



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



In the matter of:)
)
) ADP Case No. 24-01745
)
Applicant for Public Trust Position)

Appearances

For Government:
Rhett E. Petcher, Esq., Department Counsel

For Applicant:
Samir R. Nakhleh, Esq.

04/23/2026

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for a position of public trust is granted.

Statement of the Case

On September 2, 2020, Applicant submitted a Questionnaire for National Security Positions (Questionnaire). On December 26, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The DCSA acted 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 adjudicative guidelines (AG) implemented by the Department of War (DOW) on June 8, 2017. On September 11, 2025, in accordance with ¶ E3.1.17 of the Directive, Department Counsel amended the SOR with an additional allegation under Guideline F.

In Applicant's February 5, 2025 response to the SOR (Answer 1), he admitted, through counsel, all allegations in the SOR. On September 20, 2025, he responded to the SOR amendment (Answer 2) and likewise admitted to the new allegation. He provided an expansive explanation with his answers, as well as Applicant's Exhibits (AE) A through I. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge.

On March 20, 2025, the Government was ready to proceed to a hearing. I was assigned this case on July 1, 2025. DOHA issued a notice on August 13, 2025, scheduling the hearing for September 11, 2025, by video teleconference. The hearing proceeded as scheduled. The Government proffered evidentiary exhibits identified as Government Exhibits (GE) 1 through 5. Applicant offered AE A through I, which had been provided previously with his answer, as well as AE J through X. Applicant testified and at his request, I left the record open until September 25, 2025, to provide him an opportunity to supplement the evidentiary record. Applicant timely submitted AE Y through EE. All exhibits offered by the parties were admitted without objection. DOHA received the hearing transcript (Tr.) on September 18, 2025, and the record closed on September 25, 2025.

Findings of Fact

Applicant is 53 years old. He has been married to his present wife since 2005, and they have two minor children together. He enlisted in the Navy as a corpsman in September 1990 and was honorably discharged in April 1999. He then joined the Naval Reserve in June 2000 and was later activated from August 2004 through March 2005 during Operations Noble Eagle and Enduring Freedom, where he served as a field medical service technician with the Marine Corps 2nd Force Reconnaissance Company on the Syrian border. He was extensively trained in field medicine, reconnaissance and surveillance, and jungle warfare. During his years of service, he completed a combat tour and at least a dozen deployments. He received numerous decorations and awards including the Enlisted Fleet Marine Force Warfare Specialist device, a Navy and Marine Corps Achievement Medal (with Combat Distinguishing Device), the Navy Reserve Meritorious Service Medal, two Good Conduct Medals, and a Combat Action Ribbon. He was also nominated for a meritorious promotion "for heroism and gallantry." Applicant was honorably discharged from the reserves in February 2017 and has held a security clearance in the past. (AE C – F; GE 2 at 7, 17-18, 20-22, 29-30; Tr. at 15-16, 25.)

On his release from active duty in 1999, Applicant ran a small gym until approximately March 2020. The gym remained financially solvent until Applicant's recall to active duty in 2005 when other managers ran the facility in his absence – then the business started running at a loss. Applicant returned to Iraq as a civilian contractor from September 2006 to December 2010, working as part of a High Threat Protection Detail. When he returned full-time to the United States, he worked 80 to 90 hours per week at the gym as he struggled to keep it running, but by 2020 he had to shut it down. (AE E; GE 1 at 10; Tr. at 17-19, 38-40.)

Applicant was also employed as a city firefighter from April 2015 to March 2020, and then in March 2020 as an instructor with his current employer, the sponsoring Department of War contractor. In that role, he teaches a combat casualty care course to Navy students. (AE E; Tr. at 22-23.)

While working in Iraq as an independent contractor, Applicant was earning over \$100,000 per year. He did not file state or federal tax returns during this timeframe based on admittedly bad advice from a coworker. When he returned to the United States in 2010 from his civilian contractor position in Iraq, he still did not file tax returns as he was focused on trying to get the gym up and running. Knowing his tax responsibilities, he did put money aside for the taxes but ended up spending a great deal of the funds on the gym to keep it afloat. He explained that he “was behind financially and just kept waiting to get things right. And it never did. There’s no good answer.” Ultimately, he ended up owing approximately \$80,000 in back taxes. (GE 3 at 5-6; Tr. at 26-27, 46-47, 50-51.)

