



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01967
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jenny Bayer, Esq., Department Counsel  
For Applicant: *Pro se*

03/22/2024

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations and Guideline E, personal conduct. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 1, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on November 30, 2022, and he requested a hearing before an administrative judge. The case was assigned to me on January 9, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January

12, 2024. I convened the hearing as scheduled on February 5, 2024. The Government offered exhibits (GE) 1 through 4. Applicant testified and offered Applicant Exhibits (AE) A through C. There were no objections, and all exhibits were admitted in evidence. The record was held open until February 20, 2024, to allow both parties to submit additional documents. The deadline was extended to February 29, 2024. Applicant offered AE D through AE Q and they were admitted without objection, and the record closed. DOHA received the hearing transcript (Tr.) on February 16, 2024.

## Procedural Matters

In accordance with DOD Directive 5220.6, the Government moved to amend the SOR to render it in conformity with the evidence admitted. The record was held open to allow Applicant an opportunity to provide additional evidence. There was no objection to the motion, and it was granted. The SOR amendments are included in Hearing Exhibit (HE) I and detailed below. Email correspondence about the amendments and other procedural matters are included in HE II. (Tr. 68-71)

The SOR was amended as follows:

1.g. You are indebted to the Federal Government for delinquent taxes in the approximate amount of \$9,000.00 for tax year 2013. As of the date of this Statement of Reasons, the taxes remain unpaid.

1.h. You are indebted to the Federal Government for delinquent taxes in the approximate amount of \$6,000.00 for tax years 2014 and 2015. As of the date of this Statement of Reasons, the taxes remain unpaid.

1.i. You failed to file, as required, Federal income tax returns for at least tax year 2019. As of the date of this Statement of Reasons, the tax return remains unfiled.

Based on a post-hearing submission and a request by Applicant, the amended allegation in SOR ¶ 1.i was amended again to change the date from tax year 2019 to tax year 2021. The Government concurred and had no objection. SOR ¶ 1.i is therefore amended to tax year 2021.

Guideline E: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative process.

2.a: You falsified material facts on an Electronic Questionnaires for Investigations Processing (e-QIP), executed by you on or about September 27, 2021, in response to: **Section 26 – Financial Record Taxes, in the last seven (7) years** have you failed to file or pay federal, state, or other taxes when required by law or ordinance.” You answered

"No" and thereby deliberately failed to disclose those delinquent debts as set forth in subparagraph 1.h, above.

2.b You falsified material facts on an Electronic Questionnaires for Investigations Processing (e-QIP), executed by you on or about September 27, 2021, in response to **"Section 26 - Financial Record Delinquency Involving Routine Accounts.** Other than previously listed, have any of the following happened? ...**In the last seven (7) years**, you defaulted on any type of loan? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor)... You are currently 120 days delinquent on any debt? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor)". You answered "No" and thereby deliberately failed to disclose those delinquent debts as set forth in subparagraphs 1.a, 1.b, 1.c, and 1.d.

### Findings of Fact

Applicant admitted the allegations in the SOR ¶¶ a. through 1.d, 1.f, 1.g, and 1.h. He did not admit or deny SOR 1.i, 2.a and 2.b, but rather provided explanations. I will consider his response as denials. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 59 years old. He served in the military from 1988 to 1990 and received a hardship discharge, which was honorable. He reenlisted in December 2001 and served in combat in Iraq from April 2003 to November 2003. He earned a bachelor's degree in 2007. He married in 1996 and divorced in 2012. He has a child from a previous relationship and two children from the marriage. His youngest child has special needs, and Applicant provides financial support to her as needed. He and his ex-wife share guardianship over her. He remarried in June 2021. He has worked for his current employer, a federal contractor, since 2008 and has held a security clearance since then. He stated that he has earned approximately \$67,000 a year since 2008 with minimal raises. During his marriage to his first wife, she earned about \$65,000 until she became unemployed for a period after their divorce. His second wife earns approximately \$140,000 annually. (Tr. 16-29; GE 1)

