



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



In the matter of:)
)
) ISCR Case No. 24-00613
)
Applicant for Security Clearance)

Appearances

For Government: John Renehan, Esquire, Department Counsel
For Applicant: *Pro se*

01/27/2025

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance is granted.

Statement of the Case

On August 8, 2023, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86). On October 10, 2023, he was interviewed by an investigator with the U.S. Office of Personnel Management (OPM). On January 30, 2024, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued him a set of interrogatories. He responded to those interrogatories on February 13, 2024. On August 1, 2024, the DCSA CAS, renamed as the DCSA Adjudications and Vetting Services (AVS), issued him a Statement of Reasons (SOR) under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security

Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (AG) (December 10, 2016), effective June 8, 2017.

The SOR alleged security concerns under Guideline F (Financial Considerations) and detailed reasons why the DCSA adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In an unsworn and undated statement, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM), including proposed Government Exhibits (GE), was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on September 30, 2024, and he was afforded an opportunity after receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. Applicant received the FORM on October 18, 2024. His response was due on November 18, 2024. Applicant chose not to respond to the FORM, for as of November 25, 2024, no response had been received. The case was assigned to me on December 17, 2024.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with extensive comments, two of the factual allegations pertaining to financial considerations (SOR ¶¶ 1.a. and 1.b.). He denied the remaining allegation (SOR ¶ 1.c.) "as of today" and stated that the issue had been resolved. Applicant's admissions and comments are incorporated herein. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is a 40-year-old pending employee of a defense contractor. He has been offered an unspecified part-time position in August 2023, and his employment will commence upon receiving a security clearance. He has been the owner/operator of a photography organization (January 2014 – the present) and served as a route sales and service represent for another employer (June 2010 – July 2014). A 2002 home-schooled high school graduate, he received an associate degree in 2004, and a bachelor's degree in 2008. He has never served with the U.S. military. He has never been granted a security clearance. He was married in 2005. He has two children, born in 2008 and 2010.

Financial Considerations

In his SF 86, Applicant candidly reported that he had failed to pay his federal and state income taxes for the tax year (TY) 2021. He said that his business was experiencing a down-turn in volume, he is saving money to pay off his taxes, and it has taken longer to pay back an estimated \$2,500 in income taxes. (GE 4 at 33-34)

During his October 2023 OPM interview, Applicant reported that in September 2022, before his TY 2021 income tax returns were due with an extension, he consulted with an accountant who informed him that he would owe the Internal Revenue Service (IRS) approximately \$2,500 for TY 2021 and advised him to set up a repayment plan for monthly payments. Applicant failed to do so because he did not have the discretionary funds in his budget to make monthly payments. Eventually, in December 2022, the IRS notified him that his tax debt was approximately \$2,846 for TY 2021. To generate additional income, his wife obtained employment in January 2023, and Applicant received his job offer in August 2023. It was his intention to contact the IRS in October 2023 to make arrangements to make monthly minimum payments of \$50 which he expected to increase once his employment was approved. While he considered his budget to be tight, his current financial status was stable. (GE 5 at 3-4)

In his February 2024 response to interrogatories, Applicant explained that he had experienced a reduction in business since COVID-19 struck the nation and inflation had negatively impacted his income. (GE 6 at 2) He furnished Account Transcripts from the IRS which reported the following information:

- TY 2020 adjusted gross income was \$39,224, he filed the federal return within the authorized extension period, and he received a refund (GE 6 at 5-6);

- TY 2021 adjusted gross income was \$50,206, he failed to file the federal return within the authorized extension period (December 5, 2022), but eventually filed the return, and as of February 26, 2024, the account balance including accruals, was approximately \$3,061 (GE 6 at 7-9); and

- TY 2022 adjusted gross income was \$45,767, he filed the federal return within the authorized extension period, and as of February 26, 2024, the account balance including accruals, was approximately \$2,914 (GE 6 at 10-11).

In addition, Applicant submitted a letter from the state department of revenue reporting that, as of February 14, 2024, he still had a deficiency of approximately \$341 for TY 2022 (GE 6 at 12).

In his response to the SOR, Applicant stated:

I deny that I'm living outside of my means. 2021 is the first year I have ever owed taxes and it was a surprise. I have made several changes in my personal expenses to bring down my liabilities and costs. I am an entrepreneur and have been trying to adapt to a new market norm, between a downturn in business stemming from the years of Covid, and the rise in inflation and the cost of living, I have not been able to afford consistent payments on the back taxes. I am in pursuit of a second job to raise additional income to apply to this debt and want to be wise with my time so I've pursued a higher paying job here locally that has flexible hours but it requires a clearance. This life change will allow me to build off my already tight budget to allow me to make progress on my taxes. We've sold our

second car and cut a lot of our auxiliary spending just to stay in our means. My wife also re-entered the work force to help with our expenses and cost of living life for our family of four. . . . [A]s of today, the (state) taxes are paid in full and a receipt is attached.. . .

(GE 2 at 1)

Applicant was repeatedly offered the opportunity to submit documentation to confirm that his federal income taxes for TY 2021 and 2022 and his state income taxes for TY 2022 had been paid: during his OPM interview; with his response to the interrogatories; with his Answer to the SOR; and in response to the FORM. Notably, although Department Counsel argues unalleged conduct such as Applicant's failing to timely file his federal income tax returns (more than a month past the extended due date for each of the two TYs), the documentation furnished by Applicant is that both returns had been filed in 2023, well before the SOR was issued. With regard to the state income taxes for TY 2022, it appears that Applicant did pay his delinquent income taxes for that year in February 2024, also before the SOR was issued, but the state subsequently informed him that there was an additional amount due, and that modest amount of approximately \$358 was paid to the state on May 21, 2024 – eight days after the SOR was issued.

Contrary to the Department Counsel argument that Applicant failed to submit evidence that he had been in contact with the IRS prior to the issuance of the SOR, that argument was overcome by documentary evidence that Applicant received Account Transcripts from the IRS in February 2024, again well before the SOR was issued. Applicant simply failed to furnish evidence that he had entered into a repayment plan to start resolving the unpaid federal taxes, but he explained the reasons for his inaction.

Applicant did not submit any documentary evidence reflecting his current monthly net income, monthly expenses, or if he had any monthly remainder for savings or paying other bills. He offered no evidence of a budget or financial counseling. Likewise, the record is silent as to Applicant's other commercial or credit card accounts, and there is no evidence that he has any other financial delinquencies other than his two remaining federal income tax debts for TY 2021 and TY 2022.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)) As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.)

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence." "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)) "Substantial evidence" is "more than a scintilla but less than a preponderance." (See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994))

The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005))

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials." (*Egan*, at 531)

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." (See Exec. Or. 10865 § 7) Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not

met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

¶ 19: The guideline notes some conditions that could raise security concerns under AG

(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.

The SOR alleged that Applicant failed to pay his federal income taxes for TY 2021 (approximately \$3,061) and TY 2022 (approximately \$2,914), and state income tax for TY 2022 (approximately \$341). Applicant was afforded multiple opportunities to submit documentation confirming that his federal and state income taxes had been paid, but while he submitted evidence that the state income taxes had been paid, he stated that he was still not yet in a financial position to start paying his federal income taxes. AG ¶¶ 19(a), 19(c), and 19(f) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20:

(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.

AG ¶¶ 20(a), 20(b), 20(d), and 20(g) apply. Applicant essentially attributed his financial troubles to two factors: COVID-19 and inflation. His financial problems commenced in 2021, months after COVID-19 struck the world, causing chaos in business, education, and health. Business closures, social distancing, and the wearing of face masks became mandatory. DOD guidance related to COVID-19 continued until July 2023. (<https://www.defense.gov/Spotlights/Coronavirus-DOD-Response/Timeline/>) Inflation – the rate of increase in prices and the cost of living in the U.S. – the other factor, rose from 2.6 percent in the first half of 2021 to 6.2 percent in the first half of 2022. (<https://data.bis.govtimeseries>) Those two factors, individually and combined, set up a situation (a business downturn and reduced income, as well as increased costs) that was substantially, not merely largely, beyond Applicant's control.

Applicant, realizing the situation, addressed it by cutting family costs, he and his wife sought additional income, and he explored appropriate ways to resolve his financial problems. Reality set in when he realized he did not have sufficient funds to pay off all his income taxes and maintain his other accounts in a current status. He obtained documentation from the IRS, focused on his current accounts, and paid off his delinquent state income tax, only to be informed about the time the SOR was issued that he still owed an additional amount to the state. He paid the amount and he completely resolved the state income tax issue. Taking some corrective actions but being unable to resolve his federal income taxes at the same time is not evidence that he failed to act responsibly.

A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." (ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016))). Based on the evidence, Applicant maintained contact with his creditors, and made payments to the state, but because of insufficient funds, was unable to commence payments to the IRS even in modest amounts. The Appeal Board has previously commented on such a situation:

Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties. ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

An applicant who begins to resolve his or her financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. (See, e.g., ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018)). In this instance, as noted above, Applicant obtained Account Transcripts from the IRS and paid the state his delinquent state income taxes in February 2024, well before the SOR was issued. The state subsequently informed him that there was an additional modest amount due, and that amount was paid to the state on May 21, 2024 – eight days after the SOR was issued.

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time. Mere promises to pay debts in the future, without further confirmed action, are insufficient. In this instance, Applicant has a plan and he clearly stated that he intended to pay off his delinquent federal income taxes as soon as he commences his new job. He did, however, resolve his delinquent state income tax issue.

The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation."

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

Applicant's actions, under the circumstances do not cast doubt on his current reliability, trustworthiness, and good judgment. (See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).)

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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. (See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006))

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in SEAD 4, App. A. There is some disqualifying evidence regarding Applicant's financial concerns. He failed to pay his federal income taxes for TY 2021 (approximately \$3,061) and TY 2022 (approximately \$2,914), and state income tax for TY 2022 (approximately \$341). He was afforded multiple opportunities to submit documentation confirming that his federal and state income taxes had been paid, but while he submitted evidence that the state income taxes had been paid, he stated that he was still not yet in a financial position to start paying his federal income taxes.

The mitigating evidence under the whole-person concept is simply more substantial. Applicant is a 40-year-old pending employee of a defense contractor. He has been offered an unspecified part-time position in August 2023, and his employment will commence upon receiving a security clearance. He has been the owner/operator of a photography organization since January 2014 and served as a route sales and service represent for another employer for four years before that. A 2002 home-schooled high school graduate, he received an associate degree in 2004, and a bachelor's degree in 2008. Before the commencement of the COVID-19 pandemic, and the soar in inflation,

Applicant had no negative issues with finances. He timely filed his federal and state income tax returns and generally received refunds. However, the combination of those two factors – over which he had no control – negatively impacted his finances to such a degree that it caused him to have insufficient funds to pay his federal and state income taxes. Other than his delinquent federal income taxes in the combined approximate amount of \$5,975, there is no evidence of other delinquent accounts. This seemingly isolated incident of not being able to meet his financial obligations appears to be an exception to Applicant's normal financial status.

Moreover, considering Applicant's initial successful resolution steps, the continuing financial impact of inflation, and the relatively modest amount in delinquency, Applicant's continuing family efforts to increase income while decreasing spending, along with his pending employment, reflect responsible actions by him, not disinterest or irresponsible avoidance of his financial responsibilities. However, as an additional incentive to motivate him to resolve his financial issues through monthly minimal payments he should be warned that his failure to enter into a repayment plan with the IRS upon commencing his new position will be justification to withdraw his eligibility for a security clearance.

Overall, the evidence leaves me with no substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has successfully mitigated the security concerns arising from his financial considerations. See SEAD 4, App. A, ¶¶ 2(d)(1) through AG 2(d)(9).

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. through 1.c:	For Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge