



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-02559
	)	
Applicant for Security Clearance	)	

**Appearances**

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

03/19/2024

\_\_\_\_\_

**Decision**

\_\_\_\_\_

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On February 10, 2023, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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 implemented by DOD on June 8, 2017 (AG).

On August 30, 2023, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. Department Counsel prepared the Government’s File of Relevant Material (FORM), which was sent to Applicant on September 18, 2023. The evidence included in the FORM is identified as Items 2-8 (Item 1 includes pleadings and transmittal information). The FORM was received by

Applicant on September 29, 2023. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted evidence in response to the FORM, which is admitted without objection as Appellant Exhibit (AE) A1-A40. His transmittal documents were marked as administrative exhibits (AD) I-IV. Also, the Government's evidence is admitted into the record without objection. (Items 2-8). The case was assigned to me on February 6, 2024.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a and 1.e, with explanations, but he denied SOR ¶¶ 1.b and 1.d. His admissions are incorporated into these findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 48-year-old employee of a U.S. defense contractor. He began working at his present job in August 2017. He has worked for U.S. defense contractors since his honorable discharge from the Marine Corps in 2009. He served in the Marine Corps from 1995 to 2009, and he served in combat areas on three deployments. He is a high school graduate. He is twice divorced (first divorce in 2003, second in 2019) and has four children. He pays monthly child and spousal support in a total amount of \$2,530. (Items 2-3)

Under Guideline F, the SOR alleged that Applicant failed to timely file his federal income tax returns for tax years 2011 and 2021, as required (SOR ¶¶ 1.b and 1.d); that he owes federal taxes for tax year 2021 in the amount of approximately \$14,400 (SOR ¶ 1.c); and that he failed to timely file his state income tax returns for tax years 2011, 2012, 2018, 2019, and 2020, as required (SOR ¶ 1.e).

The SOR also alleged a delinquent account in the amount of approximately \$11,300. (SOR ¶ 1.a) Applicant's SOR admissions, admissions on his July 2020 security clearance application (SCA), his responses to an investigator during his background interview in November 2020, his responses to interrogatories from September 2022, and a credit report from October 2020, establish the SOR allegations. (Items 1-5)

Applicant explained that he got into financial difficulties when he was deployed serving overseas in about 2008. He believed his ex-wife was taking care of their financial responsibilities, including filing their tax returns and paying any taxes owed. She was not doing this. His 2019 divorce also contributed to his financial difficulties. Since becoming aware of his tax problems, he hired a tax service and has filed his missing federal and state tax returns, as noted below. All his 2011 federal tax remediation efforts took place before the SOR was issued, as did his filing of his state tax returns. He accepted responsibility for failing to timely file his federal and state income tax returns for the years indicated. (Item 1, p. 3, Item 3, p. 2; AE A2)

Applicant documented his federal income tax return filings and payments below:

**TY 2011** On May 2, 2019, the tax service Applicant hired to prepare his return provided evidence that his 2011 return was processed by the IRS. Applicant also documented that he sent the IRS a cashier's check in the amount of \$2,279, on June 28, 2019, to pay the amount he owed for TY 2011 (this amount was not alleged in the SOR). (AE A35-A49)

**TY 2021** Applicant's 2021 federal tax return was received by the IRS on June 5, 2023. He owed taxes of approximately \$14,400 for this tax year. Applicant paid this amount, although the record does not reflect the date of payment. A document from the official IRS website shows that Applicant has a zero balance towards the IRS. Another document from the IRS website, dated August 30, 2023, shows zero amount owed for TYs 2022, 2021, 2020, and 2019. (Item 1, pp. 25-26; AE A27)

Applicant documented his state income tax return filings as follows:

**TY 2011** Filed before May 2019. (AE A35, AE A39)

**TY 2012** Applicant stated that he filed "all" his state tax returns. Although he did not provide a document directly showing that his 2012 return was filed, he provided documentation showing that he received refunds from his state in 2021 and 2022, something he would not receive if he had missing tax returns. I can reasonably infer that his 2012 state return was filed during or before 2021. (Item 2, pp. 29-33, Item 4, p. 8)

**TY 2018** Filed December 2021. (Item 4, p. 8)

**TY 2019** Filed November 2021. (Item 4, p. 8)

**TY 2020** Filed November 2021. (Item 4, p. 8)

Applicant was unfamiliar with the sole delinquent debt listed in the SOR for approximately \$11,000 but believed it could be related to siding he purchased for his home, which was foreclosed in 2012. He originally purchased this property in about 2001, as his residence when he was in the Marine Corps. He later turned it into rental property. At some point, he was unable to rent it and could not pay the mortgage. The property sold for more than the mortgage amount and Applicant actually made approximately \$10,000 from the sale proceeds. He is sure this debt was included as part of the foreclosure settlement and was resolved from the proceeds of the 2012 sale. Applicant contacted the named creditor of this debt, but the creditor could provide no information about the debt. This debt is not listed on his most recent credit report. (Item 1, p. 3; Item 3, pp. 5-7; Item 6; AE A2)

## 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.

The evidence showed Applicant failed to timely file his federal income tax returns for tax years 2011 and 2021. He also failed to timely file his state income tax returns for tax years 2011, 2012, 2018, 2019, and 2020. He owed delinquent taxes for 2021 in the amount of \$14,430 and owed another delinquent debt in the amount of \$11,319. I find the above disqualifying conditions are raised by the evidence.

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;

(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;

(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 should have responded in a more timely fashion to resolve his tax issues. However, initially his deployment and subsequently his second divorce contributed to his delay in resolving his tax issues. He demonstrated responsible action hiring a tax service, which prepared his missing state and federal returns. He was able to file his 2011 federal return and all of his missing state returns before the issuance of the SOR. He paid his 2021 federal tax debt and now has a zero balance with the IRS. There are clear indications that his tax issues are resolved, and recurrence is unlikely because he now has a firm handle on his tax filing responsibilities. AG ¶¶ 20(b),20(c), and 20(g) all substantially apply.

Applicant credibly conveyed that the non-tax delinquent debt was resolved from the proceeds of his foreclosure sale in 2012. His dispute of this debt is corroborated by the lack of an entry concerning this debt on his most recent credit report from September 2022. His follow-up action by contacting the creditor produced no contrary evidence. AG ¶ 20(e) substantially applies to SOR ¶ 1.a.

### **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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's military service, including his combat deployments, and his contractor service. I am convinced he will act in a timely manner filing and paying his federal and state tax returns and taxes from now on.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated 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:	FOR APPLICANT
Subparagraphs: 1.a - 1.e:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

---

Robert E. Coacher  
Administrative Judge