



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



In the matter of: )  
)  
) ISCR Case No. 22-01605  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John Lynch, Esq., Department Counsel  
For Applicant: *Pro se*

08/10/2023

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

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

**Statement of the Case**

On December 12, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on December 14, 2022, and requested a hearing before an administrative judge. The case was assigned to me on May 3, 2023.

The hearing convened as scheduled on July 21, 2023. Government Exhibits (GE) 1 through 10 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) 1 through 9, which were admitted without objection.

## Findings of Fact

Applicant is a 55-year-old employee of a defense contractor. He has worked for his current employer since October 2018. He served on active duty in the U.S. military from 1988 until he was honorably discharged in 1996. He is a disabled veteran who suffered traumatic brain injury (TBI) and other injuries during his service. He earned a bachelor's degree in 2002. He has married and divorced four times. His last marriage ended in 2015. He has a 12-year-old child from his third marriage. (Transcript (Tr.) at 17-19, 22-23, 28-30, 33; Applicant's response to SOR; GE 1-3; AE 7, 8)

Applicant has a history of financial problems including unpaid taxes and delinquent debts. The SOR alleges four delinquent consumer debts totaling about \$36,134 (SOR ¶¶ 1.a-1.d) and \$54,609 in unpaid taxes for tax years 2016 and 2017 (SOR ¶ 1.e). Applicant admitted all the allegations.

Applicant worked for a company in several countries from about 2004 to 2011. He met his third wife, a citizen of Country A, while he was working overseas. They married and had their child in 2010. She also had another child from a previous relationship. They moved to the United States in 2011. He had no furniture in the United States, and the costs of furnishing their home plus the costs associated with the family's immigration to the United States adversely affected his finances. They separated in 2012 and divorced in 2013, which further strained his finances. His fourth marriage lasted from 2014 to 2015. (Tr. at 16-18, 31-34, 39; Applicant's response to SOR; GE 1, 3)

Applicant developed kidney problems in about 2011. He was placed on dialysis in 2013 and was told he would need a kidney transplant. He received his medical care primarily from the U.S. Department of Veterans Affairs (VA). He was on a transplant list through the VA. He was informed that if he was unemployed, he would qualify to be placed on a transplant list from Medicaid and increase his chances for a kidney. In December 2017, he left the company he had worked for since at least 2005 in order to qualify for Medicaid. He was told by the company that it would hire him back, but it did not, and he was unemployed until he started his current job in a different state at a lower salary in October 2018. He received his transplant through the VA in about 2019. (Tr. at 17-19, 23-27, 34; Applicant's response to SOR; GE 1, 3)

About \$120,000 from Applicant's 401(k) retirement account was disbursed to him after he left the company in December 2017. There were significant tax implications. He thought it would be taxable in 2018, but it was 2017 income. He used some of the funds to pay bills. He decided to "day trade" about \$50,000 in the stock market. He was unsuccessful, and he lost about \$50,000. (Tr. at 41-44, 70-71; GE 3)

The four SOR debts became delinquent in about 2016. He also incurred a debt of about \$30,000 that he did not pay. This debt was not alleged in the SOR, apparently

because it is not listed on any of the credit reports in evidence.<sup>1</sup> None of those five debts have been paid. The debts are no longer listed on his credit report. (Tr. at 18, 49-54; Applicant's response to SOR; GE 3-5; AE 2-4)

Applicant did not have enough taxes withheld from his paycheck for years so that he would have extra income, and then he was unable to pay the taxes when they were due the next year. Before adding penalties and interest, Applicant owed the IRS about \$7,000 for 2014; \$7,500 for 2015; \$8,600 for 2016; and \$28,500 for 2017. Penalties and interest added to those figures. (Tr. at 17; Applicant's response to SOR; GE 3)

Applicant decided that he would address his taxes before his consumer debts. In April 2019, the IRS withheld \$3,202 from what would have been a refund from tax year 2018 and transferred it to what was owed for his 2014 taxes. He paid \$300 toward his 2014 taxes in January 2020. He entered into an installment agreement with the IRS in February 2020. He regularly made the \$600 payments, and in April 2020, the IRS withheld \$1,477 from what would have been a refund from tax year 2019 and transferred it to his 2014 taxes. The 2014 taxes were paid in full with a \$600 payment in December 2020. (Tr. at 44, 49; Applicant's response to SOR; GE 3, 8)

In April 2019, the IRS withheld \$2,921 from what would have been a refund from tax year 2018 and transferred it to his 2015 taxes. In April 2020, the IRS withheld \$980 from what would have been his 2019 refund and transferred it to his 2015 taxes. After his 2014 taxes were paid, his \$600 monthly installment payments went to his 2015 taxes. The 2015 taxes were paid in full with a \$600 payment in November 2021. (Applicant's response to SOR; GE 3, 8)

Applicant continued to make \$600 monthly installment payments through February 2023. There was no payment in March 2023. His installment plan was reduced to \$552 per month. He made the April, May, and June 2023 payments. In October 2022, he owed \$9,657 for 2016 and \$45,067 for 2017. That amount is reduced by the payments he has made since October 2022 (at least \$4,056). (Tr. at 46-47; Applicant's response to SOR; GE 3, 8; AE 5)

Applicant corrected the under-withholding of his taxes in 2018. Since 2018, he would have received a refund every year if the IRS had not transferred the refunds to his back taxes. The IRS transferred \$6,123 from what would have been his 2018 refund; \$2,588 from his 2019 refund; \$3,707 from his 2020 refund; and \$667 from his 2021 refund. (Applicant's response to SOR; GE 3)

Applicant asserted that he would continue with the installment plan until his back taxes are paid. He has about \$15,400 in stock options that will vest in December 2023. He may sell his motorcycle. He plans to use the money from his stock options and the

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<sup>1</sup> Any matter that was not alleged in the SOR cannot be used for disqualification purposes. It may be considered in the assessment of Applicant's overall financial situation, in the application of mitigating conditions, and in the whole-person analysis.

sale of his motorcycle to pay his taxes. He stated that he plans to pay his consumer debts after his taxes are paid. (Tr.at 49, 53, 72, 78; Applicant's response to SOR; AE 6)

Applicant submitted letters attesting to his excellent job performance and strong moral character. He is praised for his truthfulness, honesty, trustworthiness, allegiance to the United States, work ethic, reliability, dependability, dedication, responsibility, competence, intelligence, maturity, compassion, positive attitude, and integrity. (AE 1)

### **Policies**

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable 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 EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **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 financial problems, including delinquent debts and unpaid taxes. AG ¶¶ 19(a), 19(c), and 19(f) are applicable.

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.

Applicant's financial problems can be attributed to the costs associated with moving his family to the United States in 2011, furnishing their new home, his two divorces, and the unemployment after he left a job to better his chance at receiving a new kidney. Most of those expenses were beyond his control.

About \$120,000 from Applicant's 401(k) retirement account was disbursed to him after he left his job in 2017. There were tax implications. He decided to "day trade" about \$50,000 in the stock market. He was unsuccessful, and he lost about \$50,000. That was irresponsible conduct and is a major reason Applicant still has financial problems. Had he used that money to pay his taxes and some of his other debts, or even if he rolled the money over into another retirement account, it is likely his finances would be significantly better.

Applicant decided that he would address his taxes before his consumer debts. He paid \$300 toward his 2014 taxes in January 2020. He entered into an installment agreement with the IRS in February 2020. He regularly made the \$600 payments, and more recently the new amount of \$552 per month. He still owes several thousand dollars for 2016 and more than \$45,000 for 2017, but I believe his taxes will eventually be paid. AG ¶ 20(g) is applicable, but that does not end the discussion.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, 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. 17-01382 at 4 (App. Bd. May 16, 2018). This is true even when the taxes are eventually paid.

Applicant's failure to fulfil his duty to pay his taxes on time continues to raise doubts about his judgment, reliability, and willingness to follow rules and regulations. The mitigation provided by the installment plan is lessened because his tax debt resulted largely from his reckless conduct.

Applicant has done nothing to address his consumer debts. He owes about \$36,000 for debts alleged in the SOR, another \$30,000 for a non-alleged debt, and about \$50,000 to the IRS. He stated that he plans to pay his consumer debts after he pays his taxes. That could take years, and intentions to resolve financial problems in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his consumer debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) through 20(d) do not apply. Financial considerations security concerns are not mitigated.

### **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 have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's honorable military service and favorable character evidence.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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-1.e:	Against Applicant

## **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge