



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



In the matter of: )  
)  
) ISCR Case No. 23-01445  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Erin P. Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

07/18/2024

**Decision**

GARCIA, Candace Le'i, Administrative Judge:

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

**Statement of the Case**

On September 8, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on October 3, 2023 (Answer), and he requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on March 12, 2024. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on April 5, 2024, and he was required to respond by May 5, 2024. He did not submit a response. The case was assigned to me on June 7, 2024. The Government exhibits included in the FORM are admitted in evidence without objection.

## Findings of Fact

In his Answer, Applicant admitted SOR ¶¶ 1.a and 1.b and denied SOR ¶¶ 1.c-1.g. His admissions are incorporated into the findings of facts. He is 62 years old. He married in 1980, divorced in 2007, and remarried in 2007. He has an adult child and two adult stepchildren. His second child is deceased. He lived overseas in Japan from February 2007 to November 2009, Canada from May 2010 to May 2012, the United Kingdom from June 2012 to June 2014, and India from May 2017 to May 2018. He has owned his home since July 2021. (Items 1-3, 8-9)

Applicant has worked as an aircraft technical advisor for his employer, a defense contractor, since approximately April 1984, except for a period of retirement from October 2021 to August 2022. He was granted a security clearance in 2002. (Items 3-4)

The SOR alleges Applicant failed, as required, to timely file his federal income tax returns for tax years (TY) 2018-2022 and his state income tax returns for TY 2019-2022. (SOR ¶¶ 1.a-1.b) It also alleges that he owes \$45,975 in delinquent consumer debt. (SOR ¶¶ 1.c-1.g) The allegations are established by Applicant's admissions in his Answer, October 2022 security clearance application (SCA), May 2020 and February 2023 background interviews, undated response to interrogatories, and credit bureau reports (CBRs) from May 2020, November 2022, and December 2023. (Items 1-9)

Applicant attributed his failure to timely file his relevant income tax returns to working overseas in 2017 and 2018 and awaiting the processing of his income tax returns for these tax years by the tax firm (FIRM) his then-employer required him to use for the years in which he worked on an international assignment. He stated in his Answer this was a lengthy process due to the number and nature of the income tax returns handled by FIRM, which was compounded further by the COVID-19 pandemic. He stated he did not receive his completed 2017 income tax returns from FIRM until 2021. He also stated he submitted his 2018 income tax returns to FIRM, but he had not yet received them back. He further stated, "[u]ntil my 2018 tax return is complete[,] I cannot file the following years," and "[u]ntil my federal tax returns are complete[,] I cannot complete my state taxes." (Items 2-4, 8)

Applicant acknowledged during his February 2023 background interview he delayed submitting his income tax returns for TY 2018 to FIRM until approximately January 2023. He stated in his response to interrogatories, "As each year is complete[,] I will submit them." Although he provided a copy of a completed tax questionnaire with FIRM for TY 2017, he did not provide documentation reflecting it or his federal income tax returns for TYs 2018-2022 had been filed with the IRS, or that his state income tax returns for TYs 2019-2022 had been filed with the state tax authority. (Items 2-4, 8)

Applicant stated in his Answer, "[i]n 2019 I was overwhelmed by credit card debt." During his May 2020 background interview, he attributed his credit card debt to his spouse's unemployment in approximately 2018 when she lost her job as a day trader due to a downfall in the financial market. As the sole earner, he was unable to pay his mortgage as well as the \$3,500 mortgage on her beach home and they utilized credit

cards to pay her mortgage. When they incurred approximately \$90,000 in credit card debt, they sold her beach house but did not realize enough of a profit to pay their debt. (Items 2-3, 8-9)

Applicant and his spouse sought help and entered an agreement with a credit repair and debt elimination services program (PROGRAM) in June 2019 for debts totaling approximately \$67,138, which include the SOR consumer debts. He agreed to pay PROGRAM \$26,855 through 30 monthly payments of \$895. In January 2021, having made payments totaling \$17,900, his payment agreement was revised and he was required to make monthly payments of \$303 for 14 months for the remaining \$4,255 balance. (Items 2-3, 8-9)

Applicant's agreement with PROGRAM provides it would resolve his enrolled debt through debt settlement or debt negotiation through a third party, and that funds paid to PROGRAM allocated to specific debt for settlement would be applied for settlement purposes. He indicated in his February 2023 background interview that he completed payments to PROGRAM in approximately March 2022 and PROGRAM was consequently responsible for settling and resolving his debts. He reiterated this in his Answer. He indicated during his February 2023 background interview that he would contact PROGRAM to inquire about the current status of his enrolled debts, but he failed to provide documentation reflecting that PROGRAM settled any of his SOR consumer debts. These debts continue to be reported on his CBRs. (Items 2-3, 5-9)

Applicant indicated during his February 2023 background interview that his household net monthly income was \$6,101. After paying their monthly expenses, he indicated that their household net remainder was \$3,793. He has \$500,000 in a retirement savings account. He indicated and the CBRs do not reflect any other delinquent debts. (Items 5-9)

## **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 did not timely file his federal income tax returns for TYs 2018-2022 or his state income tax returns for TYs 2019-2022. He also owes approximately \$45,975 in delinquent consumer debt that he was unable to pay. The above disqualifying conditions are applicable.

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;
- (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.

While conditions beyond Applicant's control contributed to his financial problems, he must show that he acted responsibly under the circumstances. Applicant acknowledged he delayed submitting his income tax returns for TY 2018 to FIRM until approximately January 2023. He did not provide documentation reflecting that his federal income tax returns for TYs 2018-2022 had been filed with the IRS, or that his state income tax returns for TYs 2019-2022 had been filed with the state tax authority. There is

insufficient evidence for a determination that he acted responsibly under the circumstances concerning his tax issues or that these issues will be resolved within a reasonable period. None of the mitigating conditions are sufficiently applicable to mitigate the security concerns involving his failure to file his relevant federal and state income tax returns.

Concerning the SOR consumer debts, Applicant and his spouse sought help from PROGRAM in June 2019 and made payments to PROGRAM through approximately March 2022. AG ¶¶ 20(b) and 20(d) apply to SOR ¶¶ 1.c-1.g, as he acted responsibly under the circumstances and made a good-faith effort to pay his delinquent consumer debts. However, he did not provide documentation reflecting that PROGRAM settled any of these debts and there are not clear indications that these debts are being resolved or are under control. His financial issues are recent and ongoing, and they continue to cast doubt on his current reliability, trustworthiness, and judgment. AG ¶¶ 20(a) and 20(c) do not apply to SOR ¶¶ 1.c-1.g.

### **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. 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." I am obligated to follow that directive.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude 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.g:	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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Candace Le'i Garcia  
Administrative Judge