



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



In the matter of: )  
)  
) ISCR Case No. 21-02797  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jenny Bayer, Esq., Department Counsel,  
Dan O’Reilly, Esq., Department Counsel  
For Applicant: Troy Nussbaum, Esq.

07/20/2023

**Decision**

GARCIA, Candace Le’i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 9, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on March 30, 2022 (Answer), and he requested a hearing before an administrative judge. The case was assigned to me on January 18, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 20, 2023, scheduling the matter for a video teleconference (VTC) hearing on February 13, 2023. I cancelled that hearing on February 10, 2023, to allow Department Counsel to resolve a jurisdictional issue. DOHA issued another notice of hearing on

February 23, 2023, rescheduling the matter for a VTC hearing on March 9, 2023. I convened the hearing as rescheduled.

At the hearing, I admitted Government Exhibits (GE) 1 through 6 and Applicant Exhibits (AE) A through P, without objection. Applicant testified and he did not call any witnesses. At Applicant's request, I kept the record open until April 6, 2023, for him to submit additional documentation. By that date, he submitted additional documentation that I marked as AE Q through T and admitted in evidence without objection. DOHA received the hearing transcript on March 21, 2023.

### **Findings of Fact**

Applicant admitted all the SOR allegations in his Answer. He is 33 years old, not married, and he does not have any children. He graduated from high school in 2008 and attended a technical institute from July 2009 to December 2010, but he did not earn a degree. He has completed professionalism and leadership courses through his company. As of the date of the hearing and since approximately 2018, he rented a home and his sister and nephew lived with him. (Tr. at 16-17, 24-28, 67-68, 121; GE 1)

Applicant has worked for various DOD contractors since approximately November 2008. He had a period of unemployment from June 2020 through November 2020. Since then and as of the date of the hearing, he has worked as a personnel security specialist for his employer, a DOD contractor. He was first granted a security clearance in 2008. (Tr. at 7, 17-24, 74-77; GE 1-3)

The SOR alleged that Applicant failed to file his federal income tax returns, as required, for tax years (TY) 2015, 2016, 2017, 2018, and 2020. (SOR ¶ 1.a) It also alleged that he owed approximately \$5,536, \$4,775, \$2,870, \$8,835, \$6,456, and \$5,049 in delinquent federal taxes for TY 2015 through 2020, respectively. (SOR ¶ 1.b-1.g) It also alleged that he owed \$3,904, \$3,813, \$3,246, and \$4,510 in state taxes, whereupon liens were entered against him in April 2014, July 2015, April 2016, and December 2021, respectively. (SOR ¶ 1.h-1.k)

The SOR also alleged that Applicant owed \$36,149 and \$18,068 for two judgments entered against him by his previous homeowner's association (HOA) in December 2014 and December 2018, respectively. (SOR ¶ 1.l-1.m) It also alleged that he had four delinquent consumer debts, totaling approximately \$5,985. (SOR ¶ 1.n-1.q) The SOR allegations are established by Applicant's admissions in his Answer; his March 2020 security clearance application (SCA); his December 2021 response to DOHA interrogatories; his May 2020 and July 2020 background interviews; federal tax account transcripts from December 2021 and tax-related correspondence provided by Applicant; court records; and a February 2022 credit bureau report. (Answer; GE 1-6)

Applicant believed his financial difficulties began in 2011, when his brother unexpectedly moved to a foreign country and left him solely responsible for a condominium that they jointly purchased in 2009. Both their names were on the title and the mortgage, and they had agreed to share in the costs of ownership, which included the

monthly \$2,100 mortgage and \$804 HOA fees. He notified his mortgage company and the HOA about his financial issues, but neither were willing to accommodate his circumstances because his condominium was underwater. He unsuccessfully attempted to find a roommate. He also tried on multiple occasions, to no avail, to contact his brother to ask him to continue to honor his financial obligations for their condominium. The HOA obtained its first judgment against him in 2014. Beginning in 2015, he limited his tax withholdings from his paycheck so that he would have more money available to pay his mortgage, HOA fees, and other expenses. He knew he would not be able to pay his outstanding taxes during tax season. He contacted several tax professionals to assist him but could not afford their services. He also tried to use tax software to prepare his income tax returns on his own, but the software did not permit him to go as far back as he needed, and he did not feel equipped to do them. He did not file his relevant federal and state income tax returns or pay his income taxes. He testified:

Well, it started with 2015. I knew that I would probably owe a lot. And I was young, I was scared as far as owing a lot. And I just -- yeah, I was scared. . . . Because of how much I owed, and -- yeah.

