



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



In the matter of: )  
)  
) ISCR Case No. 23-02261  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

05/31/2024

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**Decision**

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Dorsey, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 17, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. On December 13, 2023, Applicant responded to the SOR and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on January 22, 2024. A complete copy of the file of relevant material (FORM) was provided to Applicant, who had 30 days after receipt of the FORM to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on February 22, 2024, but he did not submit a response. The case was assigned to me on May 15, 2024. The Government exhibits included in the FORM (Items 1-6) are admitted in evidence without objection.

## **Findings of Fact**

Applicant is a 32-year-old employee of a defense contractor for whom he has worked since January 2022. He has attended several colleges but has not earned an undergraduate degree. He has been married since April 2019. He has one young child. (Item 2)

In the SOR, the Government alleged that Applicant failed to timely file, as required, his federal income tax returns for tax years 2016, 2017, 2018, 2019, 2020, and 2021, and that he had not yet filed his 2019 through 2021 federal income tax returns as of the date of the SOR. It also alleged that same information with respect to his state income tax return filings. Finally, it alleged that he had a delinquent car loan in the approximate amount of \$11,803. In the Answer, Applicant admitted all the SOR allegations with additional comments. His admissions are incorporated in my findings of fact. The SOR allegations are established by his admissions and the Government's exhibits included with the FORM. (Items 1-6)

As acknowledged in the SOR, Applicant filed his late 2016, 2017, and 2018 federal and state income tax returns in 2020 and 2021. He has yet to file his delinquent state and federal income tax returns for the 2019 through 2021 tax years. In his SOR Response, he claimed he will file those tax returns by April 2024, however there is no evidence in the record that he has done so. He also claimed that he will resolve his delinquent car loan once he finishes paying delinquent taxes that the DOD did not allege in the SOR. There is no evidence in the record that he has resolved his delinquent car loan. He admitted that his tax filing failures and his delinquent car loan were caused by immaturity, poor judgment, procrastination, and poor planning, but that he now understands the importance of fulfilling his financial responsibilities, and claimed he is in the process of resolving them. He claimed that his maturation and obtaining a good-paying job that he enjoys have helped him with his financial resolution process. He averred that he will resolve these issues and then stay current on all of his financial obligations. (Items 1-6)

Applicant is in the process of resolving his income tax indebtedness that was not alleged in the SOR. He made a payment arrangement with the IRS in about February 2021 and provided documentary evidence that he has since paid about \$1,800 towards his delinquent federal income taxes. Any adverse information not alleged in the SOR, such as the aforementioned delinquent taxes, cannot be used for disqualification purposes. It may be considered when assessing the application of mitigating conditions and for the whole-person analysis. He has also resolved two consumer debts that the DOD did not allege in its SOR. In about January 2023, he settled a consumer delinquency of \$162, as well as another delinquency with a payment of about \$560. (Items 3-6)

## **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

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 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 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."

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 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.

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following 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 had a delinquent car loan in the amount of about \$11,000. He also failed to timely file his federal and state income tax returns for the 2016 through 2021 tax years, as required. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;
- (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.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018).

While Applicant has now filed some of his late federal and state income tax returns, he has not provided evidence that he filed his federal and state income tax returns for tax years 2019 through 2021. Therefore, he has not provided sufficient evidence that he has remedied his failure to file his income tax returns. Likewise, he has not provided evidence that he has resolved his delinquent consumer debt. Therefore, his financial issues are ongoing, and I do not find that they are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant acknowledged that his financial issues arose because he was immature, procrastinated, and did not plan well. These conditions were not largely beyond his control. AG ¶ 20(b) does not apply.

As Applicant has resolved two smaller non-SOR debts, filed his 2016, 2017, and 2018 federal and state income tax returns, and is in the process of resolving his delinquent taxes, AG ¶ 20(d) and AG ¶ 20(g) have some applicability. However, I also note that there is no evidence of a payment plan or other resolution of the delinquent auto loan, nor is there any evidence of an arrangement to file his 2019 through 2021 federal and state income tax returns. These considerations reduce his mitigative efforts under these two mitigating conditions.

### **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. While Applicant seems to be on the right path to resolve his financial issues, his ongoing income tax filing failures as well as his unresolved car loan mean that he has made insufficient progress to show a track record of financial responsibility.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude that Applicant did not mitigate 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant

### **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Benjamin R. Dorsey  
Administrative Judge