



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01126
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

11/15/2023

\_\_\_\_\_

**Decision**

\_\_\_\_\_

COACHER, Robert E., Administrative Judge:

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

**Statement of the Case**

On November 2, 2022, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

Applicant answered the SOR and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 25, 2023, and the hearing was convened as scheduled on September 12, 2023. The Government offered exhibits (GE) 1-5, which were admitted

into evidence without objection. Its discovery letter and exhibit list were marked as hearing exhibits (HE) I and II. Applicant testified and offered Applicant exhibits (AE) A-C, which were admitted without objection. The record remained open and Applicant submitted AE C-D, which were admitted into evidence. DOHA received the hearing transcript (Tr.) on September 22, 2023.

### **Findings of Fact**

Applicant admitted all of the allegations with explanations. His admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 32 years old. He has worked for a defense contractor since December 2019, as a technology specialist. From October 2019 to December 2019, he was unemployed. He is a high school graduate and has taken some college courses. He is currently engaged and he has one child from this relationship. His significant other also has a child. (Tr. 6-7, 26-27, 46; GE 1)

The SOR alleged Applicant had nine delinquent student loans, in collection status, totaling approximately \$40,000. (SOR ¶¶ 1.a-1.i) It also alleged that he failed to file his 2017 to 2021 federal and state income tax returns, as required, (SOR ¶ 1.j)

Applicant admitted the nine delinquent student loans. He took out the student loans in the period of 2010 to 2014 when he attended art school. He further admitted that he has not made any payments toward these debts. The reasons he gave for failing to pay toward the debts were that he believed his parents were paying these loans until he had a falling out with them. He admitted not following up to set up his own payment process. The other reason he gave was that when he checked with a commercial credit reporting service, it indicated that the student loans had reverted back to the government. He thought that meant he no longer was responsible to pay them. He did not take any further action until he received the SOR when he contacted the Department of Education directly and found out about the delinquent status of his loans. Documentation from his current student loan servicer showed that as of July 2023, his student loans were in excess of \$51,000. (Tr. 28, 30-31; AE C)

Applicant claimed that he set up a payment plan but that plan was put on hold because of the student loan relief legislation resulting from COVID-19. His credit report from February 2022, shows that all of his student loans were placed in collection status in 2017, years before the COVID-19 relief. He most recently was sent a notice by his student loan servicer telling him that his loan payments will resume in October 2023. He did not provide any payment information after receiving this notice. His student loans remain unresolved. (Tr. 28; GE 3; AE D)

Applicant admitted that he failed to timely file his 2017-2021 federal and state tax returns. In his October 2022 interrogatory responses, he stated the reason for his failure to file was because he did not have the means or resources to file and that "life was

difficult.” After receiving the SOR, he contacted a tax professional to assist in preparing his unfiled tax returns. She supplied a letter on December 5, 2022, indicating that she would have the returns prepared by December 7, 2022. Applicant claims his 2017-2021 federal and state returns have been filed, although he does not remember when exactly. He did not provide documentation of any returns received by the IRS or the state tax authority. He provided a copy of a U.S. Postal Service receipt showing that on August 8, 2023, three documents were mailed to his state’s taxing authority and one document was mailed to his regional IRS office. He provided no other correspondence concerning his tax filing status. He testified that he has not filed his 2022 federal or state tax returns (I will not use his 2022 tax information for disqualifying purposes, but I may use it in my credibility, mitigation, and whole-person analyses). His unfiled tax return issues remain unresolved. (Tr. 27-28, 38-43; AE A-B)

Applicant produced a character letter from a personal friend who is a special agent for another government agency. The friend believes Applicant is honest, demonstrates integrity, and possesses the highest moral character. The letter does not state whether the author is aware of the circumstances of Applicant’s case. (AE E).

### **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 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.

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 that an 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.

Section 7 of EO 10865 provides that 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**

AG ¶ 18 expresses the security concern for financial considerations:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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 delinquent student loans that remain unpaid. He also failed to timely file his 2017-2021 federal and state income tax returns. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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; 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 claims he filed all his state and federal tax returns for 2017-2021, however, he failed to provide documentation corroborating that claim. Even giving him the benefit of the doubt that he did file those returns, such filing did not occur until after August 2023, years after they were due. He ultimately sought the services of a tax preparation professional, but again not until after he received the SOR. Since his action was only prompted by receiving the SOR, his reliability and trustworthiness are called into question. Applicant failed to describe any conditions beyond his control as a reason for not timely filing his tax returns. Neither of the mitigating circumstances apply.

Applicant failed to pay, or act upon, his delinquent student loans until he received the SOR. His loans were delinquent before they went into COVID-19 deferment status. As of October 2023, they are once again in an active pay status and Applicant did not document any plans to pay these loans. He did not provide sufficient mitigation evidence to establish the applicability of AG ¶ 20(b), or any other mitigating condition.

### **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 the 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 guideline 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 considered favorable character evidence. However, Applicant has not established a track record of financial responsibility.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

### **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.j:	Against 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Robert E. Coacher  
Administrative Judge