



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



In the matter of:

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ISCR Case No. 23-02900

Applicant for Security Clearance

Appearances

For Government: Daniel O'Reilley, Esq., Department Counsel

For Applicant: *Pro se*

07/07/2025

Decision

Curry, Marc E., Administrative Judge

Applicant has not filed his federal and state income tax returns since 2018. Although the problems preparing his income tax returns initially corresponded with complex income tax issues related to a contentious divorce, he still has not filed his returns despite the fact that his divorce was finalized more than three years ago. Under these circumstances, I conclude Applicant has failed to mitigate the financial considerations security concern. His application for a security clearance is denied.

Statement of the Case

On January 29, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudications Services (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as

amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On October 11, 2024, Applicant answered the SOR, admitting subparagraphs 1.a and 1.b, and denying subparagraphs 1.c and 1.d. He requested a hearing, whereupon the case was assigned to me on January 13, 2025. On March 12, 2025, the Government amended the SOR, as follows:

1.e You are indebted to [Creditor X] on an account that has been charged off in the approximate amount of \$25,788. As of the date of this SOR, the account remains delinquent.

Applicant admitted the additional allegation. On April 29, 2025, the hearing was held, as scheduled. I considered the testimony of Applicant, together with four Government exhibits (Government Exhibit (GE) 1 – GE 4) and Applicant's Exhibit (AE) A and AE B. The transcript (Tr.) was received on May 7, 2025.

Findings of Fact

Applicant is a 37-year-old single parent with two children, ages 13 and 11. He has been divorced since February 2022 and he has legal and physical custody of the children. (Tr. 25)

Applicant is an information technology professional. He has earned some college credit and several certifications. He has been working for his current employer in the field of virtual technology for the past nine months. (Tr. 20) He has held a security clearance since 2012. (Tr. 20)

Applicant failed to file, as required, federal and state income tax returns for 2019 through 2022, as alleged in subparagraphs 1.a and 1.b. (Answer at 1) He fell behind on his tax filings because he got sidetracked by a contentious divorce which involved complex issues related to which spouse could claim the children as deductions on their respective income tax returns. (Tr. 21)

Applicant's divorce was finalized in February 2022. (GE 3) In May 2022, he met with an investigative agent. He told the agent that he had retained an accountant and had initiated tax filing proceedings. (GE 3 at 5)

As of April 2024, Applicant still had not filed his overdue income tax returns. That month, he reached out to a debt counselor for help with preparing them. (Tr. 41) Although the debt counselor drafted a retainer that month, Applicant did not retain the counselor until a year later, one day before the hearing. (Tr. 41; AE A) His overdue income tax returns remain unfilled.

The SOR alleges that Applicant owes approximately \$19,397 in back federal income taxes for 2019, as alleged in subparagraph 1.c, and approximately \$73,988 in back federal income taxes for 2020. Applicant denies these balances, alleging that once his finances and his delinquent tax returns are organized and filed, “it is possible that the amount will be less than what is being reported.” (Answer at 2) Applicant provided no documentary support for his contention. Absent any evidence to the contrary, I find that Applicant owes the approximate amount of back income taxes, as alleged in the SOR.

Applicant is indebted to a credit card company in the approximate amount of \$25,788, as alleged in subparagraph 1.e. (Tr. 48) On April 28, 2025, the day before the hearing, Applicant made a payment towards the resolution of the debt, totaling \$788. (AE B) Applicant has entered into a payment plan with the creditor under which he will pay the creditor \$460 per month until the remaining debt is satisfied. (Tr. 50)

Applicant has a part-time job that pays him approximately \$80,000. His total annual income is approximately \$250,000. (Tr. 50)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny 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 ¶ 1(d) 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

The security concern under this Guideline states, "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." (AG ¶ 18)

Applicant's failure to file his federal and state income tax returns, his outstanding tax delinquencies, and his commercial delinquency trigger the application of AG ¶ 19(a), "inability to satisfy debts," AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(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 following mitigating condition under AG ¶ 20 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;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debt; 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's failure to file his income tax returns or pay the corresponding debts corresponded with a contentious divorce proceeding that involved the disposition of complex tax issues. Conversely, the divorce was finalized in February 2022 and Applicant still has not either filed his income tax returns or made any payments towards the income tax delinquencies. Similarly, he just made his first payment on his delinquent credit card bill the day before the hearing. Under these circumstances, AG ¶ 20(b) is partially applicable with respect to the circumstances causing Applicant to lose control of his finances, but his continued failure to file his income tax returns indicates irresponsibility and renders the remainder of AG ¶ 20(b) inapplicable.

Similarly, Applicant's ongoing financial problem renders AG ¶ 20(a) inapplicable, and he only recently made arrangements to file his federal tax and state tax returns, which renders AG ¶ 20(g) inapplicable. Applicant just retained the day before the hearing a debt counselor to help him resolve the federal income tax delinquencies, and he contacted the creditor of the debt alleged in subparagraph 1.e to arrange a payment plan the day before the hearing. Consequently, AG ¶¶ 20(c) and 20(d) do not apply.

Whole-Person Concept

I considered the whole-person concept factors in my analysis of the disqualifying and mitigating conditions, discussed above, and they do not warrant a favorable conclusion.

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.e:

Against Applicant

Conclusion

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

Marc E. Curry
Administrative Judge