During Applicant's tour in Iraq, he was injured when he leaped from his vehicle to avoid an attack on his convoy. He cracked his femur and had muscle tears in his knees. He completed his enlistment in December 2004 and received an honorable discharge. In 2009, he was awarded a Veteran's Affairs (VA) disability rating of 30%. He received about \$500 a month from the VA. He resubmitted a VA claim in August 2022 with a diagnosis of post-traumatic stress disorder and was awarded a 100% disability rating in December 2022. He receives \$4,109 a month for his VA disability. (Tr 21-26; AE B)

The SOR alleged Applicant had delinquent debts that included approximately \$104,137 of delinquent student loans (SOR ¶¶ 1.a - 1.d). He began taking out student loans when he was attending college in 1995. He testified that he made consistent payments but after he got married the first time, he got behind and requested a deferment.

At some point, he stopped attending college but went back in 2005 and took out additional loans. He said he was paying the loans through the school while he was attending. Once he graduated in 2007, he said he continued paying the loans. In 2009, when he began to receive VA disability payments, he said he used those funds to pay his student loans. He stated he continued to pay the student loans until his 2012 divorce. He then contacted the student loan creditor to obtain a deferment or an income-based payment plan. He said he got the plan and started to pay it but then his divorce, child support and his ex-wife's unemployment impacted his finances. He also stated in his SOR answer that the interest rate on his mortgage increased due to the housing crisis and that increased his mortgage payments. Apparently, he had an adjustable-rate mortgage. (Tr. 39-64; SOR answer)

Applicant said he contacted the student loan creditor and requested another deferment until he could make consistent payments. When the deferment expired, he would get a payment plan, make payments for a few months, then stop due to other financial priorities, such as his children's medical and other needs. He said about 65% of his income was going for child support and his mortgage. In 2016, his oldest child graduated from high school, and he was not required to pay child support for him. Although his child support decreased by half, he used this money to help with his child's college expenses and other bills. His loans were in default and in 2020 were placed in a deferment status under the CARES Act due to the pandemic. He testified that from 2016 to 2020, he made sporadic payments toward his student loan debts. In his SOR answer, he attributed his inability to pay his student loans to having a young family, a new mortgage, and interest rates increasing on his mortgage. (Tr. 39-64)

Applicant stated in his SOR answer that when his student loans were deferred due to the pandemic in 2020, it allowed him to catch up on his other financial obligations. In his answer, he stated that he intended to apply for the "Fresh Start" program, which he did in December 2022. In July 2023, his VA disability was increased to 100% and the total amount he owed for federal student loans were discharged due to his disability status. The student loans are resolved. (Tr. 39-64; AE B)

Applicant disputed the debt in SOR ¶ 1.d (\$4,433). He explained in 2017 the roof of his house was damaged in a storm. An unsolicited person came to his house asking to repair his roof. Applicant and the person agreed an estimate would be provided but he clearly told the person that he was not agreeing to contract with the company. He provided Applicant an estimate and there was no further contact with this salesperson or the company. They did not do any work for Applicant. In late 2017, he was contacted by the company that provided an estimate and it demanded payment. He told them he did not owe any debt to them. He was told he needed to pay them for their estimate, or they would send the debt to a collection company. Applicant refused. When he saw the debt on his credit bureau account, he contacted the collector and asked them to provide him with a copy of a signed contract. They were unable to produce a signed contract and removed the debt from his account. Applicant provided documents to substantiate his actions. This debt is resolved. (Tr. 29-38; AE A)

SOR ¶ 1.f alleged Applicant had a delinquent credit card in collection (\$3,227). He testified that this credit card became delinquent in approximately 2013 or 2014. A judgment was entered against Applicant for the balance owed on the debt. In February 2022, the creditor agreed to settle the judgment for less than the amount owed (\$2,049). Applicant was able to pay the settlement after he sold his house in 2021, as detailed below. In his post-hearing statement, he said he was unaware of the debt until he received a letter from a debt collector. The debt is resolved. (Tr. 90-93; AE C, D)

