



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-01274
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

March 5, 2024

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On March 19, 2021, Applicant submitted a security clearance application (e-QIP). On July 6, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the DoD after June 8, 2017.

Applicant answered the SOR on October 23, 2023, and requested a hearing before an administrative judge. The case was assigned to me on December 5, 2023. The Defense Office of Hearings and Appeals issued a notice of hearing on December 7, 2023, and the hearing was convened as scheduled on January 18, 2024. The

Government offered three exhibits, referred to as Government Exhibits 1 through 3, which were admitted without objection. The Applicant offered six exhibits, referred to as Applicant's Exhibits A through F, which was admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on January 26, 2024.

### **Findings of Fact**

Applicant is 56 years old. He is married and has three children. He has a high school diploma, some college, and multiple industry certifications. He holds the position of IT Specialist/Storage Specialist. He is seeking to obtain a security clearance in connection with his employment.

#### **Guideline F - Financial Considerations**

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information.

The SOR identified four allegations consisting of delinquent Federal back taxes owed for tax years 2010, 2011, 2017, and 2021, totaling approximately \$19,000. Applicant admits each of the allegations with explanations. Applicant began working for his current employer in 2021. He is applying for a security clearance for the first time.

Applicant explained that he has had tax problems since 2008. At that time, he took about \$65,000 out of his 401(k) to put down on the purchase of a house. The escrow closing took eight months, and so he was hit with a 30 percent tax penalty for early withdrawal. This cost him additional taxes and penalties of about \$20,000. (Tr. p. 27.) He did not file his 2008 income taxes on time but filed them the following year. (Tr. 26.) He started making payments towards resolving the taxes and then lost his job, and had to stop making payments. When he started working again, payments were either garnished from his account, or he made payments to resolve the debt. He stated that he has paid off his 2008 income taxes, and that since 2012, he has filed his income tax returns on time. (Tr. 38.)

In regard to the back taxes owed that are listed in the SOR, he stated that for the past two years he has been trying to set up a payment plan with the Internal Revenue Service (IRS) but has not been successful. (Tr. pp. 31-35.) He has not made any payments toward resolving any of the back taxes listed in the SOR, and they remain owing. (Tr. p. 31.)

Applicant believes he incurred delinquent tax debt for tax years 2010 and 2011, because he sold a number of stock options, considered income, that he used to pay for a sewage backup problem he had to fix in his house. (Tr. p. 29.) In 2017, he was laid off from his job, and he did not have stable employment until 2020. He had previously

taken out a loan on his 401(k), and because he did not pay it, it was also considered an early withdrawal. He was hit with additional tax liability. In 2020, he refinanced his house to lower the payment so he could afford to keep it. He also exhausted his original 401(k) to keep the house. He currently owes about \$410,000, on his house. He believes that the house is now worth about \$600,000, so there is equity there. In 2021, Applicant began working for his current employer, and did not pay enough in Federal taxes. (Tr. p. 37.)

For the past thirteen years, Applicant has been struggling with his back tax liability and he continues to remain indebted. Applicant currently earns about \$159,000 annually. His wife is also employed and earns about \$16.00 an hour. He currently has about \$50,000 in his new 401(k). His mortgage payment is \$3,100 monthly. He has no other savings yet. (Tr. pp. 22-23.)

Applicant stated that he plans to pay his back taxes as soon as he can. He may refinance his house to obtain the money to pay his back taxes. Applicant stated that he has been working on getting other things taken care of and he has not put the effort into getting his back taxes paid.

The following delinquent debts are of security concern:

1.a. Applicant is indebted to the Federal Government for delinquent back taxes in the amount of \$2,516.94 for tax year 2010. The debt remains owing. (Tr. p. 31, and Applicant's Exhibit D.)

1.b. Applicant is indebted to the Federal Government for delinquent back taxes in the amount of \$8,141.56 for tax year 2011. The debt remains owing. (Tr. p. 31, and Applicant's Exhibit D.)

1.c. Applicant is indebted to the Federal Government for delinquent back taxes in the amount of \$4,708 for tax year 2017. The debt remains owing. (Tr. p. 31, and Applicant's Exhibit D.)

1.d. Applicant is indebted to the Federal Government for delinquent back taxes in the amount of \$3,000 for tax year 2021. The debt remains owing. (Tr. p. 31, and Applicant's Exhibit E.)

Applicant's performance appraisals from October 1, 2020, through September 30, 2021; October 1, 2021, through September 30, 2022; reflect that he "successfully met expectations." (Applicant's Exhibits A and B.)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 avoided drawing 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, 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 clearance 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 as to 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. 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 under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness 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 a history of financial hardship and as a result, has fallen behind on paying his Federal income taxes. For the past thirteen years, he has had delinquent Federal back taxes owed for tax years 2010, 2011, 2017, and 2021. He has not made any payments towards resolving these debts. His actions or inactions both demonstrated a history of not addressing his debt and an inability to do so. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under the Financial Considerations guideline are potentially applicable under AG ¶ 20.

- (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, or a death, divorce, or separation), 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.

Applicant has delinquent Federal back taxes that he has not been able to afford to pay. He stated that he has tried numerous times over the past two years to get the IRS to accept his payment or to set up a payment plan with him, but he has been unsuccessful. Applicant also admitted that he did not realize the seriousness of these back taxes and how important it is to the Defense Department to get them resolved. Thus, he remains delinquently indebted to each of the debts listed in the SOR. Applicant's financial irresponsibility and inaction for so long casts doubt on his current reliability, trustworthiness, or good judgment. Applicant needs more time to show the Government that he will work to resolve his back taxes with regular systematic payments and consistency. None of the mitigating conditions are applicable.

There is insufficient evidence in the record to show that Applicant has shown good judgment or that he has made a good faith effort to resolve his delinquent back taxes. Applicant still owes a significant amount of money to the Federal Government that he obviously cannot afford to pay or has simply ignored. There is insufficient evidence in the record to show that the Applicant has carried his burden of proof to establish mitigation of the government security concerns under Guideline F.

### **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. In the event that Applicant follows through with a commitment to show financial responsibility, sometime in the future he may be found to be sufficiently reliable to properly protect and access classified information.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated the Financial Considerations security concern.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.d.	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge