



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



In the matter of:)
)
) ISCR Case No. 23-00138
)
Applicant for Security Clearance)

Appearances

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

07/08/2024

Decision

MURPHY, Braden M., Administrative Judge:

Applicant has numerous delinquent debts that remain unresolved. He also failed to timely file two recent years of Federal income tax returns and did not provide sufficient evidence that those returns have been filed. Applicant has yet to establish a sufficient track record of financial responsibility and compliance with tax filing requirements. He did not mitigate financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 28, 2022. On January 26, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The DOD issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on February 21, 2023, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on January 22, 2024. On January 29, 2024, following consultation with the parties, DOHA issued a notice scheduling the hearing for March 8, 2024.

The hearing convened as scheduled. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 8. Applicant testified and offered Applicant's Exhibits (AE) A through P. All exhibits were admitted without objection. I held the post-hearing record open, initially until March 25, 2024, to allow Applicant the opportunity to submit additional information. He timely submitted numerous documents, which are marked as AE Q through AE BB. On March 28, 2024, he submitted one additional document, which is marked as AE CC. All of Applicant's post-hearing submissions were admitted without objection. DOHA received the hearing transcript (Tr.) on March 18, 2024. The record closed on April 2, 2024.

Amendment to the SOR

At the end of the hearing, based on Applicant's testimony, Department Counsel moved to amend the SOR to add the following allegation:

1.j: You failed to file Federal tax returns for tax years 2021-2022.

The amendment was adopted without objection. As noted above, Applicant was given time after the hearing to provide additional documentation on the new allegation. (Tr. 119-124)

Findings of Fact

Applicant admitted the allegations in the original SOR (¶¶ 1.a-1.i) and provided a narrative explanation. His admissions and explanations are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 33 years old. He graduated high school in 2008. He served in the Army from 2009 to 2011 and was discharged honorably. He and his wife married in 2012. They have one son, age eight. His son is developmentally disabled. Applicant earned a bachelor's degree in 2014. He worked in county government in State 1 from 2013-2014 and worked as a software engineer 2014-2015. He worked as a consultant in State 1 2015 to 2020. He left the job by mutual agreement after he was unable to work effectively from home during the COVID pandemic. This was due, at least in part, to fact that he found it difficult to work from home while balancing childcare responsibilities for his child with special needs. Applicant moved to State 2, where he had family support, in September 2020. He has worked for his current employer, a defense contractor and clearance sponsor, since October 2020, as a software engineering manager. (GE 1 at 12-17; Tr. 28-33, 61, 115-117, 131)

The SOR debts total about \$60,531. They are generally debts to consumer creditors and public utilities. They are largely established through Applicant's credit reports from April 2022 and November 2022. (GE 2, GE 3) Applicant also disclosed several of his debts on his SCA and discussed them in his background interview. (GE 1, GE 2) The Government also provided a recent credit report, from March 2024. (GE 8)

In his answer to the SOR, and at the start of his testimony, Applicant noted that he had made several poor financial decisions, due to what he called a "complicated and frustrating marriage." He said he has "a hard time saying 'no'" to his wife, while acknowledging that this does not excuse him from fulfilling his obligations. He noted that most of his debts are not recent, and that he and his wife have not incurred many new debts beyond a leased vehicle. He noted that other debts not alleged in the SOR have been recently resolved, that he has sought financial counseling, and that he intends to continue to work to resolve his debts. (Answer; Tr. 29-27)

In his prior job, Applicant earned about \$100,000 annually. He began his current job, in October 2020, at about \$120,000 annually, and he now earns \$143,000 annually. However, there is a higher cost of living in State 2. This includes a higher monthly mortgage and a higher interest rate. He saw moving as a fresh start, but he and his wife also began falling behind on their debts soon after, in 2021. They considered bankruptcy after seeking legal advice. He was advised to stop paying on his debts, but he also never finalized a bankruptcy filing. He said he is now in worse financial shape than before. His son also faced expensive surgery, which was successful. Applicant and his family are on his company's insurance plan but still faced medical expenses. He said he is in a difficult financial situation but is making progress. He intends to continue addressing his debts as best he can. Applicant's wife recently began working part time but does not make much money. They home-school their son, so his wife's work means Applicant is more involved in dealing with school personnel. (Tr. 33-40, 61-62, 70-72, 117)