During his hearing, Applicant was asked if he filed and paid his federal and state taxes on time, and he confirmed he filed the returns on time. He said he has a federal income tax debt for 2013 (approximately \$9,000) and he also owes approximately \$6,000 for tax years 2014 and 2015. He did not pay the taxes because he did not have the money. He had been a 1099 employee in addition to his regular employment. He stated that the IRS withheld any refunds he may have been entitled to in subsequent tax years and applied them to his delinquent balance. At the time of his hearing, he had not made any independent payments towards these tax debts. He testified that he received notifications from the IRS advising him of how to address his delinquent tax debts. It also told him the IRS would withhold any refunds he may be entitled to. Prior to his hearing, he had not contacted the IRS to make any payment arrangements and did not have a payment plan. (Tr. 69-83, 96-97)

Applicant further testified that in 2020 he contacted the IRS because he wanted to find out why a tax return had been rejected. He was told he could request tax transcripts from their website. He said when he went on the website, he found out his 2013 tax debt had been reduced when his refunds were applied to the balance, and he had a balance owed of about \$9,000. He explained when he sold his house, he used the profit for other expenses and did not prioritize his student loans or income tax debt. (Tr. 72-78)

Applicant testified that he sold his house in June 2021. He received approximately \$105,000 profit from the sale. He said it was his intention to obtain a payment plan at that time to repay his student loan debt. He said he used about \$35,000 to pay other debts he owed but were not delinquent. He paid property taxes that were three years in arrears for property he owns in another state. He said he did not have the money to pay these taxes when due. He estimated he owed about \$1,400 on one parcel of land and \$900 on another. His wife had medical bills that were not covered by insurance, and they were about \$15,000 to \$20,000 in out-of-pocket expenses. He also decided to invest in his uncle's start-up business. He referred to it as his retirement savings. He invested about \$25,000 in it. He stated that by December 2022 he had about \$15,000 remaining from the profit on the sale of his house. He did not use any of the profits from the sale of his home to make payments at the time on his delinquent federal income taxes. Applicant currently has approximately \$1,300 in his bank accounts. (Tr. 64-78, 82)

In Applicant's September 2021 security clearance application (SCA), he disclosed he took foreign trips to the Bahamas in 2014, 2016 and 2019 to visit his family and his 2019 trip was to attend his grandmother's funeral. He also traveled to Mexico in 2018 for

vacation (6-10 days), 2020 (1-5 days), and in 2021 (6-10 days). He traveled again in 2021 to Costa Rica (1-5 days). (Tr. 83, 93-94; GE 1)

In his September 2021 SCA, in response to section 26 which asked Applicant if he had failed to timely file or pay any federal, state, or local taxes, he responded "no". It also asked if he had defaulted on any loan or had any debts over 120 days delinquent, he responded "no." In the additional comments section of the SCA, Applicant wrote: "I have paid all debts in full." He testified that he made this statement because he thought his debts were being paid and addressed. At the time, Applicant had a collection account for a credit card that had been delinquent since 2013 or 2014. The creditor obtained a judgment and the settlement for the debt was not satisfied until February 2022, after he completed his SCA. His student loans were in a deferred status but had been delinquent and defaulted on prior to the pandemic, and he owed the IRS approximately \$15,000 for tax years 2013, 2014 and 2015. (Tr. 106-110; GE 1)

Applicant was interviewed by a government investigator in February 2022. During his interview he reported his credit card debt that had been delinquent since 2013 or 2014. He told the investigator that all of his accounts were current, and he did not have any other delinquent debts in the past seven years. He did not disclose he had delinquent income tax debts. (GE 4)

Applicant stated that because he had paid many debts after the sale of his house, he believed he did not have any delinquent debts when he completed his September 2021 SCA. His explanation for failing to disclose his delinquent taxes was because the IRS was withholding his refunds, so it meant the debts were not delinquent and were being paid. Also, because his student loans were deferred, they were not in a default status. Although, there may have been some confusion about his student loans status, there was no question, he was aware that he had outstanding tax debts that were not "paid in full" as he stated in his 2021 SCA. He was also being sued by a credit card creditor for non-payment and had not satisfied the judgment until February 2022, after he completed his SCA. (Tr. 84, 101-103; AE D, Q)

Post-hearing statements from Applicant explain that he takes responsibility for his financial issues. He attributes them to his 2012 divorce and providing for his family, especially during a period when his ex-wife was unemployed. He stated he was responsible for paying child support, a mortgage, medical insurance, and other expenses for his special needs child. He said he had limited resources after paying all of his expenses. He stated that in 2013, 2014, and 2015, he received notices from the IRS for taxes owed after filing each year. The notices told him how to remedy the tax issue and that any refunds would be used to offset the balance owed. He said he never received a notice from the IRS that it was going to bring any action against him for unpaid taxes, so he believed any refunds he received was considered a payment. Applicant further explained that he was under severe financial hardship from 2013 to 2020. His second wife was diagnosed with cancer in 2023 and underwent treatment. (Tr. 80-81; AE D, Q)

Post-hearing, Applicant provided IRS tax transcripts regarding his delinquent federal income taxes. Applicant testified that he was receiving notices from the IRS about the delinquent taxes. He did not provide IRS tax transcripts for tax years 2013, 2016 or 2017. He provided a document from the IRS noting "N/A" by the years 2016 and 2017. His tax year 2014 transcript reports a notice was issued to him regarding his delinquent tax debt in 2016, 2017, 2020, 2021, 2022 and 2023. His tax year 2015 transcript reports a notice was issued regarding his delinquent tax debt in 2016, 2018, 2020, 2021, 2022 and 2023. (AE F, G)

I find there is substantial evidence to conclude Applicant deliberately failed to disclose his delinquent federal income tax debts on his SCA. I find because there was confusion due to the pandemic regarding the technical status of Applicant's student loans, the evidence is insufficient to conclude he deliberately failed to disclose their prior default status. I also find that there is insufficient evidence to conclude that Applicant was aware he had a delinquent credit card debt (SOR ¶ 1.f) owed until he was notified by the collection company. I do not have evidence that he was aware of this debt prior to completing the September 2021 SCA. His statement on the SCA that all of his debts were paid in full was misleading and false.

In his post-hearing submission, Applicant stated his 2021 federal income tax return has been electronically filed. He explained that this was the year he remarried, and his wife filed as single because they did not marry until June. He filed as married filing separately. The IRS was unable to process the return. He stated he has now refiled as single, and the return was accepted, and it is waiting to be processed. He provided his tax year 2021 transcript which reflects that as of February 8, 2024, the return had not been filed. It also notes Applicant received the government's tax relief credit of \$1,400 in March 2021 and a notice was issued in April 2021. He did not provide any documentary proof that his 2021 federal income tax return was filed. However, I believe Applicant filed his 2021 income tax return after his hearing. (AE K)

Post-hearing, Applicant provided a document from the IRS showing a payment of \$2,980 was pending as of February 21, 2024. Applicant indicated this would be applied to his 2014 tax debt and satisfy the debt for tax year 2014. He also provided an IRS installment agreement signed on February 27, 2024, which provides that \$420 monthly payments would begin in April 2024. These payments will be applied to outstanding balances for tax years 2013 and 2015. The amount owed as of the date of the agreement is \$8,307. (AE D, E, F, N, O)

I have not considered any derogatory information not alleged in the SORs in the application of disqualifying conditions. I may consider this information in the application of mitigating conditions, in making a credibility determination, and in my whole-person analysis.

## Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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(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." 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 as to 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

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. 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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 had delinquent student loans totaling more than \$100,000. He also had other delinquent debts. He failed to timely file his 2021 federal income tax return and owes delinquent federal income taxes from 2013, 2014, and 2015. Although, he had some events that impacted his ability to pay his taxes, he also made a substantial profit on the sale of his home and did not use any of the profits to pay his taxes. He took foreign trips for vacation and invested in his uncle's business (\$25,000) which shows he had the resources and chose not to pay his tax debt. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 provided proof that his student loan debts were resolved when he received a 100% VA disability rating in 2022. He provided documents to show he disputed the debt in SOR ¶ 1.de and it has been resolved. AG ¶ 20(e) applies to this debt. He also provided documents to show he settled a judgment entered against him in 2022 for a credit card debt (SOR ¶ 1.f) that had been delinquent since 2013 or 2014. Although the debt is resolved, I cannot find AG ¶ 20(d) applies because settling a debt after a judgment is entered is not considered a good-faith effort.

Of greatest concern is that Applicant failed to pay his delinquent taxes. He explained he was unable to pay the debts because he was taking care of his family, their medical needs, child support, his mortgage **payments** had increased, his special needs child had expenses, and his ex-wife was unemployed for a period after their divorce. These are all conditions beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Although for a period of time he may have had limited resources to fully pay his tax debt, he did not contact the IRS to make an attempt to establish a repayment plan until after his hearing. He relied on refunds from subsequent tax years to be applied to his delinquent balances owed. In 2021, he received a substantial profit from the sale of his house. He used the profit to pay

other debts and invest in his uncle's business. In addition, he had the resources to travel overseas to visit family in 2014 and 2016. His trip in 2019 was to attend a family funeral. He took vacations to Mexico in 2018, 2020, and 2021, and a trip to Costa Rica also in 2021. Applicant had legitimate issues that were beyond his control, but he also made financial choices that were within his control and did not act responsibly under **his**the circumstances, which included not paying his delinquent income taxes. I find AG ¶ 20(b) only partially applies because he did not act responsibly.

Applicant paid his 2014 delinquent taxes after his hearing. He still has a tax debt for tax years 2013 and 2015. He initiated an installment agreement with the IRS in late February 2024 that will begin in April 2024. AG ¶ 20(g) applies. I find AG ¶ 20(d) does not apply because his actions to resolve his delinquent tax debts occurred after his hearing. There is no evidence Applicant has received financial counseling. AG ¶ 20(c) does not apply.

A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. ISCR Case No. 15-00216 at 4 (App. Bd. Oct. 24, 2016), *citing Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). Applicant's failure to address his tax issues until after his hearing "does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation's secrets." ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016.) Although there is some evidence of mitigation, it is insufficient to fully mitigate the security concerns raised by Applicant's failure to timely pay his income taxes.

### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications,

award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant deliberately failed to disclose on his September 2021 SCA that he owed delinquent federal income taxes for tax years 2014 and 2015. I did not find his explanations credible regarding these matters. AG ¶ 16(a) applies.

As noted above, I found in Applicant's favor regarding his failure to disclose his delinquent student loans and credit card debt. I find in his favor on SOR ¶ 2.b.

The following mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying security concerns based on the facts:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant deliberately failed to disclose he owed federal income taxes from tax years 2014 and 2015. He stated in his SCA that "I have paid all debts in full." This statement is misleading and false. He was aware that he still owed the IRS for his taxes, and they were not paid in full. His failure to put the government on notice as to his tax issues is not a minor offense. He had an opportunity during his background investigation to tell the government investigator about his delinquent tax debt but did not. His actions were not minor. The security clearance process relies on those seeking a clearance to be honest and forthcoming. Applicant failed to do so, which casts doubt on his reliability, trustworthiness, and good judgment. The above mitigating conditions do not apply.

### **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 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 Guidelines F and E in my whole-person analysis. I have considered Applicant's military service in combat and that he is a disabled veteran. I have also considered the impact his special needs child has on his finances, along with all of the other matters he raised.

Applicant failed to meet his burden of persuasion. The record evidence leaves me with serious 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 and Guideline E, personal conduct.

### **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.f:	For Applicant
Subparagraphs 1.g-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge