



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



In the matter of:)	
)	
)	ISCR Case No. 24-00553
)	
Applicant for Security Clearance)	

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: *Pro se*

03/04/2025

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 May 28, 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 June 5, 2024 and requested a hearing before an administrative judge. The case was assigned to me on December 5, 2024.

The hearing was convened as scheduled on February 6, 2025. At the hearing, over Applicant’s objection to the balances reflected in certain exhibits, I admitted Government Exhibits (GE) 1 through 8. Applicant testified at the hearing but did not present documents for entry in evidence. I treated Applicant’s statement that he was unprepared for the hearing during his direct testimony as a request for a continuance but denied that request because he did not show good cause for his alleged lack of preparation. I treated his statement about being unprepared as a request to leave the record open for the submission of post-hearing documents, and I left the record open until February 20, 2025,

to allow the parties to provide post-hearing evidence. Neither party offered post-hearing documents and the record closed on February 20, 2025. I received a transcript (Tr.) of the hearing on February 14, 2025. (Tr. 19-25)

Findings of Fact

Applicant is a 57-year-old employee of a government contractor, for whom he was worked since about August 2020. From about 2004 until August 2020, he operated his own business as a sole proprietorship that became “dormant” when he started his current job. He has been married and divorced twice. His first marriage was from 1988 until 1989. His second marriage was from 1994 until 2013. He had no children from his first marriage and has six children from his second marriage. His seventh and youngest child is from a relationship he had with another woman near the end of his second marriage. His children are ages 28, 24, 20, 19, 17, 16, and 12. He earned an associate degree in 1987 and an electrical construction certificate in 2000. (Tr. 26-29; GE 1, 2)

In the SOR, the Government alleged that Applicant had two delinquent credit-card accounts totaling \$2,357 (SOR ¶¶ 1.a and 1.b). The Government also alleged his delinquent child-support obligation totaling approximately \$25,000 (SOR ¶ 1.c), his delinquent federal tax debt in the amount of about \$17,000 for tax years 2015 and 2019 (SOR ¶ 1.e), and his failure to timely file his federal income tax returns for tax years 2014, 2016, 2017, 2018, 2020, and 2021, as required (SOR ¶ 1.d). He admitted the SOR allegations except those in SOR ¶ 1.c, which he denied. His admission of SOR ¶ 1.e included an explanation that he believed that his federal income tax balance is lower than that alleged in the SOR. His admissions are adopted as findings of fact. The SOR allegations are established through his admissions, the Government’s credit reports, and its evidence of Applicant’s IRS tax records. (SOR; Answer; GE 1-8)

Applicant’s financial issues began when he divorced in 2013. He could no longer claim income-tax exemptions for his six children, he had to begin paying child-support payments for several of his children, and he began a protracted and expensive child-custody dispute with the mother of his youngest child. He testified that he spends about \$30,000 per year, or about half of his annual income, paying child-support payments for three of his children, and paying legal expenses related to his ongoing child-custody dispute. He claimed that after he began his current employment, his employer began taking his child support payments of \$588 per week directly from his paycheck, so his delinquent child-support balance is lower than the amount listed in the SOR. He also claimed that he has not missed a child-support payment since he began his current employment. Part of the Government’s evidence consists of his paystub for a weeklong pay period in February 2022 that reflects a “court order” after-tax deduction of \$126.92, but there is no documentary evidence to show his employer is withholding \$588 per week. The Government’s February 2025 credit report reflects a child-support obligation balance of \$11,842. He does not know whether this balance is accurate. He acknowledged that he never reads his mail, so he does not know whether he has been getting statements from State A that would reflect his balance. (Tr. 29-30, 34-38, 43; Answer; GE 1-3, 5, 8)

Applicant has not filed any of the income tax returns that the SOR alleged he failed to file. He claimed that he is unable to address his income tax filing failures or his delinquent federal tax debt until he has resolved his child-custody dispute that involves his youngest child. Without providing documentary evidence, he claimed that his tax-year-2019 federal tax debt will be much lower than the amount alleged in the SOR because he did not provide his certified public accountant (CPA) with records of about half of his business expenses for that tax year. He has yet to attempt to resolve this alleged inaccuracy with either the IRS or his CPA. He has yet to provide these 2019 tax year records to his CPA. He has made no attempts to resolve his delinquent federal tax debt for either the 2015 or 2019 tax year. He has not resolved his failure to timely file his missing federal income tax returns. While it is not alleged in the SOR, he failed to file his federal income tax returns for tax years 2022 and 2023. He hoped that the Internal Revenue Service (IRS) would contact him about resolving his tax debt. He does not plan on filing his federal income tax returns until the IRS “wants to make a deal.” (Tr. 29-34, 39-41; Answer; GE 2, 3)

Applicant has not attempted to resolve the credit-card debts alleged in SOR ¶¶ 1.a and 1.b. Those accounts have been delinquent since 2019. He testified that they are the least of his worries. (Tr. 41; Answer; GE 2, 3, 6-8)

Applicant had hip-replacement surgery in 2022 and 2024, which briefly reduced his income. He lives with and takes care of his 87-year-old mother. In February 2022, he completed a personal financial statement wherein he claimed that he had about \$2,360 in surplus earnings after he paid his expenses at the end of each month. He testified that he had about \$14,000 in a savings account and about \$55,000 in a retirement account. He has not undergone financial counseling. (Tr. 36, 44-47; GE 2, 3)

Applicant is unsure when he will no longer have to devote so much money to child support and child-custody disputes. It could be as early as when his youngest child turns 14, as she could decide not to have visitation with Applicant. While he does not want this to happen, he would no longer have to pay for visitation-related costs such as equipment, testing, and counselors (Tr. 41-45)

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 two delinquent consumer accounts totaling \$2,357. These debts have been delinquent since 2019. He was delinquent on his child-support obligation in the approximate amount of \$25,000. He also had about \$17,000 in delinquent federal tax debt for tax years 2015 and 2019. He did not file his federal income tax returns for tax years 2014, 2016, 2017, 2018, 2020, and 2021, as required. 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).

With the exception of the child-support delinquency in in SOR ¶ 1.c, which he is resolving, none of the mitigating factors fully apply to the other SOR allegations. Over a decade after their onset, Applicant's financial issues are ongoing. While the causes of his financial problems were largely beyond his control, except for the child-support delinquency in SOR ¶ 1.c, he has not acted responsibly or in good faith with respect to his consumer debts or his federal tax obligations, because he has not attempted to resolve them. While he claimed that he does not have sufficient income to satisfy his financial obligations, this lack of resources does not preclude him from filing his late federal income tax returns, thereby undermining that excuse. He compounded these federal tax omissions by failing to file his federal income tax returns for tax years 2022 and 2023. I do not find that he has established a track record of financial stability, nor do I find that he has provided sufficient evidence that he will be able to do so in the foreseeable future.

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. Overall, Applicant's longstanding financial instability and federal tax issues leave me with questions and doubts about his eligibility and suitability for a security clearance. I conclude he 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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.e:	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.

_____/s/_____
Benjamin R. Dorsey
Administrative Judge