



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



In the matter of:

ISCR Case No. 24-00808

Applicant for Security Clearance

Appearances

For Government: Cynthia Ruckno, Esq., Department Counsel
For Applicant: Rochelle Ann Chernikoff, Personal Representative

03/19/2025

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On August 2, 2023, Applicant submitted a security clearance application (e-QIP). On September 25, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the DoD after June 8, 2017.

Applicant answered the SOR on October 25, 2024, and on February 14, 2025, and requested a hearing before an administrative judge. The case was assigned to me on December 18, 2024. The Defense Office of Hearings and Appeals issued a notice of

hearing on January 23, 2025, and the hearing was convened as scheduled on February 25, 2025. The Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. The Applicant offered six exhibits, referred to as Applicant's Exhibits A through F, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on March 10, 2025.

Findings of Fact

Applicant is 69 years old. He is married a second time. He has a high school diploma and about three years of college. He holds the position of Information Manager. He is seeking to obtain a security clearance in connection with his employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information.

The SOR identified 11 allegations concerning delinquent back taxes owed to the Federal Government, and State tax liens filed against the Applicant totaling in excess of \$88,000. Applicant admits each of the allegations set forth in the SOR, except allegation 1.a., an allegation the Government concedes has been paid. Records from IRS Federal Transcripts for the periods from 2017 through 2022; and a County Record of State Liens dated July 8, 2023, confirm the indebtedness listed in the SOR. (Government Exhibits 3, 4, and 5.)

From January 2009 to the present, Applicant was self-employed and did part-time consulting as a Software Engineer. He was also employed at a University from 2001 to 2017, when he retired. In July 2023, Applicant was hired by his current employer. He applied for a security clearance for the first time in August 2023. (Government Exhibit 1.)

In 1988, Applicant married his first wife. During their marriage, and for over a thirty-year period, he and his first wife, in order to build their financial portfolio, invested in rental real estate. His wife, who spearheaded the venture, joined a real estate investment club, and became entrenched in the project as her full-time job. Applicant, as the passive one, just followed her direction. His wife did not maintain good financial records, and although they filed an extension each year to file their annual tax returns, they ultimately did file them as required. Applicant stated that he would estimate the amount of their taxes based upon his gross income and known expenses, but he would not fully itemize or depreciate the expenses, because they did not have proper records.

Consequently, Applicant did not file his Federal and State income tax returns for tax years 2005 through 2019, as required.

As an investment strategy, in 1999, Applicant decided to move money from a couple of his 401k retirement accounts into a self-directed IRA. He explained that he took approximately \$100,000 or so and put it in the custody of an organization that used it to invest in various kinds of real estate entities. Applicant tended to invest in real estate by making private mortgage loans to people he knew. Applicant would direct his IRA to give individuals money to purchase and invest in real estate with the understanding that he was going to get paid back. In several cases, however, Applicant did not receive the payments that he was due. Applicant claims that the organization issued the Applicant a 1099 Form, reporting to the Federal government that he has received the value of the investment when he had not.

This was also a difficult emotional period for Applicant and his wife. They had undergone fertility treatments that failed and they had a failed adoption. They were burglarized several times, and lost thousands of dollars. In 2018, Applicant was laid off unexpectedly, and had to have emergency eye surgery. In early 2000, Applicant's relationship with his wife was floundering. They divorced in May 2022. (Applicant's Exhibit A.)

It was not until February 2021, that Applicant hired a professional tax preparer, (an accounting and tax law firm), to file his delinquent income tax returns. Applicant contends that all of his Federal income tax returns, in question were filed in early 2022. (Tr. p. 29.)

Applicant stated that in early 2024, he was made aware of tax liens filed against him by the State for tax years 2005 through 2010. His attorneys then prepared and filed his state income tax returns in October 2024. Applicant also learned that he owed a substantial amount of money in back taxes to the Federal government for tax year 2016. Upon closer analysis Applicant contends that an error occurred in calculating the taxes owed for tax year 2016, that needs correcting.

Applicant explained that the Federal Government imputed a substantial amount of income to him due to a clerical error that was made on some real estate investment documents regarding his self-directed IRA. They believe that Applicant received substantial income that was not realized as income to him, either in cash or material goods. Applicant's attorney's have filed an appeal to the Federal Government contending that Applicant did not receive this money and that he should not be taxed for such. Applicant is waiting for the corrected adjusted gross income amount to be determined. Once determined, this will adjust his tax liability, and he plans to pay the tax. There has been no decision yet by the Federal Government concerning the results of this appeal.

Applicant further explained that once he receives the corrected adjusted gross income amount from the Federal Government for tax year 2016, it will also affect the

amount he owes the State in taxes. He stated that he will then file the State income tax return and pay the tax due for 2016. With the exception of tax year 2016, all of his Federal and State income taxes have been paid and the liens removed. (Applicant's Exhibits A and C.)

The SOR alleges the following delinquent debts of security concern:

1.a. Applicant is indebted to the Federal Government for delinquent taxes owed for tax year 2015, in the amount of \$618.98. Applicant has satisfied this debt. (Applicant's Exhibit B.) The Government concedes this allegation. Accordingly, it is found for the Applicant.

1.b. Applicant is indebted to the Federal Government for delinquent taxes owed for tax year 2016, in the amount of \$62,672.03. Applicant explained that with the exception of tax year 2016, all of his Federal income taxes have been paid. He is currently waiting for a decision on his appeal. The debt currently remains owing.

1.c. Applicant is indebted to the State tax authorities for a tax lien filed against him for tax year 2016. Applicant explained that with the exception of tax year 2016, all of his State income taxes have been paid, and the liens have been removed. (Applicant's Exhibits A and C.)

1.d. Applicant is indebted to the State tax authorities for a tax lien filed against him for tax year 2014, in the amount of approximately \$4,068.57. The debt remains owing. Applicant stated that he was only made aware of the lien in 2024. He claims that he satisfied the lien in January and February 2025. (Tr. p. 30, and Applicant's Exhibits A and C.)

1.e. Applicant is indebted to the State tax authorities for a tax lien filed against him for tax year 2014, in the amount of \$2,726.12. Applicant stated that he was only made aware of the lien in 2024. He claims that he satisfied the lien in January and February 2025. (Tr. p. 30, and Applicant's Exhibits A and C.)

1.f. Applicant is indebted to the State tax authorities for a tax lien filed against him for tax year 2014, in the amount of \$2,721.96. Applicant stated that he was only made aware of the lien in 2024. He claims that he satisfied the lien in January and February 2025. (Tr. p. 30, and Applicant's Exhibits A and C.)

1.g. Applicant is indebted to the State tax authorities for a tax lien filed against him for tax year 2014, in the amount of \$2,518.16. Applicant stated that he was only made aware of the lien in 2024. He claims that he satisfied the lien in January and February 2025. (Tr. p. 30, and Applicant's Exhibits A and C.)

1.h. Applicant is indebted to the State tax authorities for a tax lien filed against him for tax year 2014, in the amount of \$2,139.94. Applicant stated that he was only

made aware of the lien in 2024. He claims that he satisfied the lien in January and February 2025. (Tr. p. 30, and Applicant's Exhibits A and C.)

1.i. Applicant is indebted to the State tax authorities for a tax lien filed against him for tax year 2014, in the amount of \$3,583.65. Applicant stated that he was only made aware of the lien in 2024. He claims that he satisfied the lien in January and February 2025. (Tr. p. 30, and Applicant's Exhibits A and C.)

1.j. Applicant is indebted to the State tax authorities for a tax lien filed against him for tax year 2023, in the amount of \$393.17. Applicant stated that he was only made aware of the lien in 2024. He claims that he satisfied the lien in January and February 2025. (Tr. p. 30, Applicant's Exhibits A and C.)

1.k. Applicant is indebted to the State tax authorities for a tax lien filed against him for tax year 2023, in the amount of \$7,301.68. Applicant stated that he was only made aware of the lien in 2024. He claims that he satisfied the lien in January and February 2025. (Tr. p. 30, Applicant's Exhibits A and C.)

Applicant is currently married to his new wife, who is also his personal representative for this hearing. They were married in February 2024. His wife is and has been employed for 32 years with the same defense contractor that employs the Applicant.

Applicant's wife testified that she helped the Applicant obtain his employment. She has known the Applicant for about 45 years, and they got re-acquainted in 2021. She stated that she helped him to straighten up his tax issues. Although he has already been meeting with his accounting and legal team when they got together, she ultimately helped with some of the strategies. (Tr. pp. 66-67.)

Letters of recommendation are from the Principal Project Manager, who hired the Applicant; a retiree who used to work with the Applicant; and a Certified Financial Officer, who is also his landlord. They each attest to Applicant's high level of trustworthiness, conscientiousness and dependability. (Applicant's Exhibits D, E, and F.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing 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 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." 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.

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 clearance 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 as to 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. 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness 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 failed to file his Federal and state income tax returns. He also continues to owe significant back taxes for tax year 2016, to the Federal Government and the State in an amount that is currently uncertain. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under the Financial Considerations guideline are potentially applicable 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, or a death, divorce, or separation), 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

(f) 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 has been gainfully employed for many years. For at least fourteen years, from 2005 to 2019, he did not file his annual Federal and State income tax returns, as required by law. During these years, he also incurred tax liability that he did not pay. Recently he filed these Federal and State income tax returns. In addition, he has paid the State tax liens filed against him. However, in regards to tax year 2016, Applicant still owes approximately \$62,000 in Federal back taxes. He has not made one payment towards resolving this debt. Although he has filed an appeal to have the debt reconsidered, he has only recently done this with no resolution at this time. For many years these debts just sat owing and ignored. He has not demonstrated that he is financially responsible. In fact, his history of financial irresponsibility and inaction for so long casts doubt on his current reliability, trustworthiness, or good judgment. His conduct shows poor judgment and unreliability. He needs more time to diligently work towards resolving his remaining back taxes to show the Government that he can be financially responsible. Under the particular facts, the mitigating conditions do not establish full mitigation.

Overall, there is insufficient evidence in the record to show that the Applicant has carried his burden of proof to establish mitigation of the government security concerns under Guideline F.

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. Applicant is currently working on resolving his tax liability for tax year 2016, a large delinquent tax debt he currently owes to the Federal Government. At this time, he does not show a pattern of financial responsibility, and is not found to be sufficiently reliable to properly protect and access classified information.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated the Financial Considerations security concern.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	Against Applicant
Subparagraphs 1.c. through 1.k.	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge