



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-01951
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Brian Farrell, Esq., Department Counsel  
For Applicant: *Pro se*

06/01/2023

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations, Guideline J, criminal conduct, and Guideline E, personal conduct. Eligibility for access to classified information is denied.

**Statement of the Case**

On October 27, 2021, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, Guideline J, criminal conduct, and Guideline E, personal conduct. The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

In Applicant's undated answer to the SOR, he requested a hearing before an administrative judge. The case was assigned to me on February 1, 2023. The Defense

Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 9, 2023, scheduling the hearing for April 3, 2023. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 14. There were no objections, and the exhibits were admitted into evidence. Applicant and two witnesses testified on his behalf. He did not offer any exhibits. The record was held open until April 18, 2023, to permit Applicant an opportunity to provide any documents he wanted considered. He provided Applicant Exhibits (AE) A through C. There were no objections, and they were admitted in evidence, and the record closed. DOHA received the hearing transcript (Tr.) on April 13, 2023.

### **Procedural Matters**

In accordance with DOD Directive 5220.6, the Government moved to amend the SOR to render it in conformity with the evidence admitted. The record was held open to allow Applicant an opportunity to provide additional evidence. There was no objection to the motion, and it was granted. (Tr. 147-153) The SOR amendments are included in Hearing Exhibit II. The SOR was amended as follows:

1.aa You failed to timely file, as required, Federal and state income tax returns for tax years 2015 through 2021. As of the date of this Amendment, the tax returns remain unfiled.

3.e You falsified material facts on an Electronic Questionnaires for Investigations Processing (e-QIP), executed by you on September 5, 2018, in response to **“Section 26 - Financial Record Taxes – In the last seven (7) years”** Have you failed to file or pay Federal, state, or other taxes when required by law or ordinance? You answered **“No”** to this question, and thereby deliberately failed to disclose that you failed to file your Federal and state income tax returns from 2015 to 2018.<sup>1</sup>

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.b, 1.s, 1.t, 2.a through 2.d, and 3.a through 3.c. He denied SOR ¶¶ 1.c through 1.r, 1.u through 1.z, 2.e and 2.f. He failed to respond to SOR ¶ 3.d and it will be considered a denial. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 40 years old. He earned a bachelor’s degree in 2007. He returned to college in 2013 and completed a master’s degree in 2020. He married in 2007 and divorced in 2016. He has two children, ages 16 and 11, from the marriage. He remarried in 2018 and has no children from the marriage. He has a 22-year child from a previous relationship and an 8-year-old child from another previous relationship. Applicant was commissioned in the military in 2008 and served until his honorable discharge in 2015 in the rank of O-3. He had combat deployments in 2008, 2009, 2011, and 2014. He has a

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<sup>1</sup> Applicant’s 2018 tax year return was not due until April 2019. I have amended SOR ¶ 3.e to replace “2018” with “2017.”

Veterans Affairs (VA) disability rating of 100%, which includes post-traumatic stress disorder (PTSD) among other issues. Applicant had no significant periods of unemployment and has worked for federal contractors since his military discharge. (Tr. 15, 21-31)

Applicant's admissions in his answer to the SOR, statements to a government investigator, testimony, credit reports, criminal records, and documents from the military corroborate the SOR allegations. (GE 1-14)

The SOR alleges, in SOR ¶¶ 1.e through 1.q, that Applicant has delinquent student loans. SOR ¶ 1.r is a garnishment by the Department of Treasury on behalf of the Department of Education for his student loans. Applicant obtained these loans for his undergraduate education. He said they were deferred when he was deployed. He said he made some payments but could not recall any specifics. He testified that because he is a 100% disabled veteran, his delinquent student loans were discharged and resolved, and he was not required to repay them. He provided a document confirming they were discharged. He testified he applied for the loans to be forgiven in approximately September 2021 and received notification it was approved in January 2022. The student loans alleged in SOR ¶¶ 1.e through 1.q are resolved in his favor. (Tr. 16, 31-36, 119-126; AE A)

SOR ¶¶ 1.b (\$17,329) and 1.s (\$11,030) are debts for delinquent child support payments. Applicant testified that he was paying his child support payments for his two children with his ex-wife through an automatic withdrawal from his paycheck. Applicant was unaware that when he changed jobs in 2017, the automatic payment stopped. When he became aware, he paid his child support through an electronic cash application directly to his ex-wife, and he did not receive payment credit by the state administering the child support. His ex-wife testified and confirmed that she received the cash payments. Applicant testified that he contacted the state in 2021 or 2022 and was given credit for the arrearages on this account. When he accepted a new job, he set up automatic payments from his pay for child support that goes to the state and then it is sent to his ex-wife. He has resolved SOR ¶ 1.b. (Tr. 36-44, 158-162)

The child support arrearage in SOR ¶ 1.s is for his youngest child and happened under the same circumstances. The same state manages this child support. Applicant testified that when he changed jobs, he made payments through an electronic cash application. He said that the mother is uncooperative in acknowledging she received the payments, and she refuses to turn in the required papers to the state to confirm Applicant made the cash payments to her. Applicant testified that he would provide the cash receipts to show he made the payments. He testified that he would also provide a document from the state, which would show any balance owed. He did not provide these documents. His March 2023 credit bureau report reflects a balance of \$13,533 owed. This debt is not resolved. (Tr. 44-46, 130-134; GE 14)

The SOR alleged in ¶ 1.z (\$7,179) that the Department of Treasury was garnishing his wages on behalf of the government creditor for reimbursement for lost equipment

while he was serving in the military. It is unclear if the garnishment was completed. He testified there was an investigation into the missing items, which were found, and he received a letter telling him the debts were resolved. His October 2018, October 2019, January 2021, and August 2021 credit reports reflect the debt. It is not reported on his March 2023 credit report. He failed to provide a copy of the letter. Since his wages were being garnished, I have given Applicant the benefit of the doubt and SOR ¶ 1.z is resolved in his favor. (Tr. 46-51, 53-55, 126-130; GE 2, 3, 4, 5, 12, 14)

Applicant testified that the debts alleged in SOR ¶¶ 1.a (\$86), 1.u (\$215), and 1.v (\$790) are all medical accounts that should have been paid by the VA because of his disability. I am unable to make that determination based only on Applicant's testimony. Applicant did not provide any documents to show he disputed or resolved these debts. (Tr. 52-53)

Applicant testified that he paid the cell phone account alleged in SOR ¶ 1.x (\$1,330). He did not provide documented proof. SOR ¶ 1.t (\$499) is a collection account for a payday loan and SOR ¶ 1.w is a delinquent credit card account (\$576). No proof was provided to show these debts have been paid. (Tr. 52, 134)

During his hearing, Applicant was asked by the Government if he had filed his past income tax returns. He testified that he did not file federal or state income tax returns since 2015. He testified that for tax year 2015, he forgot to file his returns and then he kept telling himself he would file and each subsequent year he did not. He testified that he received a notice from the IRS about his delinquent taxes, but he could not recall the year. He said when he returned from deployment, he did not file his 2015 tax return, and he was dealing with the death of his father in March 2016. Every year he would receive his W-2 income tax form from his employer, and he knew he had to file his returns but did not. He admitted he was neglectful and did not file his federal and state income tax returns for tax years 2015 to the present. In his post-hearing submissions, Applicant did not provide any documents to show he has filed any of the delinquent income tax returns. (SOR ¶ 1.aa) (Tr. 144-151, 154)

Based on Applicant's testimony that he was aware he had not filed his federal or state income tax returns beginning in 2015, I find he deliberately failed to disclose this information as required on his SCA. He admitted at his hearing that he lied on his SCA when he failed to disclose that he had not filed his tax returns. (Tr. 146-147; GE 1)

Applicant was apprehended by military police in August 2012 and suspected of assault consummated by a battery and spouse abuse after a mutual confrontation with his then-wife. Applicant testified that there was mutual pushing and shoving between him and his then-wife. He was ordered to participate in counseling with the base chaplain. He and his then-wife participated together for a time and then she stopped. He then went by himself. He estimated the entire counseling was for about six to seven months. There was no disciplinary action. (SOR ¶ 2.a) (Tr. 55-56, 79-84; GE 6, 7)

In January 2013, Applicant was arrested for grand larceny, a felony. He went to court multiple times and was represented by an attorney. The charge was later reduced to a misdemeanor. He pleaded guilty to petit larceny and was sentenced to 12 months confinement (11 months and 10 days were suspended) and ordered to pay court costs. Applicant testified he believed his then-wife was cheating on him. He went to the man's workplace and called a number he retrieved from his then-wife's phone that belonged to the man. When the man answered, it confirmed to Applicant that this was the man. When the man was not looking, Applicant took his phone. He was later arrested. He received a letter of reprimand from his command. (SOR ¶ 2.b) (Tr. 57-59, 84-93; GE 9)

