



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-02640
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

09/14/2023

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**Decision**

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OLMOS, Bryan J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 2, 2021. On July 22, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The DOD issued the SOR 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 Security Executive Agent Directive 4 (SEAD 4), National Security Adjudicative Guidelines (AG), effective June 8, 2017.

Applicant answered the SOR on August 8, 2022, and requested a hearing before an administrative judge. The case was assigned to me on April 11, 2023. On

April 26, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing. I convened the hearing as scheduled on June 6, 2023.

During the hearing, Department Counsel offered Government Exhibits (GX) 1 through 8, which were admitted without objection. Applicant testified and did not submit any exhibits. The record was held open until June 23, 2023, for either party to submit additional exhibits. Applicant subsequently submitted exhibits that I admitted, without objection, as Applicant Exhibits (AX) A through F. DOHA received the hearing transcript (Tr.) on June 13, 2023.

### **Findings of Fact**

In his Answer, Applicant admitted SOR ¶¶ 1.a - 1.j with no further explanations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 70 years old, married and has two adult children. He grew up in India and served in the United Kingdom Merchant Navy from about 1973 through 1982. He earned a bachelor's degree in the United States in 1983 and became a United States citizen in 1991. He started with his current employer as a port engineer in January 2021 and has since been promoted to a managerial position. (GX 1-2; Tr. 23)

In his March 2021 SCA, Applicant disclosed about \$415,000 in delinquent federal income tax debt for tax years (TY) 2015, 2016, 2018 and 2019. He also disclosed being delinquent for the deficiency balance on a mortgage after he sold the property in November 2020 for less than the mortgage value of about \$1,460,000. (GX 1)

In his April 2021 interview with a security clearance background investigator, Applicant estimated that his federal income tax debt had increased to \$500,000 for TYs 2015, 2016, 2018 and 2019. He also disclosed \$73,500 in State income tax debt for TYs 2016 through 2019 as well as about \$25,000 in delinquent property taxes. He further clarified that he owed about \$185,000 for the deficiency balance on the mortgage. (GX 2)

Applicant explained that from about 1990 through 2009, he worked in the United States for a large shipbuilder that was based overseas. In about 2004-2005, he became the CEO of a newly formed subsidiary of that company in the United States. His salary as CEO was \$346,000 plus annual bonuses of up to \$120,000. He described this work as lucrative, but very stressful. During this time, he also purchased a minority share in two local hotels and earned an annual dividend of up to \$200,000. (GX 1-2; Tr. 19-24, 35-37).

In 2008, Applicant borrowed substantial funds to build a nearly \$2,000,000 "dream home" (Home B). He then converted his previous residence (Home A) into a

rental property. Later that year, the housing market collapsed, and Home B became worth substantially less than the purchase price. (GX 1-2; Tr. 25-30)

Despite the uncertain economic times, Applicant resigned from his job in 2009, believing he could earn a comparable salary as a consultant. However, the economic slowdown scaled back work in his field and he struggled to maintain a consistent income. He also stopped receiving dividends from his hotel investment. (GX 1-2; Tr. 25-27)

From 2010 through early 2014, Applicant's intermittent consulting work earned him about \$100,000 annually. However, it was not enough to maintain his financial commitments. During this period, he depleted his savings and sold his wife's jewelry. He also tried to sell Home B, but the property was worth less than what he owed on the mortgage and he was unable to get the lender to agree to a short sale. (GX 1-2; Tr. 27-30)

Applicant made several early withdrawals from his 401k retirement account in order to pay his mortgage and bills. He filed his tax returns on time with the assistance of an accountant, but failed to pay all taxes or the penalties due for his 401K withdrawals. Applicant began accruing delinquent tax debt in 2011 and was assessed underpayment penalties from 2011 through 2014 that he was unable to address at the time. (GX 1-2; Tr. 21-27)

From late 2014 through early 2019, Applicant worked as a consultant for his former employer, the shipbuilder. He primarily worked overseas and earned approximately \$200,000 annually. With this income, Applicant paid much of his delinquent tax debt for TYs 2011 through 2014. (GX 1-2; Tr. 21-22, 30)

However, while resolving one tax problem, Applicant created another. Because he was a consultant, and not a company employee, his former employer did not withhold income taxes from his pay. Although Applicant continued to timely file his tax returns from 2015 through 2019, he repeatedly failed to fully pay taxes when due. (GX 1-2; Tr. 22, 30-32)

In early 2019, Applicant's consultancy work for his former employer ended and he once again struggled to secure new work. He stopped making any payments on his delinquent taxes at that time. In 2020, his financial difficulties were further exacerbated when business slowed because of closures related to the COVID-19 pandemic. (GX 1-2; Tr. 22-25, 35-38)

In November 2020, Applicant sold Home B at a loss and moved back into his previously rented Home A. Since starting with his current employer in January 2021, he has maintained a steady income and currently earns \$139,000 annually. Additionally, since he is now a W-2 employee, a substantial portion of his annual tax obligations are withheld by his employer. (GX 1-2; AX A; Tr. 23-25, 35-39)

The SOR allegations and relevant evidence are summarized below.

