



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-01908
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Mark Lawton, Esq., Department Counsel  
For Applicant: *Pro se*

07/11/2024

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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 November 6, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. 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 17, 2023. He elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on February 20,

2024. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 6 (Item 1 is the SOR and Applicant's answer). Applicant did not submit a response to the FORM or object to the Government's evidence. Items 1-6 are admitted into evidence. The case was assigned to me on June 12, 2024.

### **Findings of Fact**

Applicant admitted all the SOR allegations. His admissions 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 30 years old. He attended college in 2011 and again in 2016 but did not earn a degree. He is unmarried and has no children. He has been employed by a federal contractor since January 2023. (Item 2)

Applicant completed a security clearance application (SCA) in January 2023. Section 13A-Employment Activities requires a chronology of past employment. Applicant disclosed periods of unemployment as follows: October 2022 to January 2023; June 2022 to July 2022; May 2021 to June 2021; August 2020 to October 2020; January 2016 to November 2017; and July 2011 to April 2014. For his employment with Company X from November 2017 to August 2020, he disclosed that he left the job because he was laid off. He also answered "no" to the inquiry if he left because he was fired; quit after being told he would be fired; left by mutual agreement following charges or allegations of misconduct; or left by mutual agreement following notice of unsatisfactory performance. Applicant was terminated from employment in August 2020 for timecard fraud. (Items 1, 2, 5, 6)

Applicant was interviewed by a government investigator in February 2023. He confirmed to the investigator that he was laid off by Company X. He was then confronted by the investigator with information that he had been fired for timecard fraud. He told the investigator that he agreed he had falsified his timecards but disagreed that he had taken extended lunches. He said that he did not disclose he had been fired because he believed he had been unfairly fired. In response to government interrogatories from October 2023, Applicant admitted he falsified his timecards, which resulted in his termination. (Items 1, 2, 5, 6)

SCA Section 22-Police Record asked if in the past seven years Applicant had been arrested by any police officer, sheriff, marshal, or any other type of law enforcement official and if in the past seven years if he had been charged, convicted or sentenced of a crime in any court. Applicant answered "no" to both questions. During his February 2023 interview with a government investigator, he confirmed he had not been arrested in the past seven years. He was then confronted with a 2018 arrest on a charge for damaging a wireless communication device. He agreed he had been arrested after the police were called to his residence due to an altercation with a former girlfriend after he took her cell phone. He was then brought to the police station and charged. He recalled attending a

hearing at the courthouse but could not recall the date. He told the investigator that he had to appear in a criminal court proceeding. He could not recall whether he pleaded guilty or not guilty. He said the judge dismissed the charge. He explained he did not disclose the arrest because it had been dismissed and he did not think about it. (Item 4)

SCA Section 26 asked Applicant to disclose if in the past seven years he had defaulted on a loan, had bills or debts turned over to a collection agency, had an account or credit card suspended or charged off, or canceled for failing to pay as agreed, if he had been over 120 days delinquent on any debt not previously mentioned or if he was currently 120 days delinquent on any debt. He responded “no.” (Item 2)

Any derogatory facts that were not alleged in the SOR will not be considered for disqualifying purposes but may be considered in the application of mitigating conditions and in a whole-person analysis.

The SOR alleges and Applicant admitted the debts in SOR ¶¶ 1.a through 1.g. They are medical debts, short-term loans, a consumer debt, and a cable/cellular debt that were placed in collection or charged off, and total approximately \$20,825. (Item 1)

During Applicant’s February 2023 interview with a government investigator, he volunteered that he had unpaid medical bills from a 2016 car accident, and he did not have medical insurance. He was not working at the time and could not pay the bills. He told the investigator that he had not resolved the debts. He planned to contact the creditors and pay the balances once he had stable employment. He also acknowledged the other SOR debts and said he was unable to pay them due to unemployment. Some of these debts became delinquent in 2022. He intended to contact these creditors and make payment arrangements once he had a stable job. (Item 5)

In Applicant’s SOR answer he stated for each debt, “This debt no longer exists on credit file with 0 balance.” He did not provide any evidence that he paid the debts or contacted creditors to resolve or settle the debts. They are substantiated by his admissions and credit reports from January 2023 and October 2023. (Items 1, 2, 3, 4, 5)

Applicant disclosed on his October 2022 SCA that he failed to file his 2018 and 2020 state income tax returns and he owed \$1,310 for each tax year. He stated for each year:

I will honestly say that I don’t have a good reason for my failure to pay required taxes. I never considered or learned of the consequences that came with the failure to file taxes until I grew older with age. I take full responsibility for my mistakes as I am now taking every necessary step possible and rule to correct my past mistakes in order to move forward with being a better person as well as to try and achieve the career I want.

I am currently in the process of receiving required documents to file taxes for the stated year, and if owed, I will be moving forward in the process to figure out a payment plan if necessary. (Item 2)

Applicant was questioned during his February 2023 interview by a government investigator about his failure to file both federal and state income tax returns. He confirmed he owed \$1,310 in taxes but did not confirm if the amount due was for state or federal income taxes. He explained he failed to file his tax returns timely because he always put filing his tax returns in the back of his mind because he was busy with work and family. He told the investigator that he was unable to pay his delinquent taxes because he was not working. Once he had stable employment, he intended to contact the federal and state tax authorities and make payment arrangements. Now that he is older, he understands the importance of completing his tax returns. (Item 4)

In response to October 2023 government interrogatories, Applicant disclosed that he had not filed federal or state tax returns for tax years 2017, 2018, 2020, 2021, or 2022. He disclosed he owed \$1,310 in federal taxes for tax year 2018. He explained that because he was occupied with work and family, he missed filing the tax returns. He said he was young and naïve to the consequences of his failure to pay his federal and state income taxes. He accepted responsibility and stated: "I do plan to file every year before the deadline, as well as paying whatever debt is owed." He indicated his current total federal tax liability was zero but did not provide substantiating evidence that he did not owe any federal income taxes or he had paid the 2018 tax debt. For his state tax returns he made the same comment and disclosed he failed to file the state tax returns for tax years 2017, 2019, 2020, 2021, and 2022. He disclosed he owed state taxes of \$1,335 for tax year 2018. He indicated that his current state tax liability was zero. He did not provide evidence that he paid the 2018 tax debt or that he has a zero-balance owed. The SOR does not allege his failure to pay taxes. (Item 4)

IRS tax transcripts from September 2023 for tax years 2018, 2020, and 2021 reflect that no returns were filed. A tax transcript for 2017 was not provided. A computer confirmation from the IRS website noted that a 2022 tax return was being processed but there was no date to indicate when Applicant submitted it. Based on his unemployment history, there is insufficient evidence to establish that he was required to file a return for tax year 2017. He did not provide evidence that the delinquent state returns for tax years 2018, 2020, 2021 or 2022 have been filed. (Item 4)

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (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 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 or sensitive information. Of special interest is any failure to

cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

In March 2018, Applicant was arrested and charged with damaging a wireless communication device, a misdemeanor. He did not disclose this arrest or charge on his SCA. He was confronted by the investigator to confirm if he had not been arrested in the last seven years. He confirmed he had not been arrested in the past seven years. He was then confronted with his past arrest. He told the government investigator that because the charge was dismissed, he did not think it had to be disclosed on his SCA. Under the circumstances of his arrest, I find Applicant likely did not fully understand the requirement to disclose the arrest and charge on his SCA even if it was dismissed. I find he did not deliberately falsify his SCA with regard to these facts and allegation. I find for him for SOR ¶ 2.c. When he was asked by the investigator to confirm whether he had been arrested in the past seven years, I believe he was put on notice that he was required to disclose this information. I give Applicant the benefit of the doubt that he was unaware that he was required to disclose this arrest to the investigator and find for him for SOR ¶ 2.d and the above disqualifying conditions do not apply to these allegations.

There is substantial evidence to conclude Applicant deliberately failed to disclose on his SCA that he was terminated from employment with Company X for timecard fraud and was not laid off. When questioned by the government investigator he stated he had been laid off, which was false. Applicant deliberately falsified his SCA and statements to the government investigator. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(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's deliberate falsifications are not minor and are of the type that raise serious questions about his honesty and whether he can be trusted. The government relies on those holding security clearances to disclose the information requested. Applicant's deliberate omission on his SCA and false statement cast doubt on his reliability, trustworthiness, and good judgment. There is insufficient evidence to apply AG ¶¶ 17(a) or 17(c).

### **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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order 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).

AG ¶ 19 provides conditions that could raise security concerns. The following 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.

Applicant has seven delinquent debts totaling approximately \$20,875. Some have been delinquent since 2016, others since 2022. He repeatedly failed to timely file his federal and state income tax returns for tax years 2018, 2020, 2021 and 2022. As noted above there is insufficient evidence he was required to file tax returns for 2017 and I find in his favor for that year. The above disqualifying conditions apply.

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 persons 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; 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 did not provide evidence that he has paid or attempted to pay any of his delinquent debts. He acknowledged he owed the debts. He attributed his failure to pay to periods of unemployment and not having medical insurance. These were conditions beyond his control. For the full application of AG ¶ 20(b), he must have acted responsibly under the circumstances. He has not provided evidence that he has contacted any of the creditors, made payment arrangements, participated in financial counseling, or made any good-faith effort to repay the creditors. Based on his SOR answer, it is unknown whether he intends to pay these debts. These debts remain on his credit reports. None of the above mitigating conditions apply.



Applicant failed to file federal and state income tax returns for multiple tax years. He stated he intends to comply with the rules in the future, but did not provide evidence that he has filed the delinquent returns except perhaps his 2022 federal tax return, which is being processed. It is unknown when the return was filed. There is insufficient evidence he has made arrangements with the IRS or his state tax authority to file the delinquent returns. AG ¶ 20(g) does 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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

The DOHA Appeal Board has held that:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with these things is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Someone 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. August 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). ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

Applicant has not met 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.

### **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.g:	Against Applicant
Subparagraph 1.h:	Against Applicant (except tax years 2017 and 2022)
Subparagraph 1.i:	Against Applicant (except tax year 2017)
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant
Subparagraphs 2.c-2.d:	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