Applicant initially sought assistance from a tax preparer in 2007 and paid her nearly \$3,000. The tax returns she prepared, however, appeared riddled with fraud and sought to obtain large refunds – with the preparer set to receive sixty percent of each refund. Applicant refused to file the returns she prepared, but took no other action to file timely, accurate tax returns. (Tr. at 53.)

In 2020 or 2021, Applicant contacted a new tax consultant to assist him with getting his taxes in order. The consultant advised that there was no requirement for him to file delinquent taxes prior to 2015 and, as a result, those returns were never filed. The tax preparer filed all of Applicant’s state and federal returns for 2015 through 2022. Applicant has no balance due. The returns for tax years 2015 through 2018 were filed in June 2022; 2019 and 2020 in September 2022; and 2021 and 2022 in August 2023. Applicant’s tax returns for 2023 and 2024 have also been filed. (AE A, AE J – S, AE Y – DD; GE 3 at 5-6, 12-14; GE 5; Tr. at 27, 49.)

It was also during 2021 that Applicant’s home went into foreclosure. In 2016, he and his family moved from the family home to a mobile home on property owned by his in-laws to be in a better school district and save money. They attempted to sell the family home at that time, but the value of the home was less than the mortgage – so they rented it. They went through several renters, most (if not all) of whom fell behind paying their rent. Then during the COVID pandemic, the tenants refused to pay any rent. Also, Applicant was still spending money on the gym business that might have otherwise gone to the mortgage payments. In addition, the situation was exacerbated by a name error on the property title, which allegedly precluded the lender from accepting proffered checks. As a result of all of this, Applicant was so far behind on the mortgage by 2021 that he “let the bank have it.” Applicant did not know if he had any equity in the house when he turned it over, but the SOR does not allege any money owed on the mortgage. (GE 3 at 15; Tr. at 34-36, 71-72, 75-77.)

SOR Allegations

The SOR, as amended, alleges failure to file federal income tax returns from 2006-2019 and 2020; failure to file state taxes from 2006-2014; failure to pay “quarterly taxes” from 2006 through 2010; and a 2021 foreclosure on a mortgage. In his Answer, Applicant admitted all of the allegations.

SOR ¶ 1.a. Federal tax returns (2006-2019 and 2020). Applicant did not file federal tax returns from 2006 – 2014 due to a combination of heeding bad advice coupled with poor decision-making. When he finally retained the services of a professional tax preparation service in 2020/2021, he still did not file returns for that timeframe, as they opined “IRS only requires the filing of the last six years of tax returns for compliance.” As noted, tax returns for years 2015 – 2018 were sent to the IRS on June 29, 2022; tax returns for years 2019 and 2020 were sent to the IRS on September 2, 2022; and tax returns for years 2021 and 2022 were sent to the IRS on August 22, 2023. All of these tax returns resulted in refunds being issued. No balances are due. (AE A at 1; GE 3 at 12-13; Tr. at 27.)

SOR ¶ 1.b. State tax returns (2006-2014). Applicant did not file state tax returns from 2006 to 2014 due to a combination of heeding bad advice coupled with poor decision-making. When he finally retained the services of a professional tax preparation service in 2020/2021, the service opined that tax returns from that far back were not required to be filed by the state. Since then, he is current with his state tax filing responsibilities and does not owe any back taxes. He recently received a refund from the state. (GE 3 at 13-14; Tr. at 29.)

SOR ¶ 1.c. Foreclosure (2021). Applicant and his family moved out of the family home in 2016 to save money and address debt. After years of receiving sporadic rental payments on the property from tenants, the property debt became overwhelming by the time COVID hit and tenants held back all rent. Applicant agreed to a voluntary foreclosure in 2021. He does not owe anything on the mortgage. (GE 3 at 15; Tr. at 34-36, 71-72, 75-77.)

SOR ¶ 1.d. Quarterly taxes (2006-2010). As explained *supra*, Applicant did not file any tax returns or pay any taxes during this timeframe. (Tr. at 27.)

Mitigation and Whole-Person Evidence

I have carefully reviewed all of Applicant’s testimony and exhibits addressing mitigation and the whole-person analysis. Below is a summary of the most significant evidence.

Applicant submitted personal decorations and awards as well as a nomination for combat meritorious achievement. All of these reflect heroism and gallantry of service during his combat deployment and time in service. No additional evidence was offered as to his character or work achievements since 2005. (AE C, AE D, AE F, AE G.)

Policies

When evaluating an applicant's suitability for access to sensitive information, 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(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."

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 sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive 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;
- (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 Government established all of the above potentially disqualifying conditions as it pertains to SOR ¶¶ 1.a, 1.b, and 1.c. As a result, the burden shifts to Applicant to provide evidence in mitigation of the security concerns raised by the record evidence. Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable in this case:

- (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 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 bears the burdens of production and persuasion in mitigation. The Appeal Board has often repeated that a failure to timely file taxes suggests a “problem with complying with well-established governmental rules and systems,” and “[v]oluntary compliance with such rules and systems is essential for protecting classified information.” Additionally, the Appeal Board has noted in the past “a clearance adjudication is not directed at collecting debts. . . . By the same token, neither is it directed toward inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant’s judgment and reliability.” ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016.)

To that end, Applicant obviously did not comply with state and federal taxation requirements for over a decade. However, several mitigating factors must be taken into consideration. First, the behavior happened long ago with all tax filing issues and the foreclosure being remedied well before the issuance of the SOR. Second, Applicant’s financial and tax issues began as a result of his activation to a combat zone where he served with heroism and gallantry, all while his small business suffered in his absence. The financial distress caused by the small business failure then snowballed into further financial issues. He moved his family to a mobile home, tried to sell the family home, and tried to keep his business afloat.

Applicant’s initial handling of these issues left a great deal to be desired, as he acknowledged time and again at hearing. But from performing in combat, to serving with the municipal fire department, to now training Sailors in life-saving skills as a civilian, the over-arching theme of Applicant’s work history is one of public service and dedication to country. The gravamen of Guideline F is to examine an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Applicant’s ultimate satisfaction of his financial and tax issues lay to rest any concern about his trustworthiness when coupled with his service to country.

Regarding SOR ¶ 1.d, the Government alleges Applicant “failed to pay, as required, (his) estimated quarterly taxes from at least 2006 through 2010.” This inartful amendment to the SOR requires first the assumption that it was *federal* taxes Applicant was to pay and second that there was in fact a *requirement* that he pay them quarterly. Applicant admitted to the allegation in Answer 2, but at hearing noted his confusion while in Iraq stating, “Everybody was (paying) yearly (in Iraq). Nobody was (paying) quarterly.” (Tr. at 82.) The Government, however, has offered no proof to the contrary. Instead, the

Government presents the assumption that Applicant had a requirement to pay estimated quarterly taxes for that five-year span.

The Appeal Board has confirmed that whether an Applicant knew he was required to file taxes is a key issue. ISCR Case No. 19-03577 at 2 (App. Bd. Sep. 8, 2022). Applicant acknowledged at hearing having an \$80,000 tax debt from that period and setting aside salary for the purpose of paying the taxes in a timely manner. He then conceded he spent the money instead on his small business. The record evidence reflects that at least as of the date of the issuance of the SOR, Applicant has no tax debt to the United States. Likewise, Applicant acknowledged needing to file returns and pay taxes, but knowledge of the estimated quarterly tax requirement levied on Applicant by the Government is not supported by the record evidence. (Tr. at 46-47.)

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of public trust 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 trustworthiness determination 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 incorporated my comments under Guideline F and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant's combat record, long history of public service, and dedication to our nation is impressive. After eight years of active duty service, he shifted to the reserves and became a small business owner. Upon recall to active duty, his business suffered. After returning again to civilian life, he admittedly made poor decisions while struggling through real-life difficulties of business losses, COVID, and managing a family. He was late in getting his financial situation in order, but he finally did – all prior to the issuance of the SOR. Overall, the record evidence leaves me without questions or doubts as to Applicant's suitability for a position of public trust.