In July 2016, while working overseas, Applicant was accused of sexual assault and abusive sexual contact on a foreign national. He denies the accusations. He was returned to the United States. An investigation ensued. Applicant was not arrested or charged. The U.S. Attorney declined to prosecute. However, his company learned through the investigation that alcohol was involved, and it was during the work week, so Applicant was terminated. (SOR ¶ 2.c) (Tr. 59-61, 93-98; GE 8)

In July 2017, Applicant was arrested for driving while intoxicated (DWI). He admitted he was over the legal limit but could not recall the breathalyzer reading. He could not recall how many drinks he had, but indicated it was a significant amount. Applicant was represented by an attorney. In October 2017, he pleaded guilty to DWI and was sentenced to 30 days confinement (all suspended), 36 months of unsupervised probation, fined \$250 and ordered to pay court costs of \$349. His driver's license was suspended for a year. (SOR ¶ 2.d) (Tr. 61-64, 98-101; GE 10)

Applicant was arrested in July 2017 for driving with a suspended license. Applicant testified that the charge was dismissed when he showed the judge that his license was valid. Court records reflect the charge was nolle prosequi. (SOR ¶ 2.e) (Tr. 61-64; GE 11)

In September 2018, Applicant completed a security clearance application (SCA). In response to Section 22, which asked about his police record and specifically if he had been arrested, charged, convicted, or sentenced for a crime in the last seven years; had he ever been charged with a felony; and had he EVER been charged with an offense involving drugs or alcohol, Applicant answered "No." He did not disclose his felony arrest, misdemeanor conviction for petit larceny, or DWI. (SOR ¶ 3.a) (GE 1)

Section 26 of the SCA asked Applicant if he had in the last seven years been delinquent on his child support, any federal debt, or a judgment entered against him. Applicant answered "No." He did not disclose two delinquent child support accounts and his delinquent student loans. (SOR ¶ 3.b) (GE 1)

Section 26 of the SCA asked if Applicant had defaulted on any loan; had any bills turned over to a collection agency; had any account or credit card charged off, suspended or canceled for failing to pay as agreed; or if he had been over 120 days delinquent on any debt. He answered "No." Applicant did not disclose any of his delinquent debts or delinquent payday loan. (GE 1)

Section 26 of the SCA asked if in the last seven years Applicant failed to file or pay federal, state, or other taxes when required by law or ordinance? He answered “No” to this question, and thereby deliberately failed to disclose that he failed to file his federal and state income tax returns from 2015 to 2017. (GE 1)

In March 2019, Applicant was interviewed by a government investigator. He was asked why he failed to disclose his delinquent student loans, child support, and other delinquent debts. Applicant said he did not know how his student loans were broken down into different accounts. At the time he was interviewed, his loans had not yet been forgiven and were delinquent. He told the government investigator that after Hurricane Katrina (2005) his student loans were broken into smaller accounts. He was unaware the loans had been reorganized until he received calls and notices from the creditors about the accounts. He did not have the information for each account, so he did not disclose them. He said he was on a payment plan and was to pay \$140 a month for nine months. The investigator gave him an opportunity to provide substantiating documents. He did not. Post-hearing, he provided emails from 2013 and 2015 to the creditor requesting his loans be deferred because he was in the military. His email stated that his military obligation ended in April 2020. He was discharged in 2015. His request was processed, and it appears the loans were deferred. However, he did not provide additional documents to reflect if he took any action on the loans after his discharge until the loans were forgiven in 2022. (Tr. 77-78; GE 13; AE C)

Applicant did not disclose the medical debts alleged in the SOR because he said they were to be paid by the VA. He said he would contact the VA and resolve the debts. He said he thought his other debts were paid, and he was unaware that other accounts were in collection. He also explained that he disagreed with some of the debts, and he was in the process of disputing and resolving them. He said that he interpreted the question incorrectly. (GE 13)

I find Applicant was aware he had student loans that were delinquent and deliberately failed to disclose them (SOR ¶¶ 1.e through 1.q). I find that Applicant likely did not deliberately fail to disclose his medical debts if he believed they should be paid by the VA (SOR ¶¶ 1.a, 1.u and 1.v). I also find that he did not deliberately fail to disclose his delinquent child support because he believed he was paying it (SOR ¶¶ 1.b and 1.s) but not receiving credit. I also find he did not deliberately fail to disclose the remaining debts that he thought were paid. My findings are limited to whether he deliberately failed to disclose these debts and not to whether he is responsible for paying them. (Tr. 78-79; GE 13)

Applicant told the investigator that he attributed his financial problems to his child support obligations that were to be modified in April 2019. He was uncertain when he would be able to pay his delinquent debts. (GE 13)

Applicant was given an opportunity by the investigator to volunteer if he had any alcohol-related charges against him in the past, and he told the investigator he did not. At his hearing, Applicant denied this and said he told the government investigator about his

DWI. He explained to the investigator the circumstances surrounding the DWI. Applicant claimed his failure to disclose the DWI conviction on his SCA was an oversight. At his hearing, he said he did not know why he failed to disclose his DWI. He said he thought it was an application that would go back to his employer, and he could explain it to his employer. He said that he had reported it to his facility security officer. I did not find Applicant credible. His DWI conviction was less than two years before he completed his SCA. I find he deliberately failed to disclose his DWI conviction on his SCA. (Tr. 72-77, 146-147; GE 1, 13)

Applicant testified that he did not know why he failed to disclose any of his other criminal charges. He said he thought he could explain himself to his employer. Applicant was charged with grand larceny, a felony. He pleaded guilty to a misdemeanor and received 12 months in jail. Some of his jail sentence was suspended but not all, and Applicant served time in jail. I did not find him credible. I find he deliberately failed to disclose his criminal conduct. (Tr. 72-79; GE 13)

In March 2021 Applicant was arrested and charged with domestic violence third degree-harassment, after he had an altercation with his wife and his stepdaughter's boyfriend. He was unhappy with the boyfriend because when he went inside Applicant's house, the boyfriend did not speak. When Applicant addressed him, the boyfriend said something sassy. Applicant threw a chair across the room, which hit a table that had beer on it, and it splashed on some people. He admitted he had been drinking but said he was not intoxicated. The police were called. He was taken to a hotel and separated from the situation. He said he could not get a hotel room, so he went back to his house. He began arguing with his then-wife and the police came again, and he was arrested. Applicant went to anger management classes and completed them in March 2022. The charge was dismissed. (SOR ¶ 2.f) (Tr. 64-67, 101-113; GE 12)

Applicant testified that he accepts responsibility for anger issues that are related to his PTSD. He has taken financial management classes to help him budget. He has a written budget but did not provide it. He has been seeing a mental health practitioner since 2022, and the last time he spoke with her was December 2022. He takes medication to help him. He testified that he participated in a substance abuse program through the VA that lasted 18 months. He stopped drinking alcohol in January 2023. He and his ex-wife have reconciled to be good parents for their children. He attributed his criminal conduct to issues with his ex-wife. He volunteers at the American Legion and Wounded Warriors. (Tr. 16, 67-69, 113-119, 137-138)

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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(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." 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 avoided drawing 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F: Financial Considerations**

The security concern 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following 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 taxes as required.

Applicant has numerous delinquent consumer accounts, medical debts, child support, and a payday loan. He failed to timely file his 2015 through 2021 federal and state income tax returns. There is sufficient evidence to support the application of the above disqualifying conditions.

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, 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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's student loans were forgiven due to his VA disability. They are resolved in his favor. He resolved one child support arrearage allegation but failed to provide documents to substantiate the other has been resolved. He claims his medical debts should be paid through the VA but did not provide evidence that he disputed or resolved those allegations, despite telling the government investigator he would do so. He also has not provided evidence that he has paid any of his other delinquent debts. He did not provide evidence that he has filed his 2015 through 2021 federal or state income tax returns or made any arrangements with the IRS. There is some evidence that he has participated in financial counseling, but it is insufficient to conclude his finances are under control. AG ¶ 20(c) has minimal application. His debt resolved through garnishment does not constitute a good-faith effort to repay the delinquent account, even though I have given him credit that it is resolved. I consider that Applicant attributed his financial issues to his child support obligations that he intended to have resolved in April 2019. Although this may have been beyond his control, he failed to provide evidence that he acted responsibly in resolving his delinquent debts and tax issues. He failed to provide documentation to support any action he may have taken to dispute any debts. None of the mitigating conditions apply.

