



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



In the matter of: )  
)  
) ISCR Case No. 23-00860  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Patricia Lynch-Epps, Esq., Department Counsel  
For Applicant: *Pro Se*

01/04/2024

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**Decision**

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BORGSTROM, Eric H., Administrative Judge

Although Applicant experienced a reduction in salary that triggered some financial delinquencies, he has not provided sufficient evidence to establish that he has acted responsibly to address and resolve his debts and unfiled income tax returns. He did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 12, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The CAS acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017.

In Applicant's July 24, 2023 response to the SOR (Answer), he admitted, without any further information or explanation, the 14 allegations. He did not attach any documentary evidence. He requested a decision by a Defense Office of Hearings and

Appeals (DOHA) administrative judge based upon the written record in lieu of a hearing. (Answer)

On August 30, 2023, DOHA Department Counsel submitted a file of relevant material (FORM) and provided a complete copy to Applicant. Department Counsel's FORM includes Government Exhibits (GE) 1 through 5. In the FORM, Department Counsel provided Applicant notice that failure to respond to the FORM may be considered a waiver of any objections to the proffered exhibits.

On September 11, 2023, Applicant received the FORM and its attachments. DOHA did not receive a response to the FORM within the next 30 days. The case was assigned to me on December 20, 2023. GE 1 through 5 are admitted into evidence without objection.

### **Findings of Fact**

Applicant is 66 years old. He graduated from high school in 1976. Since July 2012, Applicant has been employed full time as a desktop technician for three successive DOD contractors at the same jobsite. He has never married, and he does not have any children. (GE 3-4)

The SOR alleges financial considerations security concerns based upon nine delinquent consumer accounts (SOR ¶¶ 1.a.-1.i.), untiled FIT returns (SOR ¶ 1.j.), untiled SIT returns (SOR ¶ 1.k.), and delinquent Federal and state taxes (SOR ¶¶ 1.l.-1.n). In his Answer, Applicant admitted all of the allegations without any further explanation or documentation.

On October 28, 2022, Applicant completed and submitted an Electronic Questionnaire for Investigations Processing (e-QIP). Under Section 26, he reported that he had not filed his Federal income tax (FIT) returns for tax years (TY) 2013 and 2014 or his state income tax returns (SIT) return for TY 2014. He estimated that he owed approximately \$6,000 in delinquent taxes to the Internal Revenue Service (IRS) for TY 2013 (SOR ¶ 1.l.) and approximately \$4,000 in delinquent taxes, presumably in total, to the IRS and the state for TY 2014 (SOR ¶¶ 1.m.-1.n). He attributed these untiled returns and unpaid taxes to a layoff. He had been laid off from a position with an annual salary of \$62,000. When he found new employment, his starting salary was \$31,000. He also reported four delinquent consumer debts (SOR ¶¶ 1.a., 1.b., 1.f., and 1.h.). (GE 3)

On January 13, 2023, Applicant was interviewed by an authorized investigator on behalf of the Office of Personnel Management (OPM). During the interview, Applicant explained that he had been laid off in early 2012 from a position where he had earned a \$62,000 annual salary. When hired in July 2012, his salary was approximately \$31,000. He further explained that he had not made any debt-resolution efforts because he lived paycheck to paycheck, and he was awaiting a "union paycheck" to see if he could afford any debt payments. (GE 4)

On May 10, 2023, Applicant responded to interrogatories concerning his untiled tax returns, delinquent taxes, delinquent accounts, and the January 2023 OPM interview. He confirmed the accuracy of the OPM interview summary detailed above. He admitted that he had not filed his FIT or SIT returns for TY 2014 through 2021 (SOR ¶¶ 1.j. and 1.k.). He estimated his delinquent Federal taxes as approximately \$6,000, and he had not initiated an IRS repayment agreement.

The nine delinquent consumer accounts (SOR ¶¶ 1.a.-1.i.) total approximately \$40,520. In his e-QIP, Applicant reported that at least four accounts (SOR ¶¶ 1.a., 1.b., 1.f., and 1.i.) became delinquent in about July 2014. All nine accounts have been charged off or placed for collection. There is no evidence of any payments, payment arrangements, other debt-resolution efforts, credit counseling, or a monthly budget. (GE 5; Answer)

### **Policies**

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's nine delinquent accounts total approximately \$40,520. Some of these accounts have been delinquent since July 2014, and all nine accounts remain delinquent. AG ¶¶ 19(a) and 19(c) apply.

Applicant admitted that he failed to file his FIT and SIT returns for TY 2013 through 2021, and he admitted that he owed Federal and State income taxes totaling approximately \$15,000 for TY 2013 and TY 2014. AG ¶ 19(f) applies.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable in this case:

(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 has 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 bears the burdens of production and persuasion in mitigation. An applicant is not held to a standard of perfection in his debt-resolution efforts or required to be debt-free. "Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014).

All nine accounts remain delinquent, and there is no evidence of credit counseling or any debt-resolution efforts. AG ¶¶ 20(a), 20(c), and 20(d) do not apply.

Under AG ¶ 20(b), Applicant must establish circumstances largely beyond his control and that he acted responsibly under the circumstances. Applicant attributed his financial delinquencies to his layoff and significant decrease in annual income in 2012. There is no evidence that Applicant has developed a reasonable plan to address and resolve these nine delinquent accounts or has taken steps in furtherance of such a plan. While Applicant's underemployment may have been beyond his control, he has not demonstrated that he has acted responsibly to address his delinquent accounts. AG ¶ 20(b) does not apply.

Applicant has not filed his FIT or SIT returns for TY 2013 through TY 2021. His layoff and underemployment do not lessen his legal obligation to file these returns. There is no evidence of any contacts with the IRS or state tax authority to make payments or

payment arrangements. AG ¶ 20(g) does not apply. Applicant did not mitigate the financial considerations security concerns.

### **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 and the factors in AG ¶ 2(d) in this whole-person analysis.

Although Applicant experienced a reduction in salary that triggered some financial delinquencies, there is no evidence that he has initiated any debt-resolution efforts regarding his nine delinquent accounts, filed his missing FIT and SIT returns, or made payment arrangements for his delinquent taxes. He did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

### **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.n.:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Eric H. Borgstrom  
Administrative Judge