



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-01060

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel

For Applicant: *Pro se*

05/01/2025

Decision

Dorsey, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. The personal conduct security concerns were not established. Eligibility for access to classified information is denied.

Statement of the Case

On October 24, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). He responded to the SOR with an answer dated November 15, 2024, and requested a decision based on the written record in lieu of a hearing.

On December 16, 2024, the Government issued an SOR Amendment that added additional allegations under Guideline F. On January 17, 2025, Applicant responded to the SOR Amendment.

The Government submitted its written case on January 23, 2025. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was advised that

he had 30 days from his date of receipt to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on February 5, 2025, and he did not respond to it. The case was assigned to me on April 10, 2025. The Government exhibits included in the FORM, marked as Items 1 through 10, are admitted in evidence without objection.

Findings of Fact

Applicant is a 35-year-old employee of a government contractor for whom he has worked as a welder since September 2022. He earned a high school diploma in June 2008. He has never married and has no children. He served in the Army National Guard from 2007 until 2013. (Items 3, 4)

In the SOR, the Government alleged Applicant's failure to file his federal and state income tax returns for tax years 2017, 2018, 2019, 2020, 2021, and 2022, as required. (SOR ¶¶ 1.a and 1.b). It also alleged Applicant's four delinquent debts totaling approximately \$16,200 (SOR ¶¶ 1.c through 1.f). These delinquencies consist of the following: a loan for car repairs (SOR ¶ 1.c); a car loan (SOR ¶ 1.d); and two telecommunications debts (SOR ¶¶ 1.e and 1.f). He admitted the Guideline F SOR allegations without additional comment. His admissions are adopted as findings of fact. The Guideline F SOR allegations are established through his admissions and the Government's evidence. (Items 3-10)

In his undated interrogatory response to the Defense Office of Hearings and Appeals (DOHA), Applicant claimed that he filed his federal income tax returns for 2017, 2018, 2019, 2021, 2022, and 2023 in March 2024. He claimed that he filed his 2020 federal and state income tax returns in October 2024. He claimed that he owed \$2,136 in federal taxes for tax year 2020. He claimed that he filed his state income tax returns for tax years 2017, 2018, 2019, 2020, 2021, and 2022 in October 2024. He claimed that he filed his 2023 state income tax return in March 2024. He acknowledged owing state income taxes in the amount of \$1,176; \$503; and \$286, for tax year 2017, 2018, and 2019, respectively. The Government did not allege Applicant owing delinquent taxes in the SOR, so I will not use it for disqualification purposes. However, I will use that information for mitigation purposes and in my whole-person analysis. (Item 4)

Applicant provided no documentary evidence to corroborate that he filed his federal or state income tax returns for tax years 2017, 2018, 2019, 2020, 2021, or 2022. He provided a completed IRS Form 4506-T dated January 24, 2024, requesting a copy of his income tax transcripts for tax years 2017, 2018, 2019, 2020, 2021, and 2022. He provided a contract between himself and a tax relief company that was executed in June 2023, whereby the tax relief company agreed to assist him with resolving his federal and state income tax issues. He also provided a document that showed that he authorized the automatic debit of the \$295 fee that the tax resolution company required to investigate

his tax issues. However, in an undated response to Defense Counterintelligence and Security Agency (DCSA) interrogatories issued on October 24, 2023, he acknowledged that he stopped working with this tax resolution company on an undisclosed date because he could not afford their services. (Items 4, 5)

The delinquent loan that Applicant claimed was for car repairs listed in SOR ¶ 1.c in the approximate amount of \$7,295 has not been resolved. Applicant believed that he only borrowed about \$980 on this account and thought he paid it off. He did not provide any documentation regarding this debt. The debt appears on the 2023 credit report but not on the 2024 or 2025 credit report. (Items 4, 5, 8)

The delinquent car loan listed in SOR ¶ 1.d in the approximate amount of \$5,996 was being resolved, but there is insufficient evidence to show that the resolution continued after about April 2024. Applicant opened this account to finance the purchase of a car in 2017. He became delinquent on the account in about November 2019. In April 2023, after receiving a settlement letter from the creditor, he agreed to pay a settlement amount of \$1,944 in \$40 monthly payments from April 2023 until March 2027. He provided no documentary evidence to show that he made those payments. The May 2023 credit report reflects a balance of \$6,441 and the April 2024 credit report reflects a balance of \$5,996, so the evidence reflects that he has made some payments on this debt. However, the evidence does not reflect any payments since about April 2024. This debt does not appear on the January 2025 credit report. (Items 4, 5, 8, 9)

The delinquent telecommunication debt listed in SOR ¶ 1.e in the approximate amount of \$1,721 has not been resolved. Applicant opened this account in about 2016 as a carrier for his cell phone. He stopped using the account in 2020 because he claimed the service was poor. He claimed that he cancelled the account in 2020, and the creditor did not notify him that he owed money on the account. During his June 2023 security interview, he told the DOD investigator that he would look into the account and have it paid off by the end of 2023. He provided no documentary evidence regarding this account. The account appears on the 2023 credit report, but not the 2024 or 2025 credit reports. (Items 4, 5, 8)

