



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



In the matter of:)	
)	
)	ISCR Case No. 23-02201
)	
Applicant for Security Clearance)	

Appearances

For Government: John B. Renehan, Esq., Department Counsel
For Applicant: *Pro se*

01/30/2025

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 August 22, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant provided a response to the SOR (Answer) dated May 5, 2024. He requested a hearing before an administrative judge. The case was assigned to me on October 30, 2024.

The hearing was convened as scheduled on January 6, 2025. At the hearing, I admitted Government Exhibits (GE) 1 through 3 and Applicant Exhibits (AE) A through I without objection. At Applicant's request, I left the record open until January 21, 2025, for the parties to provide post-hearing documents. Applicant timely provided AE J through O, which I admitted without objection. I received the transcript (Tr.) of the hearing on January 13, 2025.

Findings of Fact

Applicant is a 40-year-old employee of a government contractor for whom he has worked since 2010. He was married in 2004 and divorced in 2013. He is engaged to be married again and resides with his fiancée. He has an 18-year-old child. He earned a bachelor's degree in 2020. He was on active duty with the Army from 2003 until 2007, when he earned an honorable discharge. (Tr. 28-31; GE 1, 3; AE J, O)

In the SOR, the Government alleged that Applicant owed delinquent federal taxes in the amount of \$17,138 for the 2012 tax year (TY) (SOR ¶ 1.a). It alleged that he owed delinquent federal taxes in the amount of \$4,694 for TY 2014 (SOR ¶ 1.b). Finally, it alleged that he owed state taxes to State A in the amount of \$26,145 for TYs 2014 through 2018 (SOR ¶ 1.c). Applicant denied these allegations because he claimed that he had reduced the balance of his federal tax debt, and he had satisfied his state tax debt. While his claims regarding these reductions are accurate, as I will discuss below, the Government provided sufficient evidence that the balances it alleged Applicant owed were accurate when it issued the SOR. Therefore, the SOR allegations are established. (SOR; Answer, GE 1-3, AE J, O)

Applicant was deployed overseas to a war zone for work from 2010 to 2011, and from 2013 to 2014. His employer contracted with a large, well-known accounting firm (Firm A) to help Applicant and other employees with their tax planning and income tax filing. Based upon Firm A's advice, Applicant adjusted his tax withholdings to a lesser amount, so he would realize more income. He planned to use Firm A to file for a foreign income exclusion that would offset these reduced withholdings and reduce any income tax he might owe. However, because of marital problems and a contentious child-custody dispute that continued until 2017, he did not timely file his federal and state income tax returns for several tax years. This failure forfeited his employer's benefit of paying for Firm A to file his income tax returns and the foreign income exclusion. (Tr. 22-27, 32-40, 44-47, 59-64, 71, 76, 81-84; GE 1-3; AE J, O)

Applicant's failure to timely file his income tax returns was not alleged in the SOR, and I will not use it for disqualification purposes. However, I will use that information for mitigation purposes and in my whole-person analysis. Applicant could not afford to pay Firm A the \$2,000 fee it required to file the foreign income exclusion, so, in 2019, he hired a less expensive accounting firm (Firm B) to file his late income tax returns. Applicant claimed Firm B was not conversant in the foreign income exclusion, so it did not claim the exclusion on his behalf, which resulted in the delinquent state and federal taxes alleged in the SOR. (Tr. 22-27, 32-40, 44-47, 59-64, 76, 81-84; GE 1-3; AE J, O)

Beginning in about 2019, Applicant thought he was sufficiently financially sound to begin repaying his taxes. His employer was supplementing his income because he was working and living across the country in State B. This supplement allowed him to pay his financial obligations while living in State B, including his mortgage and child-support obligation in State A. Sometime in 2019, he contacted the State A taxation authority to make a payment arrangement on his state tax indebtedness. He decided to pay his state tax debt before his federal tax debt because State A had already garnished his bank

account, and because Firm B told him State A was more difficult to work with than the Internal Revenue Service (IRS). He made a payment arrangement with State A of \$450 per month and made five or six of these monthly payments pursuant to that arrangement. He also cashed his \$1,200 COVID-19 stimulus payment and paid that amount to State A. In 2019, he filed his federal income tax returns for TYs 2012 through 2018. He filed his federal income tax returns for TYs 2020 through 2022 in about February 2024, and he filed his federal income tax return for TY 2023 in May 2024. He claimed that he filed his federal income tax returns late for TYs 2020 through 2022 because of the COVID-19 pandemic. He claimed has received a refund of about \$1,000 to \$2,000 every tax year since 2014. (Tr. 40-56, 59-64, 68, 72-76, 80-81; Answer; GE 1-3; AE A, D-H, J, M, O)

In about April 2020, because of the COVID-19 pandemic, Applicant's employer stopped supplementing his income for residing in State B. As he had a fiancée and had established a life in State B, he stayed there and paid his aforementioned financial obligations without the supplemental pay. This decision meant that he could not afford to repay his delinquent federal and state income taxes. He defaulted on his payment arrangement with State A. Because of the COVID-19 shutdown and restrictions, at some point, he felt as though he was trapped in State B. It was during this time that he fell behind on his child-support obligation that was not alleged in the SOR. However, in early 2021, he resolved that delinquency through automated deductions from his paycheck and has remained current on that obligation. (Tr. 40-54, 75-76, 80-81; Answer; GE 1-3; AE K, M, O)

Between April 2020 and early 2023, Applicant purchased a mobile home in State B. He entered into a loan modification agreement on the mortgage on his real property in State A to keep this property from being foreclosed upon. He claimed these processes further delayed his ability to address his tax delinquencies by diverting his limited resources. He also claimed he was unable to sell the home in State A while the mortgage was being modified. In about January or February 2023, Applicant began traveling for work consistently and earned a significant per diem again. While he testified that he would have resolved his tax delinquencies regardless of the impact on his security clearance, he acknowledged that this impact also significantly motivated him. In February 2023, he hired a tax resolution service (Firm C) to help him resolve his delinquent federal taxes. Firm C eventually helped him negotiate a lower federal tax obligation from about \$21,000 to a total of \$6,603, and a monthly payment arrangement with the IRS of \$255. He has made two payments pursuant to this payment arrangement and intends to continue paying it until his federal tax delinquency is resolved. Given his payment arrangement, and assuming he receives a tax refund for TY 2024, he thinks he will have his federal taxes paid off by the end of 2025. He no longer owes federal taxes for TY 2014. The aforementioned \$6,603 balance (less the two payments of \$255) is solely from TY 2012. (Tr. 54-69, 77, 80-81; GE 1-3; AE A, D-H, J, K, L, O)

Despite having engaged Firm C a year and a half earlier, Applicant's payment arrangement with the IRS became effective in about October 2024, because his ability to pay it was contingent upon him selling his home in State A. He also had to save money and pay Firm C a total of about \$3,500 over a few months before he could fully engage its services. In early 2024, he began the process of listing and selling his house in State

A. He traveled to State A to take these steps. He incurred about \$6,000 in additional credit-card debt in the process. After one sales contract fell through, he closed the sale of this home in November 2024, and used the proceeds to pay the state taxes listed in SOR ¶ 1.c in December 2024. (Tr. 67-72, 80-81, 90-92; AE B, I, J, O)

Applicant claimed that his financial situation has vastly improved. He sold his home in State A, he no longer has a custody dispute, and he is regularly earning per diem. After he sold the home in State A in November 2024, he saves about \$600 more per month on mortgage payments alone. Other than his outstanding federal tax debt for TY 2012, he does not have any delinquent debts. He has about \$3,400 in his bank accounts. He took out a loan for about \$15,000 against his retirement savings account to pay the closing costs on the real property in State A. After paying those closing costs, he used about \$6,000 from that loan against his retirement account to satisfy a payday loan. After early 2023, he paid off several other payday loans and credit cards. He only has balances on nondelinquent secured credit-card accounts with a combined total of about \$5,000. He has about \$1,032 per month in surplus funds after he pays his expenses. He has not undergone financial counseling. (Tr. 75-91; GE 1-3; AE J, N, O)

Applicant provided letters from friends and work colleagues attesting to his hard work in rebuilding his finances and paying his delinquent taxes. Some corroborated the challenges that led to his financial issues, as well as his resolution efforts. They believe that he is a trustworthy and reliable person who does well at work and shows good judgment. They note he is a mentor and a leader, and they believe that his financial issues are behind him. They all opined that he should retain his security clearance. (AE K)

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 is potentially applicable in this case:

(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 owed delinquent federal taxes for TYs 2012 and 2014 in the amount of \$17,138 and \$4,694, respectively. He owed delinquent state taxes to State A for TYs 2014 through 2018 in the amount of \$26,145. The above-referenced disqualifying condition is 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; 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).

Applicant has the burden of proof to show evidence in mitigation. He began having tax delinquencies over a decade ago. With the exception of a briefly maintained payment arrangement with State A after a bank garnishment in 2019, his meaningful resolution of his tax delinquencies began in 2024. His mortgage on the real property in State A was in foreclosure, and he had to borrow money from his retirement account and incur additional credit-card debt to sell it, which shows that he was still in some financial distress. He continued to fail to timely file his income tax returns, which was the direct cause of his delinquent tax debt, until 2023. Given these considerations, I do not find that his tax

failings were so long ago, infrequent, or happened under circumstances that they are unlikely to recur.

Applicant has provided some evidence that his tax delinquencies arose because of his marital problems. However, for AG ¶ 20(b) to apply, he must also show that he acted responsibly under the circumstances. For AG ¶ 20(d) to apply, he must show that he acted in good faith. He did not file the income tax returns for the 2012 through 2018 TYs that resulted in his delinquent taxes until 2019. He did not attempt to make a payment arrangement on his federal tax debt until 2023. While he first attempted to make a payment arrangement on his state tax debt in 2019, he did so only after having his bank account garnished. After defaulting on his payment arrangement for his delinquent state taxes in 2020 (again for reasons that were arguably beyond his control), he did not attempt to address that debt again until early 2024.

Applicant ultimately resolved his State A tax debt by selling a house that he could have sold years earlier, except that he was delinquent on that mortgage. Although failing to file his income tax returns was a major factor in causing his delinquent taxes, he then did not timely file his federal tax returns for TYs 2020 through 2022. For these reasons, I do not find that he acted responsibly under the circumstances or in good faith. AG ¶¶ 20(b) and 20(d) do not apply.

AG ¶ 20(g) partially applies. Applicant has satisfied his 2014 federal taxes, his 2014 through 2018 state taxes, and is current on a payment arrangement that he made with the IRS for his 2012 federal taxes. However, for the reasons I enumerated in my mitigation analysis about the timing of his resolution efforts, and his additional failure to timely file his 2020 through 2022 federal income tax returns, the application of AG ¶ 20(g) is insufficient to remove my concerns regarding his judgment, trustworthiness, and reliability.

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. I have also considered his military service and positive character references. Overall, while he had some reasonable excuses for why it took him so long to address his tax delinquencies, those explanations do not adequately justify the length of the delay and leave me with doubts about his judgment and reliability. His continued failure to timely file his income tax returns for TYs 2020 until 2022, despite the consequences of not timely filing income tax returns from 2012 through 2018, reinforces my doubts.

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.c:	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.

Benjamin R. Dorsey
Administrative Judge