



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



In the matter of:	)	
	)	
XXXXXXXXXXXXXXXXXX	)	ISCR Case No. 22-00667
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Patricia Lynch-Epps, Esq., Department Counsel  
For Applicant: *Pro se*

04/22/2024

**Decision**

KATAUSKAS, Philip J., Administrative Judge:

Applicant has not provided evidence sufficient to mitigate the national security concern arising from his problematic financial history. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted his security clearance application (SCA) on April 12, 2020. On September 6, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Services (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F, financial considerations. The DCSA CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant submitted an undated answer to the SOR (Answer) and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 22, 2022. The case was assigned to me on April 28, 2023. On July 28, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted at DOHA's offices in Arlington, VA, on August 31, 2023. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 5 were admitted without objection. Applicant testified and submitted nine exhibits marked Applicant's Exhibits (AE) A through I, which were admitted without objection. I left the record open until October 20, 2023, to allow Applicant to submit additional documents. He did not submit any additional documents. DOHA received the transcript (Tr.) on September 12, 2023.

### **Findings of Fact**

Applicant is 58 years old, married since 1994, and has two sons, ages 26 and 23. They are college graduates. The oldest lives out of state, and the youngest lives at home. Applicant is a college graduate. He has worked for his current employer since February 2020. He holds a Top Secret clearance. (Tr. 31-34, 101.)

Under Guideline F, the September 6, 2022 SOR alleged that Applicant: (a) failed to timely file his federal income tax returns for tax year 2015; (b) failed to timely file his state income tax return for tax year 2015; (c) is indebted to the federal government for delinquent taxes in the amount of \$79,889 for tax year 2017; (d) is indebted to the state for delinquent taxes in the amount of \$17,412 for tax year 2017, and; (e) is indebted to the state for delinquent taxes in the amount of \$10,737 for tax year 2020. (SOR ¶¶ 1.a – 1.e.) He denied SOR ¶¶ 1.a through 1.d and admitted SOR ¶ 1.e. (Answer ¶¶ 1.a – 1.e.)

**Applicant testified about SOR ¶ 1.a**, his failure to timely file his federal income tax return for tax year 2015. (Tr. 36.) He was directed to GE 1, pages 34 and 35, which asked whether in the last seven years he had failed to file federal taxes. He responded "yes" to that question and was asked if that was accurate. He said he filed for an extension for 2015 and affirmed that he was on a business trip that lasted six months. He did not travel out of the country, but the project had 13 sites around the country in a variety of states. He "traveled consistently." As a result of those commitments and the necessary travel, he filed for an extension on the deadline, April 15, 2016. He then "forgot about" filing his return at the extended time. (Tr. 34-41.)

AE F was marked and admitted into evidence. AE F is an IRS Account Transcript for tax year 2015. AE F shows that on April 15, 2016, Applicant filed an extension of time to file his 2016 tax return and made a payment of \$1,000. (Tr. 42-44.) AE F showed he was granted an extension to file until October 15, 2016. He was asked when he filed his 2015 return. His testimony was unclear but that he filed that return *later* than October [2016]. (Tr. 45.) He does not have any paperwork for when he filed his 2015 federal tax return. Sometime later than October 2016 before 2022, he filed his 2015 return. He did not recall the actual date. (Tr. 49-50) His Answer stated that SOR ¶ 1.a was "false," but he now testified that it should have been "true." (Tr. 51-52.)

**Applicant testified about SOR ¶ 1.b**, his failure to timely file his state income tax return for tax year 2015. (Tr. 52.) His testimony is “pretty similar” to his testimony about SOR ¶ 1.a, except that he did not request an extension from the state to file his 2015 tax return, because the state did not request one. (Tr. 52-53.) He filed his 2015 state tax return the same time he filed his federal tax return for 2015. He was directed to AE B, a TurboTax cover sheet, and testified that he filed his 2015 state tax return sometime in 2021. “It was definitely late.” His Answer stated that SOR ¶ 1.b was “false,” but he now testified that it should have been “true.” (Tr. 54-55.) He does not have any documentation to support the exact date that he filed his 2015 state tax return. (Tr. 57.)

**Applicant testified about SOR ¶ 1.c**, that he is indebted to the federal government for delinquent taxes in the amount of \$79,889 for tax year 2017. (Tr. 57.) Applicant explained that he filed the 2017 return “with the idea of having a side business” in 2017. (Tr. 61.) This “side business” was Applicant’s company, Company G. He purchased on his own account (actually Company G’s account) equipment, labor, and materials for the government project his employer had secured. But he was purchasing as a 1099 independent subcontractor for his former employer, not as an employee. So he was “fronting” the bill for the equipment and for his and others’ labor. His former employer, now his contractor, was to reimburse him for those costs.

Applicant was reimbursed “at the last second,” and he in turn paid the laborers, and equipment and material suppliers he had hired. When he was reimbursed, his employer, however, mistakenly paid to him individually, as “Applicant,” not to his company, “Company G.” Therefore, it showed up as a “big cash flow” to him individually as an employee, rather than to Company G, a 1099 subcontractor. It looked like income paid to him, but it did not take into account the expenses he (as Company G) incurred as a subcontractor. That was “where the whole mess started.” (Tr. 61-65.) He filed his 2017 tax return on time, on April 15, 2018. (Tr. 59-60.)

AE G was marked and admitted into evidence without objection. (Tr. 59.) Applicant testified about AE G, an IRS Account Transcript for tax year 2017, which shows an Amended Tax Return filed on January 18, 2023. (Tr. 67.) He received an IRS letter asking for receipts for expenses he claimed in tax year 2017 as a subcontractor. He does not have a copy of that letter. He agreed that AE G states that he owes \$87,515 in taxes. (Tr. 74.) He testified that the amount is incorrect, because it does not account for the expenses he incurred as a subcontractor.

Applicant pointed to three entries on AE G, page two: (1) “Amended tax return or claim forwarded for processing 01-18-2023;” (2) “Amended tax return filed 01-18-2023;” and (3) “Balance due amount currently not collectible – not due to hardship, 02-22-2023, 0.00.” He testified that those three entries show that the IRS received the expense receipts he sent it and is still processing them. Once those documents are processed, they will verify that his taxes should be reduced. He believes the \$87,515 amount is incorrect, because the IRS has not completed its processing. (Tr. 59-71.) AE G is the IRS

document showing that in writing. (Tr. 77-80.) As the following discussion will show, it appears that the IRS has completed that processing.

AE H was marked and admitted without objection during the discussion of SOR ¶ 1.d., *infra*. AE H is an IRS Account Transcript for tax year 2022. There were no questions or testimony about that exhibit. (Tr. 85-88.) AE H is, however, relevant to SOR ¶ 1.c. Applicant was directed to GE 4, page 7, a copy of his Amended Tax Return for tax year 2017. He agreed that it showed him owing \$18,714. He filed this Amended Tax Return in November 2022. He did not send any money, because the IRS told him he would not owe anything. (Tr. 72-74.) AE H shows he filed his 2022 tax return on May 15, 2023, with an amount due of \$18,099. It also shows an amount withheld of \$18,101 (for a \$2.00 credit). AE H shows an ACCOUNT BALANCE PLUS ACCRUALS of 0.00 as of May 15, 2023. Those are the most recent relevant IRS entries in the record. It appears that the IRS has corrected his tax liability, and that his federal tax liability has been resolved.

**Applicant testified about SOR ¶ 1.d.**, that he is indebted to the state for delinquent taxes in the amount of \$17,412 for tax year 2017. (Tr. 81.) He was directed to GE 4, page 12, a February 22, 2022 state invoice showing that he owes \$17,412. He explained that the new balance is \$11,453 (Tr.83.) AE H was marked and admitted into evidence without objection. AE H is an IRS Account Transcript for tax year 2022. (Tr. 85.) AE I was marked and admitted into evidence without objection. AE I is a state Notice of Collection Action dated December 22, 2022. AE I shows a balance due of \$11,453. (Tr. 85-86.) Applicant was asked which tax year AE I refers to. His answers were unclear, but he believes AE I refers to tax years 2015 and 2017. (Tr. 86-87.) He has not made arrangements with the state to pay any of that balance, because “[o]nce the 2017 [federal] is done, [he] should not owe anything.” (Tr. 88.) He produced no documents showing any communications he had with the state about this outstanding balance.

**Applicant testified about SOR ¶ 1.e.**, that he is indebted to the state for delinquent taxes in the amount of \$10,737 for tax year 2020. (Tr. 88.) He was directed to GE 4, page 13, a February 22, 2022 state Notice of Income Tax Assessment. He testified that the current status is that State A sent his home state \$7,340. He does not have a document showing that. The company he was working for “messed it up” and sent his taxes to State A instead of to his home state. He filled out a form and received a check from State A to reimburse him for the taxes that were incorrectly applied. On December 23, 2022, he paid his home state the amount State A reimbursed him. He is “sure [he has] something [he] can send [to Department Counsel].” He knows that \$2,811 from his last tax return did go to his home state. His home state has stopped sending him notice letters, so he believes there is nothing pending. He has not verified that with his home state. (Tr. 90-96.) He produced no documents showing his payment to his home state or any other supporting documents.

**Applicant testified about his personal finances.** He has no liens or judgments against him. He is current on all federal and state income tax filings. His current net annual salary is \$130,000. His spouse earns \$36,000 per year. His adult son works but does not contribute to household expenses, because he just graduated from college and is taking care of student loans.(Tr. 96-98.)

Applicant has two joint checking accounts, one with about \$500 and the other about \$1,500. He has a 401k with a balance of about \$40,000. He has no other sources of income. He rents his home for \$2,200 per month. He has two cars, one a 2006 model that is paid off and one a 2021 model. He has not had any financial counseling. He has not been on a vacation in 10 years. (Tr. 98-101.)