(Tr. at 22-32, 46-53, 69-92, 106-107, 112-114, 121; GE 1-5; AE N)

At an unrecalled date between 2011 and 2017, Applicant's mortgage company denied his two-year application to short sale his condominium. He moved out of the condominium in 2017. His condominium was foreclosed, and the HOA obtained the second judgment against him. When Applicant was unemployed from June 2020 to November 2020, he could no longer afford to stay afloat, and he obtained credit cards and loans to make ends meet. (Tr. at 22-32, 46-53, 56-58, 65-66, 69-92, 119-120, 124-125; GE 1-5; AE T)

When Applicant retained employment with a more substantial income in November 2020, he decided to start resolving his debts. He retained a tax resolution firm in approximately December 2021, at a cost of \$2,000, to assist him with filing his past income tax returns and resolving his outstanding federal and state taxes. The firm submitted an installment agreement request on his behalf to the Internal Revenue Service (IRS). He stated that he planned to set up a payment plan to resolve his outstanding state taxes. (Tr. at 32-38, 92-94, 96-97, 99-100, 107-108, 112-114, 126; GE 1-4)

Applicant's efforts to resolve his outstanding financial obligations were further impacted when, in 2022, his sister and her husband began divorce proceedings, and Applicant took his sister and his five-year-old nephew into his care. With an annual salary of approximately \$23,000 as a special education teacher, his sister's financial means are limited so Applicant has given her approximately \$500 monthly, and he assisted her with paying groceries and other expenses. (Tr. at 24-27, 107-108)

In August 2020, Applicant untimely filed his federal income tax returns for TY 2019, for which he owed \$7,083 in federal taxes. In November 2021, he untimely filed his federal income tax return for TY 2018, for which he owed \$9,731 in federal taxes. In June 2022, he entered an installment agreement with the IRS to resolve his outstanding federal taxes

for TY 2013 through 2020. The agreement provides for automatic deduction from his checking account of \$604 monthly, beginning in July 2022. In July 2022, he untimely filed his federal income tax returns for TY 2015, 2016, 2017, and 2020, for which he owed \$10,466, \$8,703, \$5,065, and \$5,789 in federal taxes, respectively. He timely filed his federal income tax returns for TY 2021 and 2022. He owed \$10,218 in federal taxes for TY 2021, for which he reached an installment agreement in October 2022 to resolve. The IRS intercepted his \$976 overpayment for TY 2022 and applied \$783 and \$192, respectively, to his outstanding federal taxes for TY 2013 and 2014. His remaining balance for TY 2014 was \$7,170. (AE A, S)

IRS tax account transcripts from February and March 2023 reflect that Applicant owes approximately \$57,055 in federal taxes for TY 2014 through 2021. Applicant made payments, in accordance with his June 2022 installment agreement with the IRS, in July 2022, August 2022, and September 2022. The IRS was unable to process his payments in November 2022, December 2022, and January 2023. Another payment, made by Applicant in January 2023, was pending as of the date of the hearing. He made his \$604 payment in accordance with his payment arrangement in March 2023. He intends to continue abiding by his payment plan with the IRS. (Tr. at 28-37, 100-104, 108-112, 114-115; AE B, C, S)

Applicant testified that he could not recall receiving any documentation related to his state tax liens. He contacted the state tax authority directly and entered an initial payment plan in March 2022, consisting of \$791 monthly payments for 56 months beginning in April 2022, to resolve his outstanding state taxes of \$38,833. He made two payments in April 2022, consisting of \$242 and \$791. He renegotiated that payment plan to better align with his budget and other expenses, and he entered a payment plan in November 2022, consisting of \$470 monthly payments for 99 months beginning in December 2022, to resolve his outstanding state taxes of \$36,758. (Tr. at 37-46, 100-104, 108-112, 114-115; GE 5; AE D, E, Q)

Applicant made the following payments toward his outstanding state taxes: payments of \$791 in May, June, July, and August 2022; an additional payment in June 2022 of \$836; three payments in February 2023 totaling \$1,401; and a payment in March 2023 of \$470. He stated that he did not make any payments to the state tax authority from August 2022 to December 2022 because he was not obligated to do so while he was renegotiating his payment plan, and he was late on his payments for December 2022 and January 2023, in part because he did not receive the approval of his renegotiated payment plan in the mail until after the December 2022 due date. He also had to pay his attorney's fees for the attorney he retained to represent him at his security clearance hearing. He intends to continue to comply with his payment arrangement with the state tax authority and resolve his outstanding state taxes. (Tr. at 37-46, 100-104, 108-112, 114-115; GE 5; AE D, E, Q)

Applicant stated that the two HOA judgments in SOR ¶ 1.1-1.m were entered against both him and his brother but that his brother filed bankruptcy, which left him responsible for the judgments. He testified that he made payments to the HOA of \$430 monthly for over one year before the HOA obtained the judgments against him. He also

testified that he contacted the HOA at least nine times to resolve his outstanding judgments. He reached a debt settlement agreement in March 2022, which provides for him to pay his \$68,305 balance at \$400 monthly, beginning in April 2022. He testified that he had since mailed his payments via check to the HOA, and he provided copies of such checks from April 2022 to January 2023 but stated that the HOA had yet to deposit any of them. He set those funds aside in his bank account. He unsuccessfully attempted to contact the attorneys that represented the HOA in obtaining the judgments against him, to determine why none of his checks have yet been deposited. In March 2023, he successfully contacted the HOA, who informed him that it had not received any of his checks, and he hand delivered a \$3,500 cashier's check. He also made his \$400 payment for April 2023. He intends to continue making his payments in accordance with his agreement. (Tr. at 46-47, 51-56, 88-92, 115-119, 122, 125-126; AE F, G)

SOR ¶ 1.n is for a credit card in collection in the amount of \$877. Applicant used this card to make ends meet while trying to stay afloat on his mortgage. In March 2022, he entered an agreement to settle this debt through four payments of \$193. As of May 2022, this debt was paid. (Tr. at 56-58, 92-94, 100; GE 6; AE H)

SOR ¶ 1.o is for the \$3,124 balance due on Applicant's vehicle that was repossessed in 2016. He stopped making payments while he was trying to stay afloat on his mortgage. He testified that he made ten to twelve payments of \$480 directly to the creditor at an unrecalled date before the SOR. As of June 2022, this debt was paid. (Tr. at 58-61, 94-96, 100; GE 2, 3, 6; AE I)

SOR ¶ 1.p is for a \$438 charged-off credit card. Although Applicant indicated during his May 2020 background interview that he believed this debt was a result of identity theft, he testified that this was a credit card he used to pay for expenses around the time he was in or leaving his condominium. He could not recall whether he made any payments on this debt after it became delinquent. As of June 2022, this debt was paid. (Tr. at 61-64, 96-98, 100; GE 2, 3, 6; AE J)

SOR ¶ 1.q is for a \$1,546 charged-off loan for furniture that Applicant purchased for his current residence. He testified that he mistakenly indicated during his May 2020 background interview that he paid this debt in January 2018. He testified that he made several payments of between \$200 and \$400 to this creditor at an unrecalled date. He paid this debt in April 2022. (Tr. at 64-55, 98-100; GE 2, 3, 6; AE K)

As of the date of the hearing, Applicant's annual income was \$88,600, an increase from \$86,500 when he started with his employer in 2022. His employer awarded him a 2% salary increase in January 2023, in recognition of his dedication and hard work. His annual salary incrementally increased from approximately \$54,000 between 2011 and 2016, to approximately \$60,000 to \$70,000 between 2016 and 2020, and then \$74,500 between 2020 and 2022. He has \$8,000 in his retirement savings account. He utilizes a budget. He was current on his rent. His car loan was paid. He received credit counseling in June 2022. He intends to timely file his income tax returns in the future. (Tr. at 17-24, 35, 48, 66-69, 100, 104-106, 108, 112, 114-115, 121-124, 126; GE 1, 3; AE L, M, P)

Four individuals, to include his father, attested to Applicant's trustworthiness, reliability, and judgment. The Chief Special Security Officer for Applicant's company, who has served as Applicant's U.S. Government supervisor since November 2020, described Applicant as one of their most valued personnel security specialists. The company's Director of Operations highlighted Applicant's performance from June 2017 to September 2020, when he served as a team lead with a "high level of integrity, loyalty, and discretion." The vice president and contract manager for Applicant's employer, from 2011 to 2016, described Applicant as a dedicated and exemplary employee. He testified that his performance has been favorably rated by his employer. He received an outstanding achievement award from his employer in 2019 for his dedication and positive leadership. (Tr. at 27; AE N-P)

### **Policies**

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 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."

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 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. Section 7 of Exec. Or. 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

Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline F: Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. 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 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;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has a history of not being able to pay his debts. He also failed to timely file his federal income tax returns for TY 2015 through 2018 and 2020, and to pay his federal income taxes for TY 2015 through 2020. He also failed to timely pay his state income taxes, resulting in liens entered against him in 2014, 2015, 2016, and 2021. The evidence is sufficient to raise AG ¶¶ 19(a), 19(c), and 19(f).

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear

victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

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

Circumstances beyond Applicant's control contributed to his financial problems. Under AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. Applicant paid the consumer debts in SOR ¶¶ 1.n through 1.q, and I find those allegations in Applicant's favor. He notified his mortgage company and his previous HOA about his financial issues after his brother abandoned him in 2011; he attempted to find a roommate; he tried to contact his brother to ask him to continue to honor his financial obligations; he contacted several tax professionals to assist him but could not afford their services; he tried to use tax software to prepare his income tax returns on his own; and he attempted to short sale his condominium.

However, once Applicant obtained gainful employment with a more substantial income in November 2020, he did not retain a tax resolution firm to assist him with filing his relevant federal income tax returns and resolving his outstanding federal taxes until approximately December 2021. He did not contact the state tax authority regarding his state tax liens until March 2022. There is no evidence to corroborate his claim that he contacted his previous HOA at least nine times to resolve his outstanding judgments, and he only reached a debt settlement agreement with the HOA in March 2022. AG ¶ 20(b) is not established for SOR ¶¶ 1.a through 1.m.

Although untimely, Applicant filed his federal income tax returns for TY 2018 and 2019 in November 2021 and August 2020, respectively, before he received the SOR. With the help of the tax resolution firm, he also filed his federal income tax returns for TY 2015 through 2017 and 2020 in July 2022. He timely filed his federal income tax returns for TY 2021 and 2022, and he intends to timely file his future income tax returns. In addition, he has a track record of payments toward his outstanding state tax liens since reaching payment plans with the state tax authority in March 2022 and then November 2022. AG ¶¶ 20(a), 20(c), 20(d), and 20(g) apply to SOR ¶¶ 1.a and 1.h through 1.k, and I find those allegations in Applicant's favor.

On the contrary, Applicant has only made four to five payments to the IRS in accordance with his June 2022 installment agreement, on an outstanding balance of approximately \$57,055 in federal taxes for TY 2014 through 2021. His claim that he



mailed payments via check to his previous HOA since reaching an installment agreement in April 2022 to resolve his outstanding \$68,305 judgments, was refuted by the HOA. He only hand-delivered a cashier's check to the HOA in March 2023, and he has only made one payment in accordance with his agreement in April 2023. While he received financial counseling and he has the means to continue resolving his outstanding federal taxes and HOA judgments, he needs more time to establish a track record of doing so. I find that these financial issues continue to cast doubt on his current reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(c), 20(d), and 20(g) do not apply to SOR ¶¶ 1.b through 1.g, 1.i, and 1.m.

**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. 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 has not mitigated the financial considerations security concerns.

**Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a:	For Applicant
Subparagraphs 1.b - 1.g:	Against Applicant
Subparagraphs 1.h - 1.k:	For Applicant
Subparagraphs 1.l - 1.m:	Against Applicant
Subparagraphs 1.n - 1.q:	For Applicant

## **Conclusion**

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

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Candace Le'i Garcia  
Administrative Judge