Applicant has not participated in formal credit counseling recently. He spoke to a financial advisor when he lived in State 1. He also has a mentor who he met through his church in State 1, someone who he turns to for personal, marital, and financial advice. The mentor runs his own company and is experienced in financial matters. The mentor advised him to "stop using credit" and to cut down on expenses. Applicant acknowledged that, with a special needs child, returning to financial stability is a long path. He tracks his monthly expenses on a spreadsheet. Applicant also has seen a professional mental health counselor. He recently traded in his vehicle for a newer model. He and his wife have car payments of a combined \$1,700 a month, due to high interest rates. Applicant said he received about \$600 in disability benefits from the VA. He and his wife are living paycheck to paycheck, but her new job has allowed them to build a safety net. (Tr. 53-59, 64-65, 68-70, 89-90, 94-96, 104, 111-115, 130-131)

In AE B, Applicant updated his financial situation and addressed the state of each SOR debt in a chart. He noted that when he answered the SOR, only one alleged debt was under a payment arrangement. Since then, two small debts (SOR ¶¶ 1.h and 1.i) had been paid, and all but three of the others (SOR ¶¶ 1.b, 1.e, and 1.g) were under payment arrangements, as were some debts that were not alleged. (AE A, AE B)

SOR ¶ 1.a (\$33,150) This is a consolidation loan that Applicant took out to address credit card debts. It has been charged off. (GE 2) Applicant documented that he has been paying \$230 a month since November 2022 under a repayment agreement with the creditor. As of March 2024, he had paid \$4,373 towards the debt, with \$28,775 left to pay. (Tr. 43-45, 72-74; AE E, AE Q, AE U, AE V, AE CC)

SOR ¶ 1.b (\$8,443) is a consumer account that has been charged off. (GE 3) It has been past due since November 2021. This debt remains unresolved and not yet under a payment plan. (GE 8 at 8; AE L at 13; Tr. 52, 74-75)

SOR ¶ 1.c (\$8,406) is a credit account with a hardware store that has been charged off. (GE 3) In February 2024, Applicant entered into an agreement with the creditor to pay \$73 bi-weekly until September 2028 to resolve the debt. (AE H) A recent credit report shows a balance of \$8,366. (GE 8 at 2; Tr. 75-82)

SOR ¶ 1.d (\$4,963) is a credit account with a bank, now in collection. (GE 3) The account was through another hardware company. The creditor brought a claim against Applicant in court. (GE 5; Tr. 17, 49-50) Applicant documented that he has been making \$51 payments towards the debt since November 2022 under an agreement with the creditor. He is to continue those payments until November 2030. He now owes \$4,136. (AE J, AE K; GE 8 at 6; Tr. 82-84)

SOR ¶ 1.e (\$4,028) is a charged-off credit account related to a home furniture purchase. (GE 2, GE 3) It became delinquent in about September 2021. This debt remains unresolved and not yet under a payment plan. (GE 8 at 7; Tr. 84-85)

SOR ¶ 1.f (\$3,974) is a retail credit account placed for collection. (GE 3) It became delinquent in late 2021 or early 2022. In January 2024, Applicant entered into an agreement with the creditor, filed in local court, to pay \$46 every two weeks on the debt from February 2024, to resolve the \$3,974 debt, plus court costs of \$374, totaling \$4,348. The agreement is to run until September 2027. As of the close of the record, he had documented three \$46 payments, and owed \$4,211. (Tr. 41-43, 83, 85-87; AE C, AE S)

SOR ¶ 1.g (\$887) is an account placed for collection by an insurance company. (GE 2, GE 3) It remains unpaid and not yet under a payment plan. (GE 8; Tr. 52, 87-88)

SOR ¶ 1.h (\$155) is a utility account placed for collection. It is from Applicant's time in State 1. (GE 3) He documented that this debt was resolved with a payment in late February 2024. (AE I; Tr. 51-53, 88-89)