**SOR ¶¶ 1.a-1.d: delinquent federal income taxes for TY 2015 (\$153,379), TY 2016 (\$169,415), TY 2018 (\$73,449) and TY 2019 (\$53,695).** Applicant admitted each allegation and the delinquent taxes are reflected in an April 2021 IRS account summary. The evidence provided does not show comprehensive detail of Applicant's tax account activities for TYs 2015 through 2019. However, it does reflect a number of payments that he made to the IRS. In 2016, he paid about \$40,000 that was applied toward tax debts for TYs 2012 and 2013. In 2017, he paid about \$78,000 that was applied toward tax debts for TYs 2012 and 2016, as well as an estimated payment for TY 2017. In 2018, he paid about \$202,000 that was applied toward tax debts for TYs 2012, 2014 and 2017, as well as an estimated payment for TY 2018. In 2019, he paid about \$36,000 that was applied toward tax debts for TYs 2012 and 2013. (GX 1-3; AX C)

From January through March 2020, Applicant made monthly payments of \$580 toward his federal tax debt, payments that were applied toward TY 2015. He stopped making payments in March 2020 because the COVID-19 pandemic and economic slowdown affected his ability to pay. He made no payments until July 2021. From then through January 2022, he made monthly payments of \$520 that were also applied toward TY 2015. In February 2022, he made a \$20,176 payment for TY 2020. In December 2022, he made a \$22,000 payment for TY 2021. However, from January 2023 through the hearing in June 2023, he did not issue any payments to the IRS beyond his employer's W-2 withholdings. (GX 2-3; AX C; Tr. 32-34)

At hearing, Applicant explained that he still owed about \$10,000 for TY 2021 that related to income from his hotel investment. In total, Applicant estimated he currently owes about \$450,000 in delinquent federal taxes. He hired a tax attorney in September 2022 to assist in communicating with the IRS and setting up a payment plan for all of his delinquent tax years. However, as of the hearing, no payment plan had been established. Instead, he was considering communicating with the IRS directly. In his post-hearing statement, he explained that he now had monthly disposable income of about \$2,000 and reiterated his intent to approach the IRS in the near future and establish a payment plan. (AX A; Tr. 23, 34-35, 65-70)

**SOR ¶¶ 1.e-1.h: delinquent State taxes for TY 2016 (\$20,385), TY 2017 (\$21,685), TY 2018 (\$22,045), and TY 2019 (\$9,352).** Applicant admitted each allegation and State tax account records reflect that he entered into a payment plan in May 2019, but defaulted on that plan in October 2019. Thereafter, the debt transferred to a collection agency. In June 2021, he initiated monthly payments of \$200 through the collection agency. (GX 2, 4; Tr. 40-41)

An April 2022 statement from the collection agency showed that Applicant owed the State about \$88,160 for TYs 2016 through 2019. Applicant also owed \$3,079 for TY 2020 that was incorporated into the payment plan. In May 2022, his monthly payment

increased to \$250 and he has made required monthly payments since. (GX 2, 4; AX D; Tr. 40-41)

**SOR ¶ 1.i: delinquent property taxes of \$25,683.** Records reflect that this amount was due for TYs 2017 through 2021 for Home A. At hearing, Applicant stated he had recently paid this debt. A June 2023 account statement from the locality confirmed that he had paid these delinquent taxes, though the date he did so is unclear. However, he owes \$2,807 for TY 2023, which includes penalties and interest. (GX 5; AX A, E; Tr. 42, 70-72)

**SOR ¶ 1.j: mortgage deficiency balance of \$185,014 following November 2020 sale of Home B.** In January 2021, Applicant entered into an agreement with the lender and began making monthly payments of \$550. A May 2023 payment history shows that, in May 2022, payments increased to \$625 per month. Applicant continues to make monthly payments pursuant to that agreement and the balance has reduced to about \$155,000. (GX 1-2, 6-8; AX F; Tr. 43)

Outside of the accounts alleged in the SOR, Applicant has no additional delinquent debts. He submitted a budget reflecting that, after paying his obligations, he maintains a net remainder of about \$2,300 per month. Although he listed State and property taxes in this budget, he did not include a payment for his delinquent federal tax obligations. (GX 7-8; AX B)

Applicant described himself as an upstanding, loyal and proud citizen. He stated he maintained a strong work ethic and would continue to strive toward overcoming the financial hardships he experienced and resolving his tax issues. (AX A; Tr. 75-76)

### **Policies**

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

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available,

reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The financial security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses

concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012)

The adjudicative guideline notes three conditions that could raise security concerns under AG ¶ 19 and 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's admissions and the evidence reflect that he failed to pay federal and State income taxes due, that his property taxes are delinquent and that he is past-due for the deficiency balance on a mortgage account. All of the above disqualifying conditions apply.

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

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Since 2008, Applicant has experienced challenging financial circumstances that were both beyond and within his control. He was directly impacted by the housing market crash in 2008 and the subsequent difficult economic conditions. Over a decade later, he was further impacted by the COVID-19 shutdowns. Some consideration is also given to his inconsistent income resulting from his consulting work. However, Applicant chose to leave a lucrative position in 2009 in the midst of difficult economic conditions. From 2011 through 2014, he also chose to repeatedly withdraw 401k funds, but not pay the accompanying taxes and penalties when due. While he is credited with later paying these taxes, he did so by not fully paying his tax obligations for TY 2015 through 2019. Since he timely filed his tax returns each year, he was fully aware of his tax obligations, yet allowed the problem to escalate. Now, with penalties and interest, he owes about \$450,000 in delinquent federal taxes.

In 2020 and 2021, Applicant twice attempted and failed to maintain a payment plan with the IRS. He hired a tax attorney in September 2022 to assist in communicating with the IRS and made his last tax payment in December 2022 that was specifically for TY 2021. Yet, at hearing, no payment plan had been established and he presented no timeline for the resolution of his federal tax debt. Instead, his tax problem expanded, as he also now owes an additional \$10,000 for TY 2021. While Applicant's tax debt for TY 2021 is not alleged in the SOR, it shows further unresolved tax delinquencies and undercuts assertions of mitigation since his tax problems are ongoing.

After the hearing, Applicant submitted a budget that reflected a net remainder of over \$2,000 per month. He affirmed his intent to communicate with the IRS and to use these funds to begin another payment plan. However, outside of his W-2 tax withholdings, he did not show the issuance of any federal tax payments since December 2022.

None of the AG ¶ 20 mitigating conditions is fully applicable to SOR ¶¶ 1.a – 1.d. Applicant's delinquent federal taxes are long-standing, ongoing, and cast doubt on his current reliability, trustworthiness, and good judgment. He has not provided sufficient evidence that he acted responsibly under the circumstances or initiated and adhered to a good-faith effort to repay this debt. He has not offered a clear timeline for resolution and he has not established that the problem is under control.

AG ¶¶ 20(b), 20(d) and 20(g) are applicable to SOR ¶¶ 1.e - 1.h. The root causes of Applicant's State tax issues are similar to those of his federal tax issues. However, he has demonstrated more commitment to repaying his State tax debt. He made payments under a payment plan with the State from May to October 2019. In June 2021, he established a monthly payment plan of \$200 with a collection agency on behalf of the State. In May 2022, payments increased to \$250 per month. He has budgeted for and maintained payments under this plan for over two years.

AG ¶¶ 20(a), 20(b), and 20(d) are applicable to SOR ¶ 1.i. Applicant failed to fully pay his property taxes on Home A from 2017 through 2021. This occurred at a time when he primarily worked overseas and was also trying to sell Home B. During his



investigation and at hearing, he repeatedly expressed his intent to resolve this debt. A June 2023 account statement from the locality confirmed that the delinquent taxes were paid. Although he still owes a small amount of additional taxes for 2023, he has acted responsibly and resolved this SOR debt.

AG ¶¶ 20(a), 20(b) and 20(d) are applicable to SOR ¶ 1.j. Applicant purchased Home B when he was experiencing better financial circumstances. As his financial difficulties increased, he endeavored to maintain the mortgage until he eventually sold Home B in 2020 for a substantial loss and less than the mortgage amount. He then maintained regular communication with the lender and reached a settlement in January 2021. He has since budgeted for and maintained monthly payments on this debt. He has taken responsible action under the circumstances

After experiencing variable periods of financial difficulties, Applicant has made significant progress in resolving several of his delinquent debts. However, those efforts do not fully mitigate the ongoing financial security concerns arising from his federal tax issues.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant initially experienced financial difficulties from 2008 through 2014 because of the 2008 financial crisis and his struggles to maintain consistent work as a consultant. He took several early withdrawals from his 401k retirement account, but then failed to pay the associated taxes, penalties and interest when required. From

2014 through 2019, while consulting for his former employer, Applicant resolved much of his tax debt that resulted from the 401k withdrawals. However, he also continually failed to pay income taxes when due. He traded one tax problem for another.

Applicant then experienced further financial difficulties with the loss of his consulting work in 2019 and the economic difficulties that occurred with the Covid-19 pandemic in 2020. Since starting with his current employer, he has maintained a consistent income and has resolved or is resolving several of his outstanding debts. I found his desire to address his financial concerns sincere. However, his statements and actions, to date, are insufficient to establish good-faith, responsible efforts to resolve his substantial federal tax debt. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his significant ongoing federal tax debt.

### **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.d:	Against Applicant
Subparagraphs 1.e-1.j:	For Applicant

### **Conclusion**

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

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Bryan J. Olmos  
Administrative Judge