Department Counsel asked why Applicant did not file his taxes on time. He answered that: He “thought that because they owed me, that I was okay . . . I was doing well enough at the time where I felt like you know . . . the extra thousand dollars that I was going to get didn’t really matter. And before I knew it, it was multiple years later And I got a notice from them, and that’s when I started to work on it.” (Tr. 102-103.)

### **Law and Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, then 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 in seeking a favorable security clearance decision.

### **Analysis**

#### **Guideline F: Financial Considerations**

The security concern under this guideline 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise any questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Guideline F notes conditions that could raise security concerns under AG ¶ 19. Applicant's failures to file federal and state income tax returns and his failures to pay federal and state income taxes are established by the Government's case-in-chief. The following disqualifying condition under AG ¶ 19 applies:

- (f) failure to file . . . annual Federal, state or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Guideline F also includes conditions that could mitigate trustworthiness 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., . . . unexpected medical emergency . . .), and the individual acted responsibly under the circumstances); and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

SOR ¶¶ 1.a and 1.b both involve Applicant's failure to file his federal and state income tax returns for tax year 2015. The circumstances of those failures were "pretty similar," so they can be discussed together. In 2015, he was assigned to a project that had 13 work sites in a number of states around the country. As a result of his frequent travels for that project, he needed to request an extension to file his federal income tax return. He filed for an extension right at the deadline of April 15, 2016. The same circumstances affected his state income tax return filing, except that he did not request an extension from the state. He then forgot about filing his returns. He ultimately filed his

federal return sometime after October 2016 and before 2022 and his state return sometime in 2021. He testified that they were “definitely late.”

I have considered mitigating conditions AG ¶¶ 20(a) and 20(b). Applicant’s circumstances occurred at the outset in 2015 and 2016, which is quite a while ago. And a work assignment of that kind might not recur. As well, that assignment was “largely beyond” his control. Those factors satisfy the initial requirements of AG ¶¶ 20(a) and 20(b). He did not, however, rectify his tardy filings until years after they were due. That was not responsible conduct, and it calls into question his reliability. SOR ¶¶ 1.a and 1.b are not mitigated by AG ¶¶ 20(a) or 20(b).

SOR ¶1.c alleged that Applicant is indebted to the federal government for delinquent taxes in the amount of \$79,889 for tax year 2017. In 2017, he decided to do business as an independent subcontractor for his employer, instead of an employee. His company was called “Company G,” and using that company he “fronted” the costs of equipment, labor, and materials for the project. At the end of the year, he was to be reimbursed for those costs. The problem arose when his employer mistakenly reimbursed him in his individual name, “Applicant” instead of paying his company, “Company G.” Therefore, it showed up as a “big cash flow” to him individually as an employee, not as Company G, a 1099 subcontractor. It looked like income that was paid to him, but it did not take into account the expenses he (as Company G) incurred as a subcontractor.

Applicant filed his 2017 tax return on time, on April 15, 2018. He then began the task of submitting to the IRS the back-up documents supporting the expenses he incurred when his company fronted the costs of labor, materials, and equipment for the project in 2017. IRS then had to go through the internal process of correcting his tax liability. It was not until he filed his 2022 tax return on May 15, 2023, that his tax status was updated and corrected. He is no longer delinquent.

I have considered mitigating conditions AG ¶¶ 20(a) and 20(b). The significant bookkeeping error by Applicant’s employer in reimbursing him as an employee instead of as a subcontractor working through his own company was what caused his tax problems. This event happened in 2017 or 2018, quite a long time ago. It was also an unusual circumstance and is unlikely to recur. And it was a factor largely beyond his control. He nonetheless filed his 2017 tax return on time and set about working with the IRS to rectify his tax record. This was reliable and responsible conduct, and although it took years, he successfully had his tax record corrected in May 2023. SOR ¶1.c has been mitigated by AG ¶¶ 20(a) and 20(b).

SOR ¶1.d alleged that Applicant is indebted to the state for delinquent taxes in the amount of \$17,412 for tax year 2017. His only explanation was that “[o]nce the 2017 [federal] is done, [he] should not owe anything.” He produced no documents showing any communications he had with the state about this outstanding balance.

SOR ¶1.e alleged that Applicant is indebted to the state for delinquent taxes in the amount of \$10,737 for tax year 2020. His explanation was that his employer mistakenly sent the withheld taxes to State A instead of to his home state. Applicant filled out a form, and State A reimbursed him, and he in turn paid an amount to his home state. He believes nothing is pending, but he has not verified that with his home state. He produced no documents showing his payment to his home state or any other supporting documents.

Applicant's responses to SOR ¶¶ 1d and 1.e suffer from the same infirmity. The Appeal Board has held that "it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts." See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)). He was given the opportunity to document his explanations, but he did not do so. I find against Applicant on SOR ¶¶ 1d and 1.e.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an 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.

I have incorporated my comments under Guideline F and in this section in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under that guideline and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his delinquent debts.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.e:	Against Applicant



## **Conclusion**

I conclude that it is not clearly consistent with the interests of national security to grant Applicant national security eligibility for access to classified information. Clearance is denied.

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Philip J. Katauskas  
Administrative Judge