



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



In the matter of:

Applicant for Security Clearance

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) ISCR Case No. 24-00611
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Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

05/16/2025

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

History of the Case

On April 24, 2024, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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 implemented by DOD on June 8, 2017 (AG).

Applicant answered the SOR, and he requested a hearing before an administrative judge. His SOR answer included attachments that were not objected to by Department Counsel. The case was assigned to me on January 7, 2025. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 14, 2024, scheduling the hearing on January 31, 2025, using the video capabilities of the Microsoft

Teams platform. Before the original hearing date, a request for a continuance was granted and an amended notice of hearing was issued on January 10, 2025, and the hearing was held as rescheduled on March 14, 2025. DOHA received the hearing transcript (Tr.) on March 25, 2025.

The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. The Government's exhibit list and discovery letter were marked as HE I and II. Applicant had exhibits at the hearing, but he was unable to provide them to Department Counsel before or during the hearing, so Applicant exhibits (AE) A1 through A15 were admitted post-hearing after Department Counsel had a chance to review them and declined any objections.

Findings of Fact

Applicant admitted two SOR allegations (§§ 1.b and 1.d) and denied two allegations (§§ 1.a and 1.c). I make the following findings of fact.

Applicant is a 34-year-old employee of a U.S. defense contractor. He began working at his current job as an over-the-road truckdriver in April 2023. He is a high school graduate. He is currently engaged, has never married previously, and has no children. Applicant earns about \$8,000 net income a month. (Tr. 6, 23, 46; GE 1)

Under Guideline F, the SOR alleged that Applicant failed to timely file his federal income tax returns for tax years 2018, 2020, and 2021, as required (SOR § 1.a). The SOR further alleged that he owed delinquent federal taxes of approximately \$14,000 for tax years 2018 through 2023, which remained unpaid after April 2024 (SOR § 1.b). The SOR also alleged that he was delinquent on two debts in the approximate amounts of \$9,700 and \$2,900, respectively (SOR §§ 1.c-1.d).

Applicant gave a couple of reasons for his failure to timely file his federal tax returns for 2018, 2020, and 2021. Before that timeframe, a former girlfriend had always prepared his returns, but starting with the 2018 return she no longer assisted him. Additionally, he was unemployed during some of the time and received unemployment benefits, which he did not know was taxable income requiring him to file federal returns. It was sometime in 2020 to 2021 that he learned that his 2018 return had not been filed. He claims to have filed all three returns (2018, 2020, and 2021) on April 12, 2024. He failed to provide documentary evidence supporting that assertion. He further claimed that he had trouble communicating with the IRS, which lengthened his late filings. He was also paying other debts, which caused him to delay his federal tax filings. (Tr. 27-29, 32-33, 36; GE 2 (tax transcripts for 2018, 2020-2021 showing no return filed))

Applicant admitted that he owed federal taxes in the approximate amount of \$14,000. He provided documentation that he has entered several payment arrangements with the IRS over the years. He was paying \$100 monthly before he lost his job in 2020 due to the COVID pandemic. Currently he has reduced his overall balance down to

approximately \$7,000. His current payment toward the IRS debt is \$800 a month. (Tr. 39-40; AE A1-A5)

The first non-IRS delinquent debt (SOR ¶ 1.c) was to a credit union for the deficiency balance on a car Applicant financed. The car was repossessed when he could not make the loan payments after he lost his job. He talked to a credit restoration service about the debt and was told he did not have to pay it because it was over seven years old and beyond the statute of limitations making it unenforceable. He has not made arrangements to pay this debt. (Tr. 41-43)

The second non-IRS delinquent debt (SOR ¶ 1.d) was incurred when he was charged for damage to his apartment. Applicant documented that the debt was paid in April 2024. (Tr. 43-44; AE A14-A15)

Policies

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 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, 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. According to AG ¶ 2(a), 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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 evidence showed Applicant failed to timely file his federal income tax returns for tax years 2018, 2020, and 2021. He also failed to pay his taxes owed. Additionally, he

was delinquent on two consumer debts. I find the above disqualifying conditions are raised by the evidence.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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.

Applicant claims to have now filed all his delinquent tax returns, yet he failed to document that fact. Even if he has filed all his returns, that was not done until after the SOR was issued. His reason for not timely filing is that he put the responsibility on someone else, which obviously has no mitigative effect. None of the mitigating factors apply to his failure to timely file his income tax returns. He acknowledged owing the IRS approximately \$14,000, and to his credit, has paid that down to about \$7,000 through a payment plan with the IRS. The COVID pandemic had some impact on this financial status because he lost his job. This certainly was a circumstance beyond his control. However, the evidence does not show that he acted responsibly regarding his repossessed car debt when he allowed it to age-off his credit report without paying it. He does receive some mitigating credit for resolving the apartment debt and entering into a payment plan with the IRS. AG ¶¶ 20(d) and 20(g) apply to SOR ¶¶ 1.b and 1.d. AG ¶ 20(b) does not apply.

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 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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F 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. For all these reasons, I conclude Applicant failed to 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 and 1.c:	Against Applicant
Subparagraphs: 1.b and 1.d:	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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge