleged. Applicant attributed the filing delay to his company's failure to issue tax forms in 2016 and 2017 and his own lack of funds to deal with the unexpected tax liability. (GX 1)

During his April 2020 background interview, Applicant also attributed the delayed filings to his own "procrastination." He stated his first daughter was an accountant and

had assisted him with his taxes. He claimed he had filed his 2018 tax return in spring 2020, but did not provide any evidence of the filing. He intended on filing his 2016 and 2017 tax returns by May 2020. (GX 3)

In his November 2022 Interrogatory Response, Applicant asserted that he filed his 2016, 2017, and 2018 income tax returns in January and February 2022 and included an unsigned copy of his 2017 tax return. He also disclosed that his 2015 tax return was filed in July 2018 and his 2019, 2020, and 2021 income tax returns were filed in November 2022. These additional years of late tax filings are not alleged in the SOR. (GX 3)

In a November 2022 letter, Applicant's first daughter, the accountant, stated she had been assisting him with his taxes since 2014. She first worked with a large accounting firm and opened her own firm in 2021. She detailed that Applicant brought his 2016, 2017, and 2018 tax documents to her in May 2020. She claimed that the tax returns for those three years were submitted to the IRS in January 2022. She blamed difficulties within her own office for the additional filing delays. (GX 3)

Applicant's daughter also stated that she helped him file his 2019, 2020 and 2021 federal income tax returns in September 2022. She provided a summary of the filings on her company's letterhead but did not include any documentation from the IRS confirming these later filings. (GX 3)

IRS account transcripts confirm that Applicant's 2016 tax return was filed in January 2022. As of February 2022, account transcripts reflect that his 2017 and 2018 tax returns had not been filed. However, in a November 2022 correspondence, the IRS notified Applicant that his 2017 tax return had been received, but could not be processed without the submission of additional information. The record does not contain confirmation from the IRS that his 2017 and 2018 tax returns were filed.

SOR ¶ 1.i (\$25,534) alleges Applicant owes delinquent federal taxes for 2017, 2019, and 2020. He denied the allegation but admitted that he initially had a balance of about \$28,500 in delinquent taxes, of which he had paid \$3,500. He asserted that he had filed an Installment Agreement with his 2021 tax return and was paying \$500 per month toward his delinquent taxes.

An undated and unsigned Federal Installment Agreement Request shows that Applicant proposed a payment plan of \$395 per month. IRS account transcripts and a payment activity summary show that, in November and December 2022, Applicant paid about \$20,000 toward his delinquent taxes. Most of these payments were directed toward his 2016 tax debt that now shows as paid. (GX 3-4; AX 6-7)

In the FORM Response, Applicant's daughter the accountant stated that Applicant had submitted his 2021 tax return and that he was current with his tax obligations. She estimated Applicant had paid about \$22,500 toward his delinquent

taxes and intended on maintaining his monthly payments. No additional IRS documents were included in the Response. (FORM Response)

SOR ¶ 1.h alleges that Applicant failed to timely file his state income tax returns for 2016, 2017 and 2018. He denied the allegation but admitted that he did not timely file his tax returns for those years, as alleged. Applicant asserted that his state income tax returns had been filed and the timing of those filings mirrored his federal filings. State tax documents from August through November 2022 support Applicant's assertion that the state tax returns were received and processed. These include a Notice of State Tax Computation, Notices of Intercepted Refunds, and the issuance of a refund. (GX 1, 3; AX 5, 8-9)

SOR ¶ 1.j (\$3,797) alleges Applicant owes delinquent state taxes for 2016 and 2017. He admitted that he previously owed the state delinquent taxes, but claims he has since paid the taxes in full. Applicant claimed that refunds for tax years 2019, 2020 and 2021 were partially intercepted to satisfy his state tax debt. State tax documents confirm that the tax debt for 2016 and 2017 was paid through intercepted refunds. The remaining funds were released to him. (GX 1, 3; AX 5, 8-9)

Applicant asserted that he was "asset heavy" with about \$5,000,000 in assets. His daughter the accountant stated that he continues to pay over the agreed monthly installment toward his tax debt and he will continue to be current on his future tax liabilities. She also provided character evidence in which she described him as having great judgment and self-discipline and was of high character, integrity and credibility. (GX 3; FORM Response)

### **Policies**

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

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 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 relating to the guideline 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 financial security 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. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012)

While difficulty in meeting financial obligations may force an applicant to choose the order in which he or she addresses unpaid debts, they do not provide a plausible excuse for failing to meet an important legal requirement, such as filing returns when due. ISCR Case No. 15-03019 at 6 (App. Bd. Jul. 5, 2017) Failure to file tax returns suggests that an applicant has a problem 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)

The adjudicative 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 taxes as required.

Applicant failed to timely file his federal and state income tax returns for 2016, 2017 and 2018 as required. He owed delinquent taxes for several years. He also had a substantial home equity loan charged off for failure to pay. Despite having the apparent financial means to do so, he refused to pay the delinquent student loans that he cosigned for his second daughter. The above disqualifying conditions apply.

There are five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's financial difficulties:

- (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.

In 2016, Applicant was not prepared to navigate the change of his employment status from W-2 company employee to 1099 contractor. He also experienced erratic pay that ultimately led to his resignation and the filing of a lawsuit against the company for lost wages. At the same time, Applicant took on the responsibility of caring for both of his parents until their passing. These were circumstances beyond his control.

Applicant also took some steps toward addressing his financial situation. Over the last two years, he established and maintained a payment plan to resolve his charged-off home equity loan. In addition, he recently made significant payments toward his federal tax debt and is maintaining a payment plan for the remaining balance. He also resolved his state tax debt through payment.

However, Applicant has not taken responsibility for the \$77,000 in cosigned student loan debt. These loans were already delinquent for years prior to the COVID-related moratorium on payments, and the credit reports in the record show the loans are still in collection status. He remains obligated to pay the loans. By selectively disregarding substantial debts, he has not shown responsible action under the circumstances. Neither AG ¶¶ 20(b) or 20(d) fully apply.

Applicant has also made some progress toward addressing his tax issues. Recently, he made significant payments toward his federal tax debt and is issuing monthly payments for the remainder under an installment agreement. He has also resolved his state tax debt.

However, Applicant failed to file his 2016, 2017 and 2018 federal and state income tax returns on time as required. While he described his company's inability to provide necessary tax forms as the primary reason for the delay, other contributing factors included his own lack of funds and admitted procrastination. He did not begin to address the filings until 2020, when he submitted paperwork to his daughter the accountant. Her office then took nearly two years to submit the tax returns. While she attempted to take responsibility for the delay, this is not an isolated event for Applicant.



The record reflects that Applicant additionally failed to timely file his 2015, 2019, 2020 and 2021 federal and state income tax returns. These late-filed returns are not alleged in the SOR, but they undercut assertions of mitigation and changed circumstances because his tax filing problems are ongoing. Even with the assistance of his daughter, Applicant has not established that he is able to meet his tax obligations as required. His payment efforts do not mitigate his failures to file his tax returns in a timely manner for several years. AG ¶ 20(g) does not fully apply.

Applicant has entered into a payment agreement on his charged-off home equity loan and made significant payments toward his tax debt. He also received some assistance from his daughter, the accountant, to bring his tax obligations current. However, the delinquent student loans for which he cosigned remain ongoing and unresolved. He has not yet shown he can consistently meet his tax obligations. He has not established that his delinquent debts or tax issues are due to circumstances that are unlikely to recur or no longer cast doubt on his judgment, trustworthiness, and reliability. Neither AG ¶¶ 20(a) or 20(c) 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.

Applicant first obtained a security clearance in 1987 and has held a clearance for most of his career. His financial issues began in 2016 when his company failed to meet their pay schedule or issue necessary tax documents. At the same time, he had to manage the care of both of his parents who passed away just over a year apart from each other.

Since obtaining his current employment in 2018, Applicant has made some progress in addressing his debts, including entering into a payment plan for his home equity loan and paying a majority of his delinquent taxes. However, he refused to address the student loan debt that he cosigned for because he believes it is solely his daughter's responsibility. Additionally, instead of addressing his delayed tax filings closer in time to when they occurred, he allowed his tax situation to cascade over the next five years. While he has made some progress in bringing his tax situation current, he has not shown that he is able to remain in compliance with his tax obligations. His actions are insufficient to overcome the ongoing security concerns. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant did not provide sufficient evidence to mitigate the 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.h:	Against Applicant
Subparagraphs 1.i and 1.j:	For Applicant

### **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Bryan J. Olmos  
Administrative Judge