### **Guideline J: Criminal Conduct**

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 31, and the following is potentially applicable:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

In August 2012, Applicant was apprehended by military police and informed he was suspected of assault consummated by a battery. He admitted he and his then-wife were involved in a mutual confrontation that involved pushing and shoving each other. No disciplinary action was taken. In January 2013, Applicant was arrested for grand larceny, a felony, for stealing a cell phone from a man who he believed was having an affair with his then-wife. He was convicted of misdemeanor petit larceny and sentenced to 12 months confinement, of which 11 months and 10 days was suspended. In October 2016, Applicant was notified that he was accused of sexual assault/abusive sexual contact while in a foreign country. The U.S. Attorney's office declined to prosecute. In July 2017, he was arrested and later convicted of DWI. He was sentenced to 30 days confinement, which was suspended. He also received 36 months of unsupervised probation and his license was suspended for a year. In March 2021, he was arrested and charged with domestic violence third degree harassment after he had an altercation with his then-wife and his stepdaughter's boyfriend. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from criminal conduct. The following mitigating conditions under AG ¶ 32 are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(c) no reliable evidence to support that the individual committed the offense;  
and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

There is insufficient evidence to conclude that in October 2016, Applicant committed sexual assault/abuse sexual conduct while overseas. I find in his favor for SOR ¶ 2.c. I also find that the charge of driving on a suspended license was not prosecuted and find in Applicant's favor for SOR ¶ 2.e.

Regarding the other allegations, Applicant has a history of criminal conduct beginning in 2012 through 2021. Although some of it may be attributed to his PTSD, his larceny conviction, DWI conviction, and his arrest in 2021 for domestic violence reflect serious misconduct. I have considered his testimony that he took an anger management

class, a substance abuse class, and is seeing a mental health professional. Considering his pattern of misconduct and the nature of his criminal activity, I am not confident that future misconduct is unlikely to recur. His history of criminal conduct raises question about his willingness to comply with the law and casts doubt on his reliability, trustworthiness, and good judgment. There is insufficient evidence of rehabilitation at this time, other than his last offense was in 2021. I find the above mitigating conditions do not apply to the remaining criminal conduct allegations.

### **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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

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;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

Applicant deliberately failed to disclose on his SCA his delinquent student loans, any of his criminal arrests, charges or convictions, and his failure to file his federal and state income tax returns for tax years 2015 to 2017. I did not find his explanations credible regarding these matters. AG ¶ 16(a) applies.

As noted above, I found in Applicant's favor regarding his failure to disclose his child support debt, medical debts, and other consumer debts he believed were paid and were not disclosed.

The criminal conduct allegations were cross-alleged under the personal conduct guideline. I find they are sufficiently covered under the criminal conduct guideline and AG ¶¶ 16(c) and 16(d) do not apply.

The following mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying security concerns based on the facts:

(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.

Applicant's deliberate failure to disclose any of his criminal conduct, his delinquent student loans, and his failure to file his tax returns is not a minor offense. He was offered an opportunity by the government investigator during his background interview to provide information about these matters and he did not. The security clearance process relies on those seeking a clearance to be honest and forthcoming. Applicant failed to do so, which casts doubt on his reliability, trustworthiness, and good judgment. The above mitigating conditions do not 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 the 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 Guidelines F, J, and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those Guidelines, but some warrant additional comment.

I considered Applicant's military service and participation in combat operations. Applicant has not filed his federal or state income tax returns from 2015 to 2021. He has not provided evidence of action he may have taken to resolve his other delinquent debts.

The DOHA Appeal Board has held that:

Someone 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. August 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).<sup>2</sup>

The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations, Guideline J, criminal conduct, and Guideline E, personal conduct.

### 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:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.d:	Against Applicant
Subparagraphs 1.e-1.r	For Applicant
Subparagraphs 1.s-1.x:	Against Applicant
Subparagraphs 1.y-1.z:	For Applicant
Subparagraph 1.aa:	Against Applicant

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<sup>2</sup> ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant (except 1.a, 1.b, 1.u, and 1.v)
Subparagraph 3.c:	Against Applicant (except 1.a and 1.s)
Subparagraph 3.d:	Against Applicant
Subparagraph 3.e:	Against Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge