



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 22-02027
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicholas T. Temple, Esq., Department Counsel  
For Applicant: Joseph V. Sherman, Esq.

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**Decision**

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HOGAN, Erin C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on July 13, 2021. On October 25, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAF acted 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on January 16, 2023, and requested a decision based on the written record in lieu of a hearing. On March 29, 2023, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including pleadings and evidentiary documents identified as Items 1 through 8. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government’s evidence. He received the

FORM on April 7, 2023, and timely submitted his response on May 18, 2023, through his attorney. The Government did not object to Applicant's Response to the FORM on May 22, 2023. Applicant did not object to the Government's evidence. The case was assigned to me on June 20, 2023.

### **Evidentiary Matters**

Items 1 and 2 contain the pleadings in the case and are part of the record. Items 3 through 8 are admitted into evidence. Applicant's Response to Form is part of the record. Applicant provided two exhibits which were attached to the Response to FORM. Applicant Exhibits (AE) A and B are admitted into evidence.

### **Findings of Fact**

Applicant, age 44, is an employee of DOD contractor who is seeking to maintain his security clearance. He has worked for the same employer since June 2001. Applicant has been cleared for access to proprietary information since 2001. He was granted access to classified information in 2018. He earned a bachelor's degree in May 2001. He is single and has no children. (Items 2, 3)

The SOR alleged three delinquent debts to include: a \$78,085 collection account that was placed for collection (SOR ¶ 1.a: Items 5 at 5; 6 at 2; 7 at 1, 8 at 2); a past due bank loan, balance unknown (SOR ¶ 1.b: Response to SOR ); a past due line of credit with a bank, balance unknown (SOR ¶ 1.c: Response to SOR). The SOR alleges Applicant failed to timely file his 2019 federal income tax return (SOR ¶ 1.d: Item 4 at 6-12, 16); and that Applicant failed to file his 2019 state income tax return. (SOR ¶ 1.4 at 17). In his SOR answer, Applicant admits to all of the SOR allegations. (Items 2)

In 2014, Applicant and his business partner purchased a business from another neighbor who was retiring. Applicant continued to work his full-time job while his business partner quit his job and worked full-time at the business. The business did well for several years. In 2016, the business had a large commercial job that was poorly managed. To keep things going, they took out loans so they could buy material and manufacture products. At one point, Applicant took out a line of credit in order to make payroll and for other business expenses. They completed the job, but the business took a downturn. His business partner decided it was too much work and walked away from the business. Applicant tried to continue running the business, but it eventually closed. Applicant incurred several debts in an attempt to keep the business running. He intends to pay the delinquent debts incurred by the business. (Item 2, Response to SOR)

Applicant says he learned a very difficult life lesson. He admits his situation is not ideal but he is trying to satisfy all debts. He tries to give back to his community. For the past 15 years, he has helped build over 30 homes for qualified individuals with Habitat for Humanity. For more than 10 years, he has volunteered on the supervisory committee of his local credit union. (Item 2)

In response to the FORM, Applicant's attorney wrote a brief on Applicant's behalf. He notes Applicant has worked for the same DOD contractor for over 22 years and has no issues with his security clearance or handling proprietary information. He indicates that Applicant's business bid on large contract. The business underbid the job and went bankrupt performing the work but completed the job. The company through Applicant retained counsel to defend against and negotiate debts related to the business. Applicant's attorney says all debts alleged in the SOR are related to the failed business venture. Applicant has a history of being financially responsible for his personal debts. (Response to FORM)

Applicant's attorney states Applicant filed both federal and state income tax returns for tax year 2019. The IRS confirmed receipt of the 2019 federal tax return. Applicant worked for years to resolve the debts of his failed business venture. He entered an agreement to settle the \$78,085 debt alleged in SOR ¶ 1.a for \$10,000. The amount of the debt to be resolved is approximately \$7,132. (Response to FORM)

The current status of the SOR allegations are:

SOR ¶ 1.a: \$78,085 debt placed for collection: Applicant states this is a business loan. He was a co-signer on the loan. He mentions he has learned that the lender is known as a predatory lender. He and his lawyer worked for years to settle this debt. On April 18, 2023, the case was settled for \$10,000. Applicant paid two \$2,500 payments to the creditor, for a total of \$5,000. Applicant agreed to pay \$500 a month starting on July 1, 2023 for a total of ten months. The final payment is due on April 1, 2024. The debt is being resolved. (AE A)

SOR ¶ 1.b: Delinquent bank loan, amount is unknown: Applicant states this is a loan for the business. He signed as co-signer. His lawyer is in discussions with the bank to arrange an achievable payment plan. I note this debt does not show up on Applicant's credit reports. Applicant disclosed this debt during his background investigation.

SOR ¶ 1.c: Delinquent line of credit from a bank, amount is unknown: Applicant states this is a line of credit for the business. He signed as co-signer. His lawyer is in discussions with the bank to arrange payment plan. I note this debt does not show up on Applicant's credit reports. Applicant disclosed this debt during his background investigation.

SOR ¶ 1.d: Failure to timely file his 2019 Federal income tax return for tax year 2019. Applicant admits he did not timely file his 2019 federal income tax return. He typically files an extension because his business returns are not completed on time by his accountant. The business returns came back later than normal, and he did not promptly complete his personal return. Applicant and his attorney, provided proof that the 2019 federal income tax return was filed. (Item 2; Item 4 at 6 – 12; Response to FORM, AE B)

Applicant first responded to DOHA Interrogatories on June 22, 2022. The Internal Revenue Service (IRS) tax transcript, dated June 17, 2022, indicated Applicant was to receive a \$4,197 refund for tax year 2019. Although the tax transcript indicated Applicant

had not filed a tax return, the IRS sent Applicant a letter, dated June 14, 2022, indicating they received Applicant's tax return for 2019. They requested he take the extra step of verifying his identity before they "process [his] federal income tax return, issue a refund or credit overpayment to [his] account." (Item 4 at 6 – 12) This is sufficient to prove Applicant filed his 2019 federal income tax return.

SOR ¶ 1.e: Failure to timely file his 2019 state income tax return: Applicant and his attorney claim he completed his 2019 state income tax return. In his Response to Interrogatories, Applicant states he attempted to get his state income tax transcripts for 2019 online. He contacted the state department of revenue. They informed he could not get the transcript online. He needed to submit a formal request for the tax transcript by mail or fax. Applicant faxed the request. He contacted the state department of revenue again before submitting his Response to Interrogatories. He claims they confirmed the 2019 state income tax return was filed and paid. No documentation was provided from the state department of revenue verifying this. (Item 2, Response to FORM; Item 4 at 17, 20)

Applicant provided a Personal Financial Statement on June 20, 2022. His total net monthly income is \$5,450. His monthly expenses and monthly payments total \$4,850. He has approximately \$600 left over each month in discretionary income. He has approximately \$730,000 in total assets, of that amount, \$700,000 is in stocks and bonds. (Item 4 at 15)

### **Policies**

"[N]o one has a 'right' to a security clearance." (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." (*Egan* at 527). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” (EO 10865 § 7). Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. (*Egan*, 484 U.S. at 531). “Substantial evidence” is “more than a scintilla but less than a preponderance.” (*See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994)). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016). Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. (Directive ¶ E3.1.15). An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005))

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002)). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” (*Egan*, 484 U.S. at 531; AG ¶ 2(b))

## Analysis

### Guideline F: Financial Considerations

The concern under this guideline 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.

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a

person's self-control, judgment, and other qualities essential to protecting classified information. A person 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).

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (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.

AG ¶ 19(a) and AG ¶ 19(c) apply to Applicant's delinquent debts alleged in SOR ¶¶ 1.a, 1.b and 1.c. AG ¶ 19(f) applies to Applicant's failure to timely file and pay his federal and state taxes for tax year 2019 as alleged in SOR ¶¶ 1.d and 1.e.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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;
- (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.

AG ¶ 20(b) applies to the debts Applicant co-signed in order to keep his failing business running. (SOR ¶¶ 1.a -1.c) The business downturn was a circumstance beyond his control. Applicant hired an attorney to help him with resolving the debts of the business. He was able to enter into a settlement agreement for the largest debt and intends to resolve the two remaining business debts.

AG ¶ 20(d) applies to the debt alleged in SOR ¶ 1.a. Applicant and his attorney successfully negotiated a settlement agreement regarding the largest debt on April 18, 2023. Applicant made two \$2,500 payments on April 15, 2023, and June 1, 2023. He is to make \$500 monthly payments starting on July 1, 2023 for a period of ten months. If

Applicant defaults on the payment plan, he would be required to pay \$75,952. His budget and assets indicate he is capable of paying this settlement agreement.

AG ¶ 20(g) applies with regard to Applicant's 2019 federal and state income tax returns. He provided proof that he filed his 2019 federal income tax return. He is receiving a refund for that year. Although no documentary proof was provided, Applicant and his lawyer claim he filed his 2019 state income tax return. I conclude Applicant more than likely filed his state income tax return for tax year 2019.

Applicant bears the burden of production and persuasion in mitigation. He demonstrated that with the help of his lawyer, he is attempting to resolve the debts related to his failed business. Applicant overlooked filing his federal and state income tax returns for 2019 because his business returns were not completed in time by his accountant. The business returns were provided to him later than normal and he did not promptly complete his 2019 income tax returns. In a letter dated June 14, 2022, the IRS acknowledged he filed his federal income tax return for 2019. It is likely he filed his state tax return for 2019 as well. Applicant states he is current on all of his other state and federal tax returns. Tax year 2019 was an oversight on his part. He is financially capable of resolving the remaining debts. Applicant mitigated the concerns raised under Financial Considerations.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concerns raised under financial considerations. Accordingly, Applicant has carried his burden of showing that it is clearly consistent with the interests of national security to grant him eligibility for access to classified information.

## **Formal Findings**

Formal findings 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:                   FOR APPLICANT

Subparagraphs 1.a – 1.e:               For Applicant

## **Conclusion**

I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Clearance is granted.

Erin C. Hogan  
Administrative Judge