



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



In the matter of: )  
)  
) ISCR Case No. 22-01443  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Sakeena Farhath, Esq., Department Counsel  
For Applicant: *Pro se*

10/10/2023

---

**Decision**

---

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 November 9, 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 12, 2022, and requested a hearing before an administrative judge. The case was assigned to me on May 30, 2023.

The hearing convened as scheduled on August 30, 2023. Government Exhibits (GE) 1 through 8 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) 1 through 7, which were admitted without objection. The record was held open for Applicant to submit additional documentary evidence. He submitted AE 8, 9, and 10, which were admitted without objection.

## Findings of Fact

Applicant is a 67-year-old employee of a defense contractor. He has worked for his current employer since August 2019. He served in the U.S. military for a short period in 1976 before he was medically disqualified with an honorable discharge. He is a high school graduate with certifications in his field. He has been married for more than 20 years after his first two marriages ended in divorce, but he and his wife have been separated since about 2015. He has five adult children. (Transcript (Tr.) at 19-22, 25-28; GE 1, 3)

Applicant has a history of tax problems, including not filing his federal income tax returns when they were due for tax years 2016 through 2020 and not paying his federal income taxes when they were due for tax years 2014, 2015, 2017, 2018, 2019, and 2020.<sup>1</sup> He retained a tax company in August 2022 to file his back returns and to represent him before the IRS for the taxes owed. All of his federal tax returns have been filed, with the exception of tax year 2016. He still owes taxes for 2014, 2015, 2017, 2018, 2019, and 2020. (Tr. at 19, 23, 31-33, 43-44; GE 2, 3; AE 1, 2)

Applicant did not report tax issues on a Questionnaire for National Security Positions (SF 86) that he submitted in November 2020, but he wrote: "To my knowledge, my wife has filed taxes and I have not been notified of any tax problems. With exception of 2014 where I was notified of tax due but have heard nothing since." (GE 1)

Applicant was interviewed for his background investigation in September 2021. He stated that his wife handled their taxes, and he believed the matter was fully resolved, but he was uncertain because he did not communicate with his wife. He stated that his W-2 and other financial documents were sent to her automatically. Since he had not heard from his wife or the IRS, he assumed the tax issues had been resolved. Applicant's testimony was similar. He just assumed that his wife was handling their taxes, if the IRS had any issues they would contact him, and he did not receive anything from the IRS. (Tr. at 19, 29-30, 40-41, 48-50; GE 3) Individual years are discussed below:

### 2014

Applicant's and his wife's 2014 federal income tax return was timely filed. They filed as "married filing jointly." Their adjusted gross income for 2014 was \$215,859, and their taxable income was \$187,659. Their tax liability when they filed the return was calculated at \$21,037; \$19,906 and \$2,896 was withheld from their pay; and they paid \$1,120 with their return. In August 2016, the IRS assessed \$25,731 in additional taxes, an accuracy-related penalty of \$4,551, and \$1,244 in interest. An innocent spouse claim

---

<sup>1</sup> The SOR did not allege that Applicant owed taxes for 2014 and 2015. Any matter that was not alleged in the SOR cannot be used for disqualification purposes. It may be considered in the application of mitigating conditions and in the whole-person analysis.

was filed (presumably by his wife) and received by the IRS in 2019. The IRS wrote off \$28,550 in unpaid taxes, penalties, and interest in 2019. (GE 2, 3; AE 1, 2)

## **2015**

Applicant's and his wife's joint 2015 federal income tax return was timely filed. Their adjusted gross income for 2015 was \$246,958, and their taxable income was \$211,844. Their tax liability when they filed the return was calculated at \$21,047; \$20,429 was withheld from their pay; \$303 was credited to their account; and they paid \$335 with their return. In November 2018, the IRS assessed \$25,319 in additional taxes, an accuracy-related penalty of \$5,064, and \$3,571 in interest. An innocent spouse claim was filed (presumably by his wife) and received by the IRS in 2019. The IRS wrote off \$33,954 in unpaid taxes, penalties, and interest in 2019. (GE 2, 3; AE 1, 2)

