



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01034
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrew Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

01/08/2024

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**Decision**  
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OLMOS, Bryan J., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, Financial Considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on September 7, 2021. On December 15, 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 January 12, 2023, did not provide any exhibits and requested a decision on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA), in lieu of a hearing. However, on

April 10, 2023, he requested that his case be converted to a hearing. The case was assigned to me on September 11, 2023. On October 5, 2023, DOHA issued a notice scheduling the hearing for November 14, 2023, by video-teleconference.

I convened the hearing as scheduled. Department Counsel offered into evidence Government Exhibits (GX) 1 through 5. Applicant objected to GX 4, a credit report, over concerns regarding its accuracy and reliability. I overruled that objection and admitted GX 1 through GX 5. Applicant testified and offered one document, Applicant Exhibit (AX) A, which I admitted without objection. I held the record open until December 1, 2023, to allow both parties the opportunity to submit additional documents. Applicant timely submitted an e-mailed narrative statement and five documents that I marked as AX B through AX G and admitted without objection. DOHA received the hearing transcript (Tr.) on November 21, 2023. The record closed on December 1, 2023.

### **Findings of Fact**

In his Answer, Applicant admitted SOR ¶¶ 1.a-1.c and denied SOR ¶ 1.d with 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 45 years old. He is married and has two children. He received a bachelor's degree in 2006 and a master's degree in business administration in 2010. Since January 2011, he has been consistently employed in various full-time positions. He has been with his current, sponsoring employer since January 2023. He has not previously held a security clearance. (GX 1-2; Tr. 9, 19-22)

The SOR alleges two private student loans totaling about \$45,500 (SOR ¶¶ 1.a and 1.b); a federal tax debt of \$4,568 for tax year (TY) 2016 (SOR ¶ 1.d) and that Applicant failed to timely file his federal tax return for TY 2018 (SOR ¶ 1.c). The allegations are established by his admissions, his responses to interrogatories, and by various credit reports and IRS account transcripts. (GX 1-5; AX C-D)

SOR ¶¶ 1.a (\$13,004) and 1.b (\$32,464) are two of four private student loans that Applicant cosigned for his then-girlfriend, now his wife, to attend nursing school in 2008 and 2009. The loans became due in 2012 and she began making timely payments of \$600 per month. They married in 2013. (GX 1-3; Tr. 24-28)

In 2015, Applicant's wife became pregnant and eventually stopped working for several months. Applicant claimed that, during this time, he was unaware that she stopped paying on two of the loans. In 2016, the creditor began calling Applicant, but he initially refused to answer because he believed the loans were being paid by his wife and he had no other accounts with the creditor. (GX 1-3; Tr. 25-32)

Finally, by early 2017, Applicant communicated with the creditor and learned that the two loans were behind. He testified that he applied for a resumption of payments at

a reduced rate based on economic hardship. This request was denied. He then claimed to have offered a \$3,000 payment from his emergency savings to bring the loans current. The creditor informed him that the two loans had been charged off and that a payment would not change their status. Applicant believed the delinquent loans would transfer to a collection agency and waited for someone to contact him. He further claimed that no one ever reached out for payment. (GX 1-2; Tr. 26-30, 52-55)

Applicant testified that his wife never stopped paying on the two loans that remained in good standing with the original creditor. In 2018, he researched his financial options online and called the creditor quarterly to see if he could resolve the charged-off loans or pay to have the negative reporting of the loans be removed from his credit reports. He testified that the creditor took no action in response. (GX 2; Tr. 33-35, 52-59)

With the birth of his second child in 2019, Applicant testified that he took a break from contacting the creditor about the charged-off loans. He resumed his efforts in 2020 and claimed his wife submitted an application to consolidate the loans. During the application process, only the two active loans, and not the two charged-off loans, appeared in her paperwork. For unknown reasons, his wife did not qualify for any loan consolidation. Payments on the two loans in good standing continued. (GX 1-2; Tr. 33, 53-56, 62-65)

In 2021, Applicant's work transitioned to governmental services, and he knew that the charged-off loans could be a concern in a background investigation. He testified that, during this period, he contacted the creditor and asked to be removed from the loan as a cosigner. He also claimed to have offered \$10,000 to settle the debt. In both instances, Applicant claimed that the creditor refused to act as the loans had been charged off. (GX 2; Tr. 57-60)

Applicant disclosed the loans in his September 2021 SCA and claimed he was attempting to set up a payment plan with the creditor. During his October 2021 interview with a background investigator, he clarified that he made additional attempts to contact the creditor to negotiate the removal of the charged-off loans from his credit report. During this period, he learned from the creditor that the two loans in good standing were being transferred to another lender. He hoped the new lender would be able to provide some information on the charged-off loans. (GX 1-2; Tr. 31-34, 62-65)

In early 2023, the original creditor transferred the two remaining loans to a new creditor. Applicant testified that he and his wife continue to make timely payments on those loans and estimates the combined balance to be about \$40,000. He testified that he also inquired with the new creditor as to the status of the charged-off loans. However, he was informed that the new creditor did not have the loans and he was referred back to the original creditor. (GX 2; Tr. 28-34, 62-64)

At hearing, Applicant admitted that he never received an IRS Form 1099-Cancellation of Debt or any documentation from the original creditor indicating that the

loans were closed. He described communicating with the original creditor over the years as hitting a “brick wall,” and everything going into a “black hole.” Applicant’s November 2023 credit report shows the two loans as charged off in the combined amount of \$45,468. (GX 5; Tr. 30, 48-49)

After the hearing, Applicant submitted correspondence from the original creditor, dated December 2023, regarding the two charged-off loans. It stated that “due to the age of your debt, we will no longer attempt to collect from you” and that no additional payments on the loans were required. Applicant also submitted a budget that reflected continued payments on three student loans. He did not specify whether these were payments on any of his wife’s student loans or his own student loans that remained in good standing. This budget also showed that Applicant maintained a net monthly remainder, after expenses and retirement contributions, of about \$4,800. (AX B, E-G)

SOR ¶ 1.d alleges that Applicant owed \$4,568 in past-due taxes for TY 2016. At hearing, Applicant admitted that he previously owed past-due taxes for TY 2016 and explained that he experienced increased income that year and insufficient funds were withheld by his employer. Applicant also described experiencing financial and marital issues during this time and admitted he was slow to address the problem, but that the tax return had since been filed and the taxes paid. (GX 1-2; Tr. 43-45)

Post-hearing documentation included an IRS account transcript for TY 2016. It shows that Applicant filed the return in April 2018, and was assessed penalties for the late filing and late payment. He made periodic payments between 2019 and January 2023. The TY 2016 taxes have now been paid. (AX C)

An IRS account transcript for TY 2017 reflects that Applicant filed this return in May 2018 and received a penalty for the late filing and late payment. Beyond the initial withholding, Applicant made payments in 2019 and 2020 toward this tax debt, which has now been paid. (GX 2)

SOR ¶ 1.c alleges that Applicant failed to timely file his TY 2018 return. At hearing, Applicant provided documentation reflecting that he attempted to file this return late, in 2020. However, he forgot to sign the return and it was rejected by the IRS. At that time, Applicant also had a job offer fall through and moved his family twice in one year. He admitted he forgot about resubmitting the tax return, but said that it had since been filed and paid. An IRS account transcript reflects that he refiled his TY 2018 return in January 2023 and received penalties for the late filing and late payment. In May 2023, Applicant issued a payment to the IRS for \$6,179, part of which resolved his remaining balance for TY 2018. (GX 1-2; AX A-B, D; Tr. 35-39)

Applicant timely filed his TY 2019 return. A \$723 credit was transferred to pay unspecified taxes owed for TY 2015. Similarly, Applicant timely filed his TY 2020 return and received a refund. However, \$5,158 was credited towards his past-due taxes owed for TYs 2015 and 2016. (GX 2; AX C)

With regard to Applicant's TY 2021 obligations, an IRS account transcript, printed in June 2022, showed that the return had not been filed. At hearing, Applicant testified that he had since filed the return and owed no additional taxes for that year, but did not provide an updated IRS account transcript or other documentary evidence in support of this assertion. (GX 2; Tr. 39-40)

Applicant testified that he filed his TY 2022 return early, but owed between \$9,000 and \$10,000 in additional taxes. This was because of a miscalculation involving his wife's income and several months of insufficient withholdings by her employer. To address this tax debt, Applicant claimed that he submitted multiple payments to the IRS in 2023 from \$500 to \$1,000 and that the back taxes would be paid by the end of 2023. His budget included a \$500 monthly payment for taxes. (AX G; Tr. 39-42)

Applicant testified that, in the last two years, his financial situation had significantly improved, and he was now financially stable and maintaining his monthly expenditures as well as an emergency fund. He also followed general financial advice online and used a web-based budgeting system that allowed him to closely monitor the family budget. Beyond the two charged-off student loans, he testified that he has no additional delinquent debts. This is supported by his November 2023 credit report. (GX 5; AX G; Tr. 45-46)

### **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 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 cosigned four private loans in 2008 and 2009 for his then-girlfriend, now his wife, to attend nursing school. As such, he was equally liable for the loans, and he admitted the debts in his Answer to the SOR. In 2015, two of those loans, totaling about \$45,000, became delinquent and were eventually charged off. Applicant also waited until January 2023 to pay his federal tax obligations for TY 2016 and to submit his TY 2018 tax return. All of the above disqualifying conditions apply.

There are several 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; 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.

In 2015, Applicant's wife became pregnant and eventually stopped working. Applicant described experiencing financial and marital issues during this period. While he initially hesitated to communicate with the creditor, once he learned that two of his wife's student loans were not being paid, Applicant took action and attempted to negotiate a payment plan. He was informed that the loans were charged off and that no

payment was due. Still, he described continued efforts that he and his wife took to attempt to resolve the loans over the following years. Finally, in December 2023, he received documentation from the creditor stating that, given the age of the debt, the loans were closed.

Outside of this debt and his tax issues, Applicant has no other financial issues. His budget and credit report show that he has taken significant steps to strengthen the marital finances and meet his ongoing financial obligations. This debt under circumstances that are unlikely to recur. Over time, Applicant took responsible actions to address the loans. AG ¶¶ 20(a) and (b) are applicable to SOR ¶¶ 1.a and 1.b. AG ¶ 20(c) is partially applicable based on his use of online financial advice and a web-based budgeting system.

However, Applicant's tax situation is less settled. Although Applicant faced additional challenges in 2016 that complicated his tax filing, he failed to file for an extension and did not file the return until April 2018. Even with the submission of his SCA in September 2021 and his awareness that his financial situation would be under review, he still waited until January 2023 to complete paying the taxes for TY 2016. Similarly, the IRS did not receive Applicant's TY 2018 return until January 2023, and his TY 2018 past-due taxes were not resolved until May 2023.

While difficulty in meeting financial obligations may force an applicant to choose the order in which he or she addresses unpaid debts, they do not provide a plausible excuse for failing to meet an important legal requirement, such as filing returns when due. ISCR Case No. 15-03019 at 6 (App. Bd. Jul. 5, 2017) Failure to file tax returns suggests that an applicant has a problem complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)

Additionally, Applicant's tax concerns were not isolated to TY 2016 and TY 2018. His TY 2019 and TY 2020 IRS account transcripts show credit transferred out to pay taxes for TY 2015. He also received a penalty for a late filing and late payment for TY 2017. As of June 2022, an IRS transcript showed that his TY 2021 return had not been filed and no extension had been requested. Applicant testified that his TY 2021 return had since been filed. Even if that were established, that return would be late. He also testified that he still owed, and was paying, taxes for TY 2022. These additional years of tax issues were not alleged in the SOR. However, they establish a history of non-compliance with tax obligations that undercut assertions of mitigation, since his tax problems are recent and ongoing.

The Appeal Board has stated that even in instances where an “[a]pplicant has purportedly corrected [his or her] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, this does not preclude careful consideration of [a]pplicant's security worthiness in light of [his or her] longstanding prior behavior evidencing irresponsibility” including a failure to timely file federal income tax



returns. See ISCR Case No. 15-01031 at 3 (App. Bd. June 15, 2016) (characterizing a “no harm, no foul” approach to an applicant’s course of conduct and employing an “all’s well that ends well” analysis as inadequate to support approval of access to classified information).

Although Applicant has since paid his TY 2016 debt and filed his TY 2018 return, none of the AG ¶ 20 mitigating conditions are fully applicable to SOR ¶¶ 1.c or 1.d. His difficulties in meeting his federal tax obligations are long-standing and continue to cast doubt on his current reliability, trustworthiness, and good judgment. He has not provided sufficient evidence that he acted responsibly under the circumstances or established that he will be able to maintain compliance with his ongoing tax obligations.

After experiencing some financial difficulties in 2015, Applicant is credited with taking responsible action to communicate with the creditor regarding his wife’s student loans and making multiple attempts over the years to resolve those 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.

Following financial difficulties in 2015, Applicant continued to communicate with the creditor regarding his wife’s private student loans and took reasonable actions over time to attempt to resolve the debt, which is now closed. He also researched and engaged tools to better budget and manage the marital finances.

However, Applicant was less diligent in meeting his tax obligations. Although he resolved his tax issues for TY 2016 and TY 2018 in 2023, he failed to establish a track record of tax compliance. At the time of the hearing, he continued to have outstanding past-due tax debt. His struggles to meet this annual obligation raises unmitigated questions about his reliability, trustworthiness, and ability to protect classified information. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

### **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.b:	For Applicant
Subparagraphs 1.c-1.d:	Against Applicant

### **Conclusion**

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

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Bryan J. Olmos  
Administrative Judge