The delinquent telecommunications debt listed in SOR ¶ 1.f in the approximate amount of \$1,206 has not been resolved. Applicant opened this cable account in 2017 and stopped using it in 2019, when he and his ex-girlfriend stopped seeing one another. Applicant claimed he canceled the account in 2019. He does not know whether the account balance is for unused equipment or cable service and claimed the creditor has not notified him that he owed money on the account. During his June 2023 security interview, he told the DOD investigator that he would look into the account and have it paid off by the end of 2023. He provided no documentary evidence regarding this account. The account appears on the 2023 credit report and 2025 credit report, but not the 2024 credit report. (Items 4, 5, 8, 10)

Applicant satisfied two judgments against him that were not listed in the SOR. One was a judgment in detinue for possession of furniture and damages in the amount of \$2,299 entered against him in 2015. He satisfied that judgment in 2016. The other was a judgment for damages in the amount of \$2,290 entered against him in 2019. He satisfied this judgment partially through a wage garnishment in March 2023. (Items 3, 6, 7)

Applicant's financial delinquencies were caused by intermittent periods of unemployment between September 2019 and August 2022, and his breakup with his girlfriend in 2019. With respect to his failure to file his federal and state income tax returns, he claimed that he did not timely file them because he thought his mother was filing them as she had done in the past. He also claimed that he failed to pick up his IRS W-2 form for tax year 2021, because he was unemployed. In his undated response to DCSA interrogatories, he provided a personal financial statement wherein he wrote that he had about \$415 in surplus funds at the end of each month. He has not provided any more recent budget information or evidence to show his current financial status. He provided no evidence that he has undergone financial counseling. (Items 3-5)

Despite being required to divulge his failure to file his federal and state income tax returns for tax years 2017, 2018, 2019, 2020, and 2022 on the 2023 security clearance application (SCA), Applicant failed to do so. The Government alleged these failures to divulge this information on the SCA under Guideline E, claiming that he deliberately omitted that information. Applicant divulged his failure to file his federal income tax return for tax year 2021 on the SCA. He claimed that he did not list his additional federal and state income tax filing deficiencies because he did not realize he had to look back that many years and noted that he volunteered this information to the DOD investigator during the June 2023 security interview. In the SCA, he divulged the delinquent debt listed in SOR ¶ 1.d and the delinquency that resulted in the judgment for damages that I referenced above.

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 within DOD 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 failed to file his federal and state income tax returns for tax years 2017, 2018, 2019, 2020, 2021, and 2022, as required. He had four delinquent debts totaling about \$16,200. 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).

It is reasonable to expect Applicant to present documentation about the resolution of specific debts. *See, e.g.*, ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016). While Applicant claimed that he has filed his delinquent federal and state tax returns and his 2023 federal and state tax return, he provided no documentary evidence to corroborate these filings. Therefore, I find that he has not provided sufficient evidence that he has filed those income tax returns.

To the extent that Applicant claimed that he was resolving the delinquencies in SOR ¶¶ 1.c through 1.f, the only documentation he provided was a payment agreement on the debt in SOR ¶ 1.d, without proof of payments made. As I noted above, the balance on this debt was about \$450 lower on the 2024 credit report compared to the 2023 credit report, but there is no documentary evidence to show any additional payments or a more recent balance.

If Applicant disputed any of the SOR debts because he thought the balance was too high (SOR ¶ 1.c) or he did not know he had an outstanding balance (SOR ¶¶ 1.e and 1.f), these are reasonable bases to dispute a debt. However, he did not provide documentation to substantiate the basis of any dispute, nor did he provide evidence of action he took to resolve the dispute such as calling the creditor or the credit reporting agencies. In June 2023, he claimed that he would contact the creditor of the debts in SOR ¶¶ 1.e and 1.f, but he provided no evidence that he followed through.

I note that Applicant satisfied two judgments not alleged in the SOR, but one of these was at least partially satisfied through an involuntary wage garnishment, and the other was satisfied through unknown sources in 2016, well before he had additional and subsequent financial issues. Additionally, I note that some of the delinquent debts no longer appear on the 2024 or 2025 credit reports. However, a myriad of reasons that do not involve mitigating resolution can cause accounts to drop off subsequent credit reports. It is Applicant's burden to show that the reason that debts no longer appear on a credit

report is a result of a mitigative action. He has not met that burden with respect to these debts.

For these reasons, I do not find that Applicant has provided sufficient evidence to show that any of the mitigating factors apply to his failure to file his income tax returns or his SOR delinquencies.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during the national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

I do not find that Applicant's failure to divulge his failure to file his federal and state income tax returns on the SCA as indicated in the SOR was deliberate. He divulged his failure to file his federal income tax return for tax year 2021 on the SCA. He divulged other derogatory financial information on the SCA. He freely discussed the full extent of his income tax filing failings during the June 2023 security interview. I find this behavior inconsistent with someone who is trying to hide his tax issues. Therefore, I find that there is insufficient evidence that his omission was deliberate. AG ¶ 16(a) does not apply and Guideline E is not established.

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 considered Applicant's military service. I have incorporated my comments under Guidelines F and E in my whole-person analysis.

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 concern. The personal conduct security concern was not established.

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.f:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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