## **2016**

Applicant has not filed a federal income tax return for 2016. His tax company wrote: "The IRS requires the past 6 years to be filed in order to be in compliance with IRS tax filing requirements and to be in good standing with the IRS; therefore, we are not filing [Applicant's] 2016 federal tax return." (GE 2, 3; AE 1, 2)

## **2017**

The IRS did not report that it received Applicant's 2017 and 2018 federal income tax returns. (AE 2) Applicant's tax company stated:

The client's 2017-2018 tax returns were prepared and faxed to the IRS on 10/17/2022. They were again mailed to the IRS on 2/14/23. The IRS has had these returns since 2/21/23, but they have not processed them. We are currently in the process of working with the local IRS Taxpayer Advocate Service (TAS) office for them to assist in processing the 2017-2018 Federal tax returns. (AE 10)

Applicant provided copies of his 2017 and 2018 federal income tax returns. (GE 3) I find that returns for those tax years have been filed.

Applicant's 2017 federal income tax return was filed "married filing separately." His adjusted gross income was \$198,587, and his taxable income was \$188,410. His tax liability was \$50,921; and \$20,995 was withheld from his pay; leaving \$29,926 owed, without accounting for penalties and interest. (GE 3)

## **2018**

Applicant's 2018 federal income tax return was filed "married filing separately." His adjusted gross income was \$266,235, and his taxable income was \$254,235. His tax liability was \$65,718; and his total payments, which included \$33,361 withheld from

his pay, was \$39,776; leaving \$25,942 owed, without accounting for penalties and interest. (GE 3)

## **2019**

The IRS received Applicant's 2019 federal income tax return in October 2022. He filed "married filing separately." His adjusted gross income was \$200,610, and his taxable income was \$188,410. His tax liability was \$41,608; and \$18,056 was withheld from his pay. With penalties and interest, in August 2023, he owed the IRS \$32,317 for tax year 2019. (GE 2, 3; AE 1, 2)

## **2020**

The IRS received Applicant's 2020 federal income tax return in October 2022. He filed "married filing separately." His adjusted gross income was \$167,923, and his taxable income was \$155,523. His tax liability was \$31,792; and \$29,318 was withheld from his pay. In April 2021, \$1,469 was credited to his account, and he paid \$1,151 in February 2023. In August 2023, he owed the IRS \$44 for 2020, which consisted entirely of penalties and interest. (GE 2, 3; AE 1, 2)

## **2021**

The IRS received Applicant's 2021 federal income tax return in October 2022. He filed "married filing separately." His adjusted gross income was \$158,513, and his taxable income was \$144,613. His tax liability was \$29,030; and \$31,851 was withheld from his pay. In April 2022, \$976 was credited to his account. The IRS withheld \$3,797 from what would have been a refund and applied it to what he owed for tax year 2014. (GE 2, 3; AE 1, 2)

## **2022**

The IRS received Applicant's 2021 federal income tax return on time. He filed "married filing separately." His adjusted gross income was \$152,958, and his taxable income was \$138,608. His tax liability was \$27,353; and \$28,354 was withheld from his pay. In April 2023, \$372 was credited to his account. The IRS withheld \$1,373 from what would have been a refund and applied it to what he owed for tax year 2014. (GE 2, 3; AE 1, 2)

Applicant's tax company is attempting to work out a payment plan with the IRS. He stated that he will pay whatever he owes. (Tr. at 23-24, 44-47; AE 2, 10)

The SOR alleges a \$20,271 charged-off credit card debt (SOR ¶ 1.c) and a \$53 medical debt in collection (SOR ¶ 1.d). Applicant denied owing both debts. The \$20,751 debt is listed on each of the six credit reports in evidence, including the October 2023 credit report submitted by Applicant. The debt is listed as an individual account that was opened in 2008 with the last payment in December 2018. He stated that he has never had that credit card, and he believes his wife or someone else may have opened the

account in his name. A civil suit by the credit card company against Applicant in a state where he does not live was dismissed without prejudice in October 2022. He did not defend against the suit; he received the dismissal order in the mail. (Tr. at 23, 55-60; GE 4-8; AE 1, 3, 9)

The \$53 medical debt (SOR ¶ 1.d) is reported by Equifax in June 2021 and April 2022, with an activity date of May 2019. Applicant stated that he paid the debt, along with other medical debts in February 2022. It is not listed on the October 2022 and August 2023 Equifax credit reports. (Tr. at 60; GE 2-8; AE 9)

Applicant suffered a stroke in 2019 requiring hospitalization; he had joint replacements in 2021; and his mother passed away in 2021. With the exception of his tax issues and the delinquent credit card debt, his finances are in good shape. He has solid income, and he has about \$600,000 in retirement and other accounts. (Tr. at 20-24, 28, 47; 61-63; GE 3-8; AE 1, 7, 9)

Applicant has worked in important roles supporting the U.S. military for more than 30 years. His performance evaluations reflect excellent job performance. (Tr. at 24; AE 1, 4-6)

### **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:

(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 unfiled tax returns, unpaid taxes, and a charged-off credit card account. AG ¶¶ 19(c) and 19(f) are applicable.

The \$53 medical debt (SOR ¶ 1.d) has been paid and has no security significance. SOR ¶ 1.d is resolved for Applicant.

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;

(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 assumed that his wife was handling their taxes. He thought if the IRS had any issues they would contact him, and he did not receive anything from the IRS. That is irresponsible conduct. Additionally, he knew he owed the IRS for at least tax year 2014 because he discussed it in his SF 86. He again ignored his tax obligations. He retained a tax company in August 2022 to file his back returns and to represent him before the IRS for the taxes owed. All his federal tax returns have been filed, except for tax year 2016. His tax service wrote: "The IRS requires the past 6 years to be filed in order to be in compliance with IRS tax filing requirements and to be in good standing with the IRS; therefore, we are not filing [Applicant's] 2016 federal tax return." He still owes the IRS more than \$140,000 for tax years 2014, 2015, 2017, 2018, 2019, and

2020, which does not include all the penalties and interest and what he would have owed, if anything, for 2016.

AG ¶ 20(g) is applicable to the filed tax returns. It does not apply to the unpaid taxes and the unfiled 2016 tax return. Little mitigation is provided in security clearance cases when an applicant stands on a legal defense such as the statute of limitations. See *e.g.*, ISCR Case No. 14-01231 at 3 (App. Bd. Feb. 10, 2015).

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 returns are eventually filed, and the taxes paid.

Applicant's tax company is attempting to work out a payment plan with the IRS. He stated that he will pay whatever he owes. However, 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).

Applicant denied any knowledge of the \$20,271 charged-off credit card debt (SOR ¶ 1.c), but he provided no documentation in support of a dispute. The debt is listed on all six credit reports in evidence, including the most recent one submitted by Applicant. I believe the most likely scenario is Applicant opened the account in 2008, gave the card to his wife, and then disregarded the card, the same way he ignored his taxes. AG ¶ 20(e) is not applicable to that debt.

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. His financial issues are recent and ongoing, and continue to raise doubts about his judgment, reliability, and willingness to follow rules and regulations. The mitigation provided by the filed returns is insufficient to overcome the years of Applicant shirking his responsibility to file his tax returns and pay his taxes when they were due. None of the above mitigating conditions are sufficient to mitigate financial considerations security concerns.

### **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 considered that Applicant has worked in important roles supporting the U.S. military for more than 30 years, and his performance evaluations reflect excellent job performance. However, he shirked a fundamental requirement to file his tax returns and pay his taxes when they were due.

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
Subparagraph 1.a:	Against Applicant (except tax year 2021, which is found for Applicant)
Subparagraphs 1.b-1.c:	Against Applicant
Subparagraph 1.d:	For 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.

---

Edward W. Loughran  
Administrative Judge