SOR ¶ 1.i (\$145) is a utility account placed for collection. It is from Applicant's time in State 1. (GE 2) The account has been resolved and no balance is owed. (AE F; Tr. 51-53)

The Government also provided evidence of an unalleged debt. (GE 2; GE 4; Tr. 16) The plaintiff creditor filed suit against Applicant in small claims court in May 2022 but soon voluntarily dismissed the suit. (GE 4) Applicant said this was a personal loan for

about \$4,000 from his time in State 1 to consolidate and pay credit card debts. He resolved the debt by borrowing against his 401(k) plan. He settled it for \$2,400. The debt is now resolved. (Answer; Tr. 18, 46-48, 62-63, 90-92; GE 3)

Applicant provided documentation of other unalleged debts being resolved through agreements with creditors. Both involve collection agency M. For one of the debts, to original creditor bank C1, he originally owed \$3,906. He entered into a payment agreement in April 2023 to pay \$41 every two weeks. (AE D). He has made those payments since then and now owes about \$2,922. (AE R) The debt payment is also reflected on his recent budget. (AE BB)

For the second unalleged debt, to collection agency M and original creditor bank C2, Applicant owed \$802 as of May 2023, and was paying \$25 every two weeks, under an agreement. (AE G) As of March 2024 he was making regular payments and had \$227 left to pay. (GE 6; AE T; AE BB; Tr. 18, 92-93) Recent credit reports showed a few other delinquent debts, not alleged in the SOR, debts of \$100, \$252, and \$2,918. (GE 8; AE B; AE L, AE M, AE N)

Applicant owes about \$50,000 in federal student loans. He is to pay \$290 a month. (GE 8 at 8) He was not aware until recently that federal student loans are no longer in COVID pandemic forbearance status and that he needed to address them. While they are listed as current on a recent credit report, he is not making current, regular payments on his student loans; however, he has contacted the creditor to arrange payments. (Tr. 105-111)

When questioned, Applicant testified that when he attempted to file his federal tax returns for tax year (TY) 2022, he learned that his tax returns for TY 2021 had not been filed with the IRS, although they were on record with the nationally known tax filing software program (TFSP) he has used for years. He believes he would have been owed a small refund for TY 2021 and that he owed about \$150 for TY 2022. He also said he filed an extension for TY 2022, but then forgot to follow up and file the TY 2022 return as well, though he did pay the TFSP company to do so. His TY 2023 returns were due in mid-April 2024, about five weeks after the hearing date. State 2, where Applicant lives, does not have a state income tax filing requirement. (Tr. 98-103) (SOR ¶ 1.j)

After the hearing, Applicant provided documentation that largely corroborates his assertions. He provided his federal returns for TY 2021 (\$240 refund) and TY 2022 (owes \$155), with extensive supporting federal forms for both years. (AE W, AE X) He filed an extension for TY 2022 and purchased the 2022 tax filing software from the TFSP company. (AE Y, AE Z) As of April 17, 2023, the IRS had no record that his TY 2021 federal return had been filed. (AE AA) There is also no indication that he has yet filed his TY 2022 return.

Applicant submitted post-hearing documents updating payments on several of his debts (AE Q – AE V, AE CC), his tax returns (AE W – AE AA) (all cited above) and a budget. Applicant's budget details "payday" income of \$8,206, plus \$612 in benefits from the VA. He lists various household expenses and debt payments. His estimated budget

has a small negative balance each month. (AE BB) This generally conforms with a March 2024 bank statement, showing a small balance. (AE U, AE V)

Two work references submitted strong letters of recommendation attesting to Applicant's responsibility, maturity, performance, work ethic, character, and integrity. (AE O, AE P)

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 Navy v. Egan*, 484 U.S. 518, 531 (1988).

The AGs 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 several 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 ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ 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.

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. The following AGs are potentially applicable:

- (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.

This concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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).

In ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016), the DOHA Appeal Board held that failure to file tax returns is a security concern:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed towards inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* 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. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015); See

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 incurred over \$60,000 in delinquent debts in recent years. He also failed to timely file federal income tax returns for TY 2021 and TY 2022. AG ¶¶ 19(a), 19(c), and 19(f) all apply.

