



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



In the matter of: )  
)  
) ISCR Case No. 23-01625  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Brittany C. M. White, Esq., Department Counsel  
For Applicant: *Pro se*

12/23/2024

**Decision**

DORSEY, Benjamin R., Administrative Judge:

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

**Statement of the Case**

On January 9, 2024, 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 (Answer) on March 25, 2024 and requested a hearing before an administrative judge. The case was assigned to me on October 3, 2024.

The hearing was convened as scheduled on December 5, 2024. At the hearing, I admitted Government Exhibits (GE) 1 through 11, without objection. At Applicant's request, I left the record open until December 19, 2024, to allow the parties to provide post-hearing evidence. Applicant timely provided Applicant Exhibit (AE) A that I admitted without objection. I received a transcript (Tr.) of the hearing on December 12, 2024.

## Findings of Fact

Applicant is a 62-year-old employee of a government contractor. He has worked for his current employer since 2015. He has been married since 1984. He has two adult children. He earned a high school diploma in 1980. He served on active duty in the U.S. Air Force from 1981 until 2004, when he retired with an honorable discharge. (Tr. 27-28, 60; GE 1, 11)

In the SOR, the Government alleged that Applicant has 18 delinquent consumer accounts totaling approximately \$41,000 (SOR ¶¶ 1.a through 1.p and 1.s and 1.t). These consumer accounts are all credit cards. The Government also alleged Applicant's delinquent federal tax debt in the amount of about \$52,000 for tax years 2013 through 2021 (SOR ¶ 1.q). Finally, it alleged Applicant's failure to timely file his federal income tax return for tax year 2022, as required (SOR ¶ 1.r). He admitted the SOR allegations with the exception of those in SOR ¶¶ 1.h, 1.k, 1.n and 1.t. He claimed that the creditors had no record of the accounts for SOR ¶¶ 1.h, 1.k, and 1.t, and that he had paid the account for SOR ¶ 1.n. His admissions are adopted as findings of fact. The SOR allegations are established through his admissions and the Government's 2022 and 2023 credit reports, as well as its case information system records. (SOR; Answer; GE 4-10; AE A)

In 2022, Applicant received an IRS cancellation of debt form (1099-C) from the creditors listed in SOR ¶¶ 1.a, 1.f, 1.g, and 1.i. He claimed that he reported these cancelled debts as income on his income tax return for the 2023 tax year that he mailed in a few days prior to the hearing. While it is not alleged in the SOR, he did not timely file his federal tax return for the 2023 tax year, and he anticipates owing federal taxes for that tax year. He claimed he did not timely file his 2023 federal income tax return because it slipped his mind. (Tr. 28-32, 45-59)

There is no documentary evidence that Applicant attempted to resolve his SOR consumer debts until after his February 2022 security interview (SI). In October 2022, prior to receiving an IRS cancellation of debt form, he claimed, without providing corroborating documentation, that he had a payment arrangement of \$25 per month on the debts in SOR ¶¶ 1.a, 1.f, 1.g, and 1.i. It is not clear how many payments he made pursuant to these payment arrangements. (Answer; AE A)

Applicant provided documents to show that in September 2022, he made a \$49 payment on the debt in SOR ¶ 1.m and a \$75 payment on the debt in SOR ¶ 1.n. However, he has not provided evidence that he made any additional payments on those debts. He also provided documentary evidence that, in September 2022, he made a \$100 payment to a creditor not listed in the SOR. After he received the SOR, he made a payment arrangement for the debts listed in SOR ¶¶ 1.b (\$100 per month), 1.d (\$75 per month), and 1.s (\$50 per month). He has not made payments on the debts listed in SOR ¶¶ 1.c (document that shows a payment arrangement, but no proof of payment), 1.e, 1.h, 1.j, 1.k, 1.l, 1.p, and 1.o. He claimed he could not afford the payments on additional debts, and he is trying to resolve the debts one at a time, before moving to the next. In July 2023, he made a payment arrangement to settle the debt in SOR ¶ 1.t for \$135, and he claimed that he has paid it, but he did not provide documentary confirmation. He also provided a

document that showed a 2017 judgment in favor of Midland Funding against his wife was released in June 2024, but this document lacks any information that shows it addresses the debts listed in the SOR. (Tr. 20-32, 45-59; Answer; GE 1, 2; AE A)

Applicant claimed that he has a payment plan in place for the federal tax debt listed in SOR ¶ 1.q. However, he does not have a voluntary payment plan with the IRS. After garnishing his bank account in about 2015, the IRS has been garnishing his military retirement in the monthly amount of \$855 since about November 2017. Applicant claimed that he consulted a tax professional who advised him to allow the garnishment to continue instead of making a payment arrangement. He does not know the balance of his federal tax debt. He late filed his federal income tax return for the 2022 tax year in February 2024. He did not timely file his federal income tax return for tax year 2022 because his father-in-law, with whom he was close, passed away, and his family was grieving his loss. (Tr. 21-28, 60-75, 84, 87-89; Answer; GE 1, 2)

From about 2005 until about 2014, Applicant worked overseas as an independent contractor for a government contractor. Starting in about 2007, he used a tax professional (Tax Professional) who some of his colleagues recommended, to determine how much money he should withhold in federal taxes. While he acknowledged the amount he paid in federal taxes was low in comparison to how much he earned, he thought he was appropriately paying his federal taxes for several years. His sense was bolstered by his colleagues telling him they paid about the same in federal taxes, and the Tax Professional's assurances that he was paying the correct amount. However, in April or May 2012, the IRS sent him a notice that it was auditing him. The IRS also audited several of his work colleagues. He called the Tax Professional, who consistently assured Applicant that everything would be okay with his federal taxes. He also contacted the IRS. He claimed that an IRS adjuster told him that they were auditing him solely because he worked for the contractor for whom he worked, and because they could audit whoever they want. (Tr. 20-27, 60-73; Answer; GE 1, 2)

Several months later, the IRS concluded its audit and notified Applicant that he owed about \$267,000 in delinquent federal taxes, fees, and penalties. His understanding is that he was not paying enough in federal taxes while working overseas. He claimed that he continued to try to work with the Tax Professional, who assured him he could get it resolved. However, at some point, the Tax Professional "vanished," possibly to Australia. Applicant testified that he tried to work with the IRS to make a payment arrangement or to obtain some tax forgiveness, but he was frustrated by an inability to speak to a representative, or to obtain the same information from different IRS representatives when he did speak with someone. He received about \$17,000 in tax relief from a tax advocacy group, but his efforts to voluntarily pay his delinquent taxes ended with the IRS bank garnishment in 2015. (Tr. 21-27, 60-75; Answer; GE 1, 2)

In 2014, Applicant's wife was diagnosed with cancer. She had surgery in March 2014 and underwent chemotherapy until April 2015. Applicant took a leave of absence from his job and came back to the United States to help with her recovery. He was not being paid, so they lived on credit cards, including the consumer accounts listed in the SOR. He had planned to stay home for about a year and then resume his work as an

independent contractor overseas, but an issue with his leg left him unable to fulfill the physical requirements of his job. He had to resign and find a new job. He found a job with his current employer in 2015, but initially only earned \$14 per hour; far less than he earned as an independent contractor, where he earned between \$110,000 and \$115,000, annually. His leave of absence to help his wife recover from cancer, his own health issue, and his unemployment and underemployment caused him to become delinquent on his consumer debts. (Tr. 21-27, 45-59, 62, 73-74; Answer; GE 1, 11)

When Applicant started his current job in 2015 as a standard “withholding” employee, he did not withhold enough taxes from his earnings to avoid owing federal taxes at the end of each tax year. He has owed federal taxes for every tax year after he started his current job and has made no changes to his tax withholdings. (Tr. 74, 89-91; Answer)

Applicant testified that he does not follow a written budget and that his wife handles the finances. He testified that he does not know how much money is in his checking and savings account. At the hearing, he stated that his monthly income consists of about \$4,500 in wages, \$2,000 in Veterans Affairs (VA) disability payments, and \$1,400 from his military retirement. He earns about \$26 per hour. He was unemployed from August 2024 until October 2024, after being fired for violating a company policy. In October 2024, he was rehired by the same company at a lower rate. His son and grandchild live with him, which adds to his living expenses. In October 2022, he submitted a personal financial statement in which he claimed that he had about \$3,150 left over in surplus funds at the end of each month. After the hearing, he submitted another financial statement reflecting that he has about \$624 in surplus funds at the end of each month. (Tr. 74-84, 87; GE 2; AE A)

## **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;
- (b) 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 had 18 delinquent consumer accounts totaling about \$41,000. These debts have been delinquent for years. He also had about \$52,000 in delinquent federal tax debt for tax years 2013 through 2021. He did not timely file his federal income tax return for tax year 2022. The above disqualifying conditions are established.

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.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, 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. 17-01382 at 4 (App. Bd. May 16, 2018).

None of the mitigating factors apply. A decade after their onset, Applicant's financial issues are ongoing. He has not provided a reasonable basis to dispute any of his SOR debts. While the causes of his financial problems were largely beyond his control (his wife's cancer, underemployment, unemployment, and reliance upon the Tax Professional), he has not acted responsibly or in good faith with respect to his delinquencies. The only debts he has fully resolved were those where the creditor cancelled the debt after it went unpaid for many years. He claimed that he listed these debt cancellations on his 2023 federal income tax return, but he filed that return late, and anticipates owing federal taxes for that tax year. Despite his past financial issues, he does not keep track of his finances, including not knowing how much money he has in his bank accounts. Despite consistently owing federal taxes at the end of each tax year, thereby increasing his federal tax debt, he has not changed his withholdings from his wages.

Applicant made minimal voluntary payment arrangements with several creditors when the clearance process started and after it became clear that his finances would affect his security clearance. An Applicant who acts to mitigate security concerns only after his personal concerns are threatened, such as by the potential loss of his or her security clearance, may not be motivated to follow rules and regulations when his personal interests are not affected.

Applicant is resolving his federal tax debt through an involuntary garnishment and not through an agreement with the IRS. He claimed that his failure to timely file his federal income tax return for tax year 2022 was a one-time event brought on by grief, but then he failed to timely file his federal income tax return the very next year because it slipped his mind.

### **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 have incorporated my comments under Guideline F in my whole-person analysis and have considered Applicant's military service. Overall, his financial instability and tax issues that have

persisted over a significant time period leave 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
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Subparagraphs 1.a-1.t:	Against Applicant
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### **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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Benjamin R. Dorsey  
Administrative Judge