



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-01747
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Brian Farrell, Esq., Department Counsel  
For Applicant: *Pro se*

10/24/2024

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**Decision**

\_\_\_\_\_

Curry, Marc E., Administrative Judge:

Applicant has filed his outstanding federal tax returns and is paying any outstanding federal tax debts through a payment plans. Additionally, he has satisfied an outstanding state tax delinquency, and he has either satisfied several consumer delinquencies or is satisfying them through payment plans. Under these circumstances, I conclude he has mitigated the security concerns. Clearance is granted.

**Statement of the Case**

On September 6, 2023, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA CAS took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017.

In an undated response, Applicant answered the SOR, admitting all the allegations except subparagraph 1.h, and requesting a hearing, whereupon the case was assigned to me on May 3, 2024. On May 30, 2024, the Defense Office of Hearings and Appeals issued a notice of video teleconference hearing, scheduling the hearing on July 15, 2024. The hearing was held as scheduled. At the hearing, I received eight Government exhibits (GE 1 – GE 8), eight exhibits from Applicant (Applicant’s exhibit (AE) A through AE H), and Applicant’s testimony. At the close of the hearing, I left the record open until August 30, 2024, to allow Applicant the opportunity to supplement his exhibits. Within the time allotted, he submitted three additional exhibits that I incorporated into the record as AE I through AE K. The transcript (Tr.) was received on August 23, 2024.

### **Findings of Fact**

Applicant is a 40-year-old single man with two children (Tr. 18). He was previously married from 2007 to 2018. (Tr. 18) The marriage ended in divorce. Applicant earned an undergraduate degree in 2018 and a master’s degree in 2020. (Tr. 18) He is a veteran of the U.S. Air Force, serving on active duty from 2002 to 2014, and in the reserve from 2014 to 2018. (Tr. 18) He was discharged honorably. Since then, he has been working for various contractors as a business analyst. (Tr. 28) Per a coworker, he is “an exceptional team player,” who is “always willing to assist others, share knowledge, and contribute to a positive work environment.” (AE J) Another coworker characterizes him as “a highly dependable individual who approaches his duties with diligence and attention to detail.” (AE K)

Over the past ten years, Applicant has experienced financial problems which have impeded his ability to keep up with his debt payments and his income tax filings, as reflected in the SOR. The debt alleged in subparagraph 1.a, totaling \$13,054, constitutes two loans owed to the same creditor. (Tr. 33) They became delinquent in approximately 2011. (Tr. 33). He incurred the debt because he and his then wife, also a service member, were stationed in different locations, and were struggling to pay the corresponding extra rent expenses. (Tr. 20) This problem was exacerbated in 2014 when they became estranged, as his then wife stopped making her share of the payments. (Tr. 20) In August 2024, Applicant contacted the creditor and negotiated a settlement, reducing the balance to \$5,934. (AE H) Under the plan, Applicant is to pay \$989 per month until the debt is satisfied. He made the first payment when he reached the settlement with the creditor.

The debt alleged in subparagraph 1.b, totaling \$4,209, is a delinquent loan. Applicant settled and paid this account. (AE B)

The debt alleged in subparagraph 1.c is a credit-card debt, totaling \$3,365. (Answer at 1) Applicant began resolving this debt with \$150 monthly payments, beginning in November 2023. He paid the remaining balance, totaling \$2,447, in August 2024. (AE C)

The allegation set forth in subparagraph 1.d, totaling \$181, is a delinquent gym membership payment. (Answer at 1) Applicant satisfied this debt in April 2023, and the account is no longer delinquent. (AE D)

The debt alleged in subparagraph 1.e, totaling \$3,865, is a debt that Applicant owed jointly with his ex-wife. It was a credit-card that he used to pay towing and storage costs for an automobile that his ex-wife was driving in 2014 when she had a seizure and passed out at a stop sign, requiring emergency hospital transport. In August 2024, Applicant contacted the creditor, and was informed that they had charged off the debt .(Tr. 49) Applicant received an IRS Form 1099-C, reporting that the debt had been forgiven. (Tr. 21)

The debt alleged in subparagraph 1.f, totaling \$6,726, is the medical bill stemming from Applicant's ex-wife's emergency hospitalization, as discussed in the previous paragraph. (Tr. 21, Tr. 50) Applicant has been attempting to contact the creditor. It has been charged off.

The debt alleged in subparagraph 1.g, totaling \$3,046, is the balance of an account that Applicant co-signed with his then wife to purchase a vacuum cleaner when they were married. (Tr. 22) Applicant contends that it was paid off in 2014. (Tr. 22, 53)

The debt alleged in subparagraph 1.h is a cell phone bill, totaling \$1,621. Applicant denies this debt, contending that it was an old account of his ex-wife's, and that it was satisfied ten years ago. (Tr. 23) He provided no supporting substantiating evidence.

Applicant is indebted to State X for a tax lien entered against him in August 2019 for \$957, alleged in subparagraph 1.i. (Answer at 2) He satisfied this debt in August 2024. (AE E)

SOR subparagraph 1.j alleges that Applicant did not file his federal income taxes between 2018 and 2022. Applicant admits that he did not file his taxes on time. He presented documentation that he filed his 2018 return in July 2019, shortly after it was due, and that he retained a tax professional in September 2023, who helped him file the outstanding tax returns and implement a payment plan. (AE F – AE G; Tr. 57) Per the plan, he began paying \$274 per month, beginning in October 2023. (AE G) The balance when he began the plan was approximately \$9,500. (Answer at 2) The balance as of August 2024 is \$8,266. (AE G)

Applicant fell behind on his bills and his tax filings, in part, because he spent approximately ten years between 2013 and 2023 traveling back and forth to his hometown, hundreds of miles away from where he lived, once every two to three months, to help his chronically ill parents. (Tr. 58, 81) In addition to visiting them frequently, he frequently sent them groceries and money. (Tr. 81)

Applicant's father passed away during the COVID pandemic three years ago, and his mother passed away earlier this year. Applicant now has no reason to travel frequently to his hometown. (Tr. 80)

In May 2024, Applicant and his girlfriend consolidated their expenses by moving in together. (Tr. 56) In August 2024, Applicant sold his home, earning a net profit of \$5,000, which he used in part to satisfy the debt alleged in subparagraph 1.c, as discussed above.

(Tr. 75) These steps helped him get his finances under control. (Tr. 56) Applicant maintains a detailed budget, which tracks both projected expenses and actual expenses. (Tr. 38; AE I) He has \$2,357 of monthly discretionary income. (AE I at 2)

## Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 deciding.

The protection of the national security is the paramount consideration. AG ¶ 1(d) 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

## Analysis

### Guideline F: Financial Considerations

Under this concern, “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.” (AG ¶ 18) Applicant’s history of financial problems triggers the application of AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.” Applicant’s tax delinquency and his failure to pay his taxes timely from 2018 through 2022 triggers the application of AG ¶ 19(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 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 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.

In addition to the mitigating conditions set forth above, AG ¶ 20(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,” is potentially applicable to Applicant’s dispute of the debt set forth in subparagraph 1.h.

Although Applicant has made significant progress resolving his debts, it has occurred relatively recently. AG ¶ 20(a) does not apply.

Circumstances beyond Applicant's control contributed to his financial problems, including the financial strain of managing two homes with his then wife when they were stationed in two different cities, the cost of their subsequent divorce, and the financial demands Applicant experienced when he frequently traveled back and forth to his ailing parents' home to support them. Applicant has satisfied the debts alleged in subparagraphs 1.(b) through 1.(d) entirely, and he has negotiated a payment plan for the debt alleged in subparagraph 1.a. As for Applicant's tax problems, he satisfied the lien alleged in subparagraph 1.i, filed his late income tax returns, and has been satisfying the delinquent debt through a payment plan through consistent monthly payments for a year. Moreover, Applicant maintains a detailed budget and has ample discretionary income. Under these circumstances, AG ¶¶ 20(b), 20(d), and 20(g) apply.

Although Applicant did not seek financial counseling to trigger the application of AG 20(c) in its entirety, it applies partially because "there are clear indications that the problem is being resolved or is under control."

Applicant did not provide evidence substantiating his denial of subparagraph 1.h. Consequently, AG ¶ 20(e) does not apply. Nevertheless, given the cause of Applicant's financial problems, his improved financial circumstances, and the significant steps he has taken to satisfy his delinquencies, his failure to substantiate the dispute of the debt alleged in subparagraph 1.h has minimal probative value. In sum, I conclude Applicant has mitigated the financial considerations security concerns.

### **Whole-Person Concept**

In addition to the mitigating conditions, I considered his strong work performance. Upon considering all of the mitigating and disqualifying conditions in the context of the whole-person concept, I conclude Applicant has mitigated the 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:	FOR APPLICANT
Subparagraphs 1.a – 1.k:	For Applicant

## **Conclusion**

Considering the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Marc E. Curry  
Administrative Judge