



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01963
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

08/30/2024

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**Decision**

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HYAMS, Ross D., Administrative Judge:

Applicant failed to mitigate the criminal conduct, financial considerations, and personal conduct security concerns arising from his 2020 arrest, unfiled and unpaid taxes, and his delinquent and charged off debts. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on July 7, 2021. On March 31, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines J (criminal conduct), F (financial considerations), and E (personal conduct). Applicant answered the SOR on January 26, 2023, and requested a hearing before an administrative judge. The case was assigned to me on April 4, 2024.

The hearing convened on May 21, 2024. Department Counsel submitted Government Exhibits (GE) 1-6, which were admitted in evidence without objection. Applicant did not provide any documentation at the hearing. I held the record open for 30 days after the hearing to provide Applicant with the opportunity to submit documentary

evidence and respond to the SOR amendment. He submitted Applicant Exhibits (AE) A-E, which were admitted in evidence without objection.

### **Amendment to the SOR**

During the hearing, Applicant testified about additional unfiled income tax returns and unpaid federal and state income taxes. At the end of the hearing, Department Counsel moved to amend the SOR to add a new allegation:

SOR ¶ 2.p – Applicant failed to file and pay, as required, his federal and state taxes for 2022 and 2023.

The motion to amend the SOR was granted without objection. Applicant was given 30 days to provide documentation responding to the new allegation. (Tr. 78-80)

### **Findings of Fact**

Applicant admitted SOR allegations ¶¶ 1.a and 1.b, and 2.a-2.p, and he denied SOR ¶ 1.c. His admissions are incorporated into the findings of fact. Based on my review of the pleadings, evidence submitted, and testimony, I make the following additional findings of fact.

Applicant is 34 years old. He never married and has three minor children. He graduated high school in 2008. He works for a government contractor as a welding instructor and a product trainer. (Tr. 21-23; GE 1)

Applicant reported that he did not have the money to pay his taxes because he spent about \$14,000 in attorney fees from 2016-2018, in a custody case for his son. He stated he did not file his taxes because he did not have the money to pay them. He admitted he did not want to file the returns and establish the debt, and then have his income garnished for unpaid taxes. He has failed to make income tax payments since 2018 or 2019. He asserted that he wants to hire someone to assist him with his tax issues, but he has not done so. (Tr. 22-72)

In 2022, Applicant's mother had cancer, and he took money out of his 401K account to assist her. He gave her about \$25,000 and used about \$25,000 to travel. He has not yet paid taxes or penalties on the money he took out. (Tr. 42-72)

Applicant was out of work for about five weeks in 2023 and did not receive unemployment benefits at that time. He has otherwise been consistently employed since 2011. (Tr. 42-79)

Under Guideline F, the SOR alleges failure to file and pay federal and state taxes, and ten delinquent consumer debts totaling about \$24,000. His failure to file income tax returns was cross alleged under Guideline E. The status of the allegations is as follows:

SOR ¶¶ 2.a and 2.b allege federal tax debts for 2018 and 2019, for \$4,769 and \$2,352, respectively. These debts remain unpaid. (Tr. 23-41; GE 2, 4; AE A)

SOR ¶ 2.c alleges unfiled federal income tax returns for 2020 and 2021. These returns remain unfiled. (Tr. 23-41; GE 2, 4; AE A)

SOR ¶ 2.d alleges delinquent state taxes for tax years 2015-2019. These taxes remain unpaid. (Tr. 23-41; GE 2, 4; AE A)

SOR ¶ 2.e alleges unfiled state income tax returns for 2020 and 2021. These taxes remain unfiled. (Tr. 23-41; GE 2, 4; AE A)

SOR ¶ 2.f is a collection account for \$388. Applicant reported it is a debt for tires. He claimed it was paid but provided no documentation. This debt remains unresolved. (Tr. 23-41; GE 6; AE A)

SOR ¶¶ 2.g and 2.i are charged-off credit cards for \$7,309 and \$5,224. Applicant claimed these debts were paid in 2022, but provided no documentation. These debts remain unresolved. (Tr. 23-41; GE 2, 4, 5; AE A)

SOR ¶ 2.h is a charged off personal loan for \$6,555. This debt remains unpaid. (Tr. 23-41; GE 4, 5, 6; AE A)

SOR ¶ 2.j is a charged-off personal loan for \$1,647. Applicant claimed it was paid in 2022 but provided no documentation. This debt remains unresolved. (Tr. 23-41; GE 2, 4, 5; AE A)

SOR ¶¶ 2.l and 2.m are collection accounts for \$776 and \$394. Applicant claimed these debts were paid in 2022 but provided no documentation. These debts remain unresolved. (Tr. 23-41; GE 2, 4, 5; AE A)

SOR ¶¶ 2.n and 2.o are insurance accounts in collection for \$220 and \$117. Applicant claimed these debts were paid in 2022 but provided no documentation. These debts remain unresolved. (Tr. 23-41; GE 2, 4, 5; AE A)

SOR ¶ 2.p is failure to file and pay federal and state taxes for 2022 and 2023. These taxes remain unfiled and unpaid. (Tr. 23-72; AE A)

Applicant did not provide documentation showing resolution of his unfiled and unpaid taxes, or of any of his delinquent and charged off debts. His monthly budget form from July 2022 showed that he had about \$1,385 left over monthly after expenses. He reported that he now pays \$1,200 monthly for child support, and has an unknown amount of arrears. His son has special needs which creates some additional expenses for his care. (Tr. 23-72; GE 4)

Under Guideline J, the SOR alleges 2020 and 2018 arrests, and ongoing probation. The SOR cross-alleges these allegations under Guideline E. The status of the allegations is as follows:

SOR ¶ 1.a alleged that Applicant was arrested in 2020 and charged with discharging a firearm into an occupied vehicle and assault with a deadly weapon with intent to kill. Applicant reported that he had a dispute with another motorist at a stop sign. He reported he was threatened and got out of the car with his firearm and warned the other motorist to leave him alone. He claimed he let the other person drive away, but the driver later found him on the road and swiped into him and spun his car out. The police report shows that Applicant called 911 and told them he discharged his firearm at a car that tried to run him off the road, however he told police he did not shoot at the vehicle. After the police arrived, the other motorist returned and claimed that Applicant shot at his car, and he swiped Applicant's car in self-defense. Police found two bullet holes in the other motorist's car door. After police told Applicant that they would swab his hands for gun residue, he stated that he had shot his firearm at a friend's house earlier in the day, and they would not find any shell casings if they investigated. At the hearing, he stated he did not shoot his gun, but rather brandished it to deter the other motorist. (Tr. 23-72; GE 2, 3; AE D, E)

At the hearing, Applicant stated he pled no contest to the charges. He stated that he entered this plea because his lawyer told him that it would be easier to get it over with. He reported that the police took his firearm, but he was not sentenced to jail time. In his 2021 SCA, he wrote that the district attorney dropped all the charges. In his 2021 background interview with a government investigator, he stated that he was told that no charges would be pursued if both parties to the incident dropped the charges against the other, and if Applicant relinquished his firearm to police. (Tr. 72-79; GE 1, 2, 3)

Post hearing, Applicant provided documentation showing that the charges were dismissed in April 2021, and his record was expunged in August 2021. He did not provide any other documentation showing why the charges were dismissed or corroborating his version of events. (AE D, E)

SOR ¶ 1.b alleged that Applicant was arrested in 2018 for DUI. In a plea agreement, he pled guilty to reckless driving and in July 2022 was sentenced to 12 months of probation, fines, attendance at a victim impact panel, and 40 hours of community service. Applicant stated that he went out for his birthday, he was drinking, and was pulled over for swerving. According to the citation, he blew a .183 on the breathalyzer. He has not had any other alcohol related arrests. (Tr. 23-72; GE 2, 3, 4; AE B, C)

SOR ¶ 1.c alleged that Applicant was still on probation from his DUI conviction in SOR ¶ 1.b. He provided documentation showing that his probation was successfully terminated in October 2023. (AE B).

## 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.

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. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes 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.

The financial considerations security concerns are established by the credit reports, tax account transcripts, and Applicant's admissions. AG ¶¶ 19(a), 19(c), and 19(f) apply.

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;

(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.

AG ¶ 20(a) does not apply. Applicant failed to provide sufficient documentation showing that any of the alleged unfiled or unpaid taxes and delinquent debts are being paid, are resolved, or became delinquent under circumstances that are unlikely to recur. His failure to file and pay his taxes and to pay the delinquent debts are both long-term and recent, as well as ongoing and unresolved. His behavior continues to cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. Applicant's legal expenses for his child custody battle were circumstances beyond his control; however, he did not provide sufficient evidence to find that he acted responsibly under the circumstances. Despite his assertions that some of these debts were resolved, he has taken no action to resolve his tax issues or contact creditors and set up payment arrangements.

AG ¶ 20(d) does not apply. Applicant did not provide sufficient evidence showing a good-faith effort to repay creditors or resolve debts, and he has not established any meaningful track record of debt payments.

AG ¶ 20(e) does not apply. Applicant did not provide sufficient documentation to establish a reasonable basis to dispute the legitimacy of past-due debts or evidence of actions to resolve the issue.

AG ¶ 20(g) does not apply. Applicant did not provide sufficient documentation to establish that he has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

## **Guideline J, Criminal Conduct**

AG ¶ 30 expresses the security concern for criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

The guideline notes several conditions that could raise security concerns under AG ¶ 31. The following are potentially applicable in this case:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted; and
- (c) individual is currently on parole or probation.

The criminal conduct security concerns are established by the police and court records and Applicant's admissions. AG ¶¶ 31 (a) and 31 (b) apply. Applicant provided documentation showing that he is no longer on parole, so AG ¶ 31 (c) does not apply and SOR ¶ 1.c is found for Applicant.

I have considered the mitigating conditions under AG ¶ 32. The following are potentially applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

AG ¶¶ 32(a) and 32(d) apply to SOR ¶ 1.b. Applicant had only one DUI arrest. There have been no reoccurrences in the last six years, and enough time has passed to find that this arrest no longer casts doubt on his reliability, trustworthiness, and judgment.

AG ¶¶ 32(a) and 32(d) do not apply to SOR ¶ 1.a. The Government provided sufficient evidence to find that Applicant discharged a firearm into an occupied vehicle. Applicant's story has evolved over time, and his versions of events are not credible. Although Applicant presented evidence showing that the charges were dismissed and expunged from his record, he did not provide sufficient documentation supporting his version of events or exonerating him. Over time, he provided several different



explanations about the outcome of the case, including stating at the hearing that he pled no contest to these felony charges. Regardless of reason or outcome, or whether he was formally charged, prosecuted, or convicted, this incident creates an ongoing security concern and casts doubt on his reliability, trustworthiness, and good judgment. He also did not provide sufficient evidence to find that there has been successful rehabilitation, or mitigation by the passage of time or other factors.

## **Guideline E, Personal Conduct**

AG ¶ 15 details the personal conduct security concern:

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...

The SOR cross-alleges the Guideline J allegations (SOR ¶¶ 1.a-1.c) and the Guideline F failure to file federal and state tax return allegations (SOR ¶¶ 2.c and 2.e). The security concern applicable in this case under AG ¶ 16 is:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

I find that AG ¶ 16(c) is established.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 17. The following are potentially applicable:

(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.

AG ¶¶ 17(c) applies to SOR ¶¶ 1.b, 1.c, 2.c, and 2.e. SOR ¶ 1.c was found for Applicant. In the Guideline J analysis, I found that enough time had passed to mitigate SOR ¶ 1.b, and that analysis similarly applies here. The Government did not allege Applicant's failure to file federal or state taxes as criminal conduct concerns, and financial considerations are not normally personal conduct concerns.

AG ¶ 17(c) does not apply to SOR ¶ 1.a. In the Guideline J analysis, I found that this allegation was not mitigated, it creates an ongoing security concern, and it casts doubt on Applicant's current reliability, trustworthiness, and good judgment. Those findings also apply here in the analysis of the personal conduct security concern.

### **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 Guidelines J, F, and E in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility for a security clearance. He did not provide sufficient evidence to mitigate all of the security concerns under Guidelines J, F, and E.

### **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 J:	AGAINST APPLICANT
Subparagraphs 1.a:	Against Applicant
Subparagraphs 1.b and 1.c:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a-2.p:	Against Applicant

Paragraph 3, Guideline E:

AGAINST APPLICANT

Subparagraph 3.a:

Against Applicant

**Conclusion**

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

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Ross D. Hyams  
Administrative Judge