Conditions that could mitigate 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, or 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 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; 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 incurred some delinquent debts when he and his family were living in State 1. They moved to State 2 in fall of 2020. He took a job with a higher salary, but also discovered that State 2 had a higher cost of living. He and his wife began seriously falling behind on their debts in early 2021. Applicant acknowledged that many of his debts were due to poor financial choices. They have a child with special needs whom they are home schooling. This impacts the ability of Applicant and his wife to both pursue full-time employment. Their son also had expensive surgery recently.

Applicant began paying on some of his debts (SOR ¶¶ 1.a and 1.d) in about November 2022. Similarly, he is resolving other unalleged debts under payment plans with an established track record. Some small, old utility debts (SOR ¶¶ 1.h and 1.i) are paid and resolved, as is another larger unalleged debt that Applicant resolved through money from his 401(k). Applicant's efforts to address other debts (SOR ¶¶ 1.c, 1.f) began only shortly before the hearing. Some debts have yet to be addressed (SOR ¶¶ 1.b, 1.e, and 1.g) and there are some newer, smaller delinquencies on GE 8, a recent credit report.

With respect to Applicant's 2021 and 2022 federal tax returns (SOR ¶ 1.j), the documentation Applicant provided corroborated much of what he said about them. However, he did not establish that either return had been filed with the IRS by the close of the record. While his tax filing issues are limited to these two years, they are also unresolved. This undercuts the evidence that Applicant has been making some headway towards addressing his quite significant financial delinquencies through good-faith, responsible action.

AG ¶ 20(a) does not apply. Applicant has numerous unresolved financial delinquencies and two years of federal income tax returns that he has not shown to have been filed. His financial issues are ongoing and not isolated and they continue to cast doubt on his current judgment, trustworthiness, and reliability.

The record supporting full application of AG ¶¶ 20(b) and 20(d) is mixed. As Applicant acknowledged, his debts, many of which are consumer credit accounts, were largely incurred due to poor financial decisions. He earns a good income, though he and his wife faced a higher cost of living when they moved to State 2 in late 2020. Applicant's ability to better address his debts is negatively impacted by the fact that he and his wife have a child with special needs, which is a circumstance beyond their control that effects their ability to both work outside the home full time and earn more income.

Applicant began addressing his debts in late 2022, which is before the SOR was issued. He has been on a payment plan for some of his debts (some alleged, some not) since then. This is evidence of good faith. Action on other debts is more recent and was taken on the eve of the hearing, which undercuts a finding that they are taken wholly in good faith. Some debts are not yet addressed (again, some alleged, some not). Applicant has acknowledged that he has a long way to go to tackle his debt load and to achieve real financial stability. He is not required to address all his debts at once, or to address them in a particular way. But he must show that he has addressed his debts in a good-faith, responsible manner under the circumstances. AG ¶¶ 20(b) and 20(d) have some application, but do not fully apply to mitigate his debts, given what remains.

AG ¶¶ 20(b) and 20(d) do not apply to Applicant's tax returns, which, though limited to two tax years, are also recent and unresolved. He has not established that he has made arrangements with the IRS to file them. AG ¶ 20(g) does not apply.

Applicant also is given some credit under AG ¶ 20(c). He has engaged a financial mentor, though not an established credit counseling service, to assist him on the path to financial stability. However, he is still in a precarious position, and given the amount of his remaining debt load, he did not provide enough evidence that his financial issues are being resolved or are under control. AG ¶ 20(c) does not fully 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(c):

- (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 based on all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

I considered the whole person evidence provided by his references, as well as Applicant's military service. Applicant has numerous past due debts that remain unresolved. He did not provide enough evidence that the debts have been or are being resolved or that his tax issues are sufficiently in the past to mitigate the resulting security concerns. He needs to establish a consistent track record of debt resolution, financial stability, and compliance with tax filing requirements to fully mitigate financial security concerns. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. This is not to say that Applicant might be a suitable candidate for eligibility for access to classified information in the future, if his financial stability improves. But at this time, I conclude Applicant did not meet his burden to provide sufficient evidence to mitigate financial security concerns about his delinquent debts and his unfiled tax returns.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant

Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant

Conclusion

Considering all the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge