



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



In the matter of:

ISCR Case No. 17-00106

Applicant for Security Clearance

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

01/22/2018

**Decision**

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the financial security concerns arising from unpaid taxes, student loans, and delinquent debts. National security eligibility for access to classified information is denied.

**History of Case**

On December 28, 2015, Applicant submitted a security clearance application (SF 86). On February 21, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) alleging 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 adjudicative guidelines effective within the DoD after September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.<sup>1</sup>

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<sup>1</sup> I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR in writing on March 14, 2017 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on April 24, 2017. DOHA issued a Notice of Hearing on July 7, 2017, setting the hearing for August 2, 2017. Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence. Applicant testified, and offered Exhibits (AE) A through O into evidence. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on August 10, 2017. The record remained open until September 15, 2017, to permit submission of additional evidence. Applicant timely submitted AE P, which included seven pages, and was admitted without objection. He subsequently requested permission to submit an additional exhibit on September 25, 2017. Department Counsel had no objection to his request, and I marked that as AE Q and admitted it into evidence.

### **Procedural Ruling**

At the conclusion of the hearing and based on the evidence, Department Counsel moved to amend the allegation in SOR ¶ 1.m to read as follows:

You are indebted to the Federal Government for delinquent taxes in the amount of \$38,318 for tax years 2012 and 2014. As of the date of the Statement of Reasons the taxes remain unpaid.

Applicant understood the amendment and did not object. The motion was granted, and the record remained open after the hearing in order to give Applicant adequate time in which to submit additional evidence pertinent to this amendment. (Tr. 65-66)

### **Findings of Fact**

Applicant is 38 years old and divorced. He has a six-year-old son for whom he provides child support. He earned a bachelor's degree in 2001. He has worked for his employer, a defense contractor, since 2002. His supervisor is aware of this hearing and the underlying financial issues. (Tr. 22-24; GE 1)

Applicant earns \$200,000 annually. He currently resides with his mother to save money and while contemplating a move. (Tr. 29-30) He was earning \$300,000 annually between 2010 and 2012. His salary then decreased to \$150,000, but increased to \$200,000 in 2014, where it remains. (Tr. 31-32; AE N) According to a budget he submitted for rehabilitating his student loans, he has about \$6,600 remaining each month after paying expenses. (AE G) He has not taken credit or budget counseling, but has spoken to a knowledgeable friend for guidance. He monitors his credit monthly through a credit bureau and an identity protection company. He uses online accounting software to track spending. (Tr. 25-26)

After submitting his December 2015 SF 86, Applicant was interviewed by a government investigator in August 2016. Applicant discussed some of his delinquent debts, including a foreclosure. The investigator confronted him about delinquent debts

listed on his credit report, which included many debts subsequently alleged in the SOR. (GE 2)

Applicant attributed his financial problems to the foreclosure of his condo in 2014 and a lack of attention to his finances. He had not reviewed a credit report for a year or two prior to starting the security clearance process in 2015, at which time he learned of outstanding delinquent debts. Applicant purchased a condo in 2009 for \$190,000. He subsequently attempted to refinance the mortgage several years later during the real estate downturn and learned that the appraised value had decreased to \$60,000. He then chose to stop making mortgage payments in 2013 because he did not believe he would be able to recoup his initial investment. The bank foreclosed on the property in 2014. He acknowledged that he was financially able to make the payments. (Tr. 26-29; GE 2)

Applicant has a history of some tax issues beginning with tax year 2012. He gave his tax documents to his accountant for 2012, but his accountant did not timely file the 2012 tax returns. Applicant disclosed the omission when he filed his December 2015 SF 86. He said he filed his 2013 returns on time. (Tr. 51-55; GE 1)

In April 2017, Applicant filed his 2012 Federal and state tax returns. On July 24, 2017, the IRS sent Applicant a notice that he owed the Federal government \$22,663 for 2012. That amount was due by August 14, 2017. Applicant said he did not owe the state any money for 2012 taxes. (Tr. 54; AE N)

On May 22, 2017, the IRS notified Applicant that he also owed the Federal government \$15,078 for unpaid taxes for 2014.<sup>2</sup> On July 28, 2017, he entered into an installment agreement with the IRS to pay his delinquent taxes for 2012 and 2014, which totaled \$38,318. His monthly payment was \$605. On August 29, 2017, he paid his delinquent 2014 federal taxes and the IRS released a tax lien it filed in April 2017. Applicant is attempting to negotiate a new payment amount for his outstanding 2012 federal taxes, which amount he disputes. (Tr. 60-64; AE P, AE Q)

Applicant filed his 2015 Federal and state tax returns within the extension of time that he applied for and received. According to an IRS notice from November 26, 2016, he owed \$811 for that year, which was due by December 19, 2016. He paid that on July 17, 2017. On September 6, 2017, the IRS released its tax lien for 2015. (AE N, AE P)

Based on credit bureau reports (CBR) from January 2016, December 2016, and August 2017, the SOR contained 14 allegations: two debts related to Applicant's mortgage foreclosure; six unpaid medical debts; one delinquent student loan, two unpaid utility bills; one unpaid retail debt; failure to timely pay federal taxes in the amount of \$38,318 for 2012 and 2014; and failure to timely file federal and state income tax returns for years 2012 and 2015. The allegations accumulated between 2013 and 2015. (GE 3, GE 4, GE 5; Tr. 27-28) The status of those allegation is as follows:

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<sup>2</sup> The date on which he filed his 2014 tax returns is not clear.

SOR ¶ 1.a alleged that Applicant defaulted on his primary mortgage, which had a balance of \$182,326 in 2014 when the bank foreclosed on the property. (GE 4; Answer) The property sold for \$57,000 through a foreclosure. He said he did not receive an IRS Form 1099C indicating that his mortgage debt was cancelled and he owed taxes on that income. (Tr. 26-28, 36-37) It is resolved.

The \$21,622 indebtedness listed in SOR ¶ 1.b also relates to Applicant's primary mortgage and represents a deficiency that the bank was collecting. Applicant settled that debt for \$5,000 and paid it in May 2017. (Tr. 37-38; GE 5) It is resolved.

Unpaid medical debts are alleged in SOR ¶ 1.c (\$598), SOR ¶ 1.d (\$191), SOR ¶ 1.i (\$573), SOR ¶ 1.j (\$506), and SOR ¶ 1.l (\$66). Some of them were paid in March 2017, and some appear to be duplicates. It is unclear which ones, if any, are outstanding. These debts are from 2013, 2014 and 2015. (Tr. 38- 41; AE C, AE D, AE E)

Applicant paid the \$324 debt listed in SOR ¶ 1.f in October 2016. It was owed to a retail store since 2015. (Tr. 42; AE F) It is resolved.

A past due amount of \$331 was alleged in SOR ¶ 1.g, relating to Applicant's delinquent student loans. Applicant had an outstanding balance of \$12,727 owed for student loans taken out for a bachelor's degree that he completed in 2001. He admitted that he stopped making payments on the loans in 2014 when the foreclosure process began. He had enough money to make payments, but irresponsibly chose not to do so. In July 2017, he agreed to make nine monthly payments of \$115, in order to bring the loans into current status. At this time, the creditor will not permit him to make larger payments or pay the debt in full. (Tr. 43-46; AE G)

The utility bill listed in SOR ¶ 1.h for \$244 was paid in March 2017. (Tr. 47-48; AE H) It is resolved.

The utility bill listed in SOR ¶ 1.k for \$242 was paid in March 2017. (Tr. 50) It is resolved.

The medical bills listed in SOR ¶ 1.e for \$66 and SOR ¶ 1.l for \$66 describe the same debt, which was paid in March 2017. (Tr. 50; AE L) It is resolved.

SOR ¶ 1.m alleged that Applicant was indebted to the Federal government for unpaid income taxes for 2012 and 2014 in the total amount of \$38,318. As explained above, this debt is not fully resolved.

SOR ¶ 1.n alleged that Applicant failed to timely file his Federal and state tax returns for 2012 and 2015 as legally required. Applicant did not file his 2012 Federal tax return until April 2017. However, the evidence does not support the allegation that he failed to timely file his 2015 Federal tax return.

Applicant admitted that receipt of the SOR was the motivating factor for taking action to resolve his outstanding financial obligations. He also stated that he was unaware of the scope of his delinquencies until then. He asserted that he will resolve his financial obligations. (Tr. 65)

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 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 applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant

concerned.” See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline F: Financial Considerations**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes conditions that could raise security concerns. Three may be disqualifying in this case:

- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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 has a history of financial difficulties which began in 2012 with unfiled tax returns and unpaid taxes. His delinquent debts and unpaid tax problems occurred between 2012 and 2015, as documented by his admissions, the CBRs, and other documentary evidence. He had been unwilling to fully satisfy or resolve those debts until after receiving the SOR in February 2017. These facts establish *prima facie* support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant’s alleged financial difficulties. The following may 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, or 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 did not present evidence to establish mitigation under AG ¶ 20(b). He admitted that he could afford the mortgage payments on his condo, but chose not to make them because of the decrease in its value and his desire not to lose his total investment. He also honestly admitted that he failed to responsibly manage his finances and debts. These were circumstances within his control.

Applicant did not provide evidence that he participated in credit or financial counseling and that his financial and tax delinquencies are sufficiently under control, as required under AG ¶ 20(c). He established some mitigation under AG ¶ 20(d), as he paid medical and other delinquent debts; however, he only recently started to resolve his student loans, which have not been addressed since 2014. His 2012 and 2015 Federal and State income tax returns are filed. He recently paid his 2014 and 2015 Federal taxes and set up a payment plan for his 2012 Federal taxes. The evidence establishes limited mitigation under AG ¶ 20(g), given the fact that his actions on these tax matters are quite recent and occurred subsequent to receiving the SOR.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case, including those mentioned in the analysis of the financial considerations guideline. Applicant is an educated and successful individual, who has worked for his employer 2002 and earned a high salary. He was candid and forthright during his testimony. He expressed remorse over his financial delinquencies and irresponsible management of them. These are positive factors in this case. However, several facts remain concerning. He has known about his 2012 tax problem for at least two or three years, yet it remains unresolved in spite of earning a substantial salary over the years. He admittedly did not begin addressing his delinquent debts, student loans, or unfiled and unpaid taxes until after he received the SOR, and realized his employment status may be in jeopardy. At this time, he has not established a solid record of responsibly managing his taxes, student loans, or delinquent debts. Overall, he has not met his burden to mitigate the security concerns arising under the guideline for financial considerations.

### **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraphs 1.h through 1.l:	For Applicant
Subparagraphs 1.m and 1.n:	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 Applicant access to classified information. National security eligibility is denied.

SHARI DAM  
Administrative Judge

