



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



In the matter of:

ISCR Case No. 17-00214

Applicant for Security Clearance

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

December 29, 2017

**Decision**

GOLDSTEIN, Jennifer, Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, Financial Considerations. His history of indebtedness and failure to timely file and pay his Federal and state income tax obligations is still of concern. National security eligibility for access to classified information is denied.

**Statement of the Case**

On February 15, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. The action was taken 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) effective within the DOD on September 1, 2006.

Applicant answered the SOR in writing (Answer) on March 13, 2017, and requested a hearing before an administrative judge. The case was assigned to me on

June 21, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on June 21, 2017. I convened the hearing as scheduled on August 1, 2017. The Government offered Government Exhibits 1 through 8, which were admitted without objection. Applicant testified on his own behalf, and presented Applicant Exhibits (AE) A through E. The Government moved to amend allegation 1.f to correct a typographical error in the account number. Applicant had no objection and the motion was granted. (Tr. 68.) DOHA received the transcript of the hearing (Tr.) on August 9, 2017. The record was left open for the receipt of additional evidence. On August 30, 2017, AE F through AE H, consisting of nine documents, were submitted and received without objection. The record closed as scheduled on September 1, 2017.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions<sup>1</sup> issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG promulgated in SEAD 4.

### **Findings of Fact**

Applicant admitted SOR allegations 1.a through 1.h, with explanations. After a thorough and careful review of the testimony, pleadings, and exhibits, I make the following findings of fact:

Applicant is 54 years old. He is married and has two children. He served in the Air Force from 1985 to 1989. He received an honorable discharge. He earned a Master's of Science in Information Technology in 2015. He attributed his financial delinquencies to unemployment between May to September 2010, and August to November 2015; a costly relocation in 2012-2013; lending his daughter money; stress related to his mother's Alzheimer's care; and unanticipated vehicle repairs. (Answer; GE 1; GE 8; AE C; AE D; Tr. 37-39, 60-61, 95, 96.)

Applicant has experienced financial problems in the past, which led to a 1997 Chapter 7 bankruptcy.<sup>2</sup> Through that Chapter 7, he discharged over \$10,000 worth of debt. (GE 6; Tr. 87-88).

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<sup>1</sup> SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

<sup>2</sup> Applicant's 1997 Chapter 7 bankruptcy was not alleged on the SOR and will only be considered for purposes of mitigation or analysis of the whole person.

Applicant was alleged to be delinquent on an automobile loan in the total amount of \$18,593, as stated in SOR ¶ 1.a. As of October 2016 he was past due on this debt in the amount of \$1,586. He testified that he contacted this creditor and made payment arrangements. He is now current on his payments to this creditor as reflected on a June 2017 credit report. This debt is being resolved. (GE 4; GE 5 at 4; Tr. 38-39, 41, 69.)

Applicant was alleged to be delinquent on a charged-off line of credit in the amount of \$2,167, as stated in SOR ¶ 1.b. He testified that this loan was for vehicle repairs and that he knew he could not afford to repay the loan at the time he procured it. He recently offered to make payments to this creditor, but that the creditor has demanded one payment of \$1,000 to resolve this account. Applicant cannot afford that payment. This debt is unresolved. (GE 3; GE 4; AE B; AE E; Tr. 42-46, 70.)

Applicant was alleged to be indebted on a delinquent telecommunications account that had been placed for collections in the amount of \$1,316, as stated in SOR ¶ 1.c. He made payment arrangements with this creditor to resolve the debt through monthly payments of \$100. Applicant's June 2017 credit report reflected that this debt was paid in full for less than the full balance. It is resolved. (GE 4; GE 5; AE B at 1; AE E; Tr. 47-50.)

Applicant was alleged to be indebted on a judgment filed against him in March 2015, in the amount of \$16,600, as stated in SOR ¶ 1.d. He testified the debt was for unpaid rent, which became delinquent when Applicant was laid off from his job in 2015. He has been unable to make payments on this debt because he cannot locate the creditor. This debt is unresolved. (GE 3 at 3; AE B; AE F; Tr. 50-53, 70-74.)

Applicant was alleged to be indebted on a delinquent account that had been placed for collections in the amount of \$256, as stated in SOR ¶ 1.e. Applicant explained that this debt was alleged to be owed for unreturned cable equipment, but that he had returned the equipment in question. The account was removed from his credit report after he disputed it with the creditor by phone. He provided no documentation to support his claim. This debt is unresolved. (GE 3 at 6; Tr. 53-56, 69.)

Applicant was alleged to be indebted on a delinquent medical account that was placed for collections in the amount of \$326, as stated in SOR ¶ 1.f. Applicant testified he contacted this creditor and made arrangements to settle the debt for \$325. He documented that he successfully made payments on this debt until it was resolved. (AE B at 4; AE E; Tr. 56, 69.)

Applicant failed to timely file and pay his Federal income tax returns for tax years 2008, 2009, 2010, and 2011, as required. Internal Revenue Service (IRS) account transcripts reflect Applicant's 2008 Federal income tax returns were not filed by Applicant, but instead substitute tax returns were prepared by the IRS after Applicant failed to file. He has a zero balance due on his 2008 Income taxes. (AE H.) His 2009 Federal income tax return was filed in September 2011, and currently has a zero balance. (AE H.) His 2010 Federal income tax return was filed late in September 2011, and has a zero balance. His 2011 Federal income tax return was filed in May 2012 and has a zero balance. He

acknowledged that he “just didn’t have the money to pay [his] taxes” at the time they were due. (Tr. 60.) An IRS agent visited him at his home in 2011. (Tr. 80-81.) He explained:

Probably like around 2011 or something like that. I don't remember. I honestly don't remember. But he did come to my house. I had to go see him at the [city omitted] Office when they were down there. I don't know if they're still there or not. And I had to go to his office, and we sat down. He went over all my taxes. He said you owe \$47,000. You know, can you pay it? No, I can't. Okay. We're going to file for you. You know, well, they filed for me. That's how I know I owed them \$47,000. They said we're going to put you in the status where you can't pay, but you've still got -- oh, that's where he got the Tax Lien from, like I said, because if you can't pay anything for the taxes, you can pay to remove the Tax Liens. So, then I went and filed my taxes for all those years and come to find out, I didn't owe anything. And that's -- that all was the difference -- and that's why they removed the Tax Liens. Again, I know that reflects on me badly. (Tr. 62.)

Two state tax liens filed against Applicant in 2011 for \$17,364 and \$34,843 were released in 2014. (GE 5.) He claimed to have filed his delinquent state incomes taxes in 2011. (GE 7.) However, he did not provide documentation to show that his state income tax returns for tax years 2008, 2009, 2010, and 2011 were timely filed as required by law.

Applicant also filed his 2012, 2013, 2014, 2015, and 2016 Federal Income tax returns late.<sup>3</sup> He has no balance for 2012 or 2013, but owes the IRS \$5,922.28 for 2014; \$3,186.41 for 2015; and \$10,116.51 for 2016. Additionally, he owes his state taxation authority \$4,120 for the 2016 tax year. (AE A; AE H; Tr. 74-79.) He entered into a payment plan with the IRS to remit \$262 monthly out directly from his paycheck. He entered into a similar agreement to resolve his state tax debt through \$65 payments. His first payments to both the state and IRS were scheduled to be made September 30, 2017. He has changed his tax withholdings to avoid future tax debt. (AE A; Tr. 80-84, 93-94.)

Applicant has not completed recent financial counseling. (Tr. 101.) He testified that he has money left over at the end of the month to save toward the resolution of his remaining debts and submitted a budget to that effect. (Tr. 70, 94).

Applicant was selected to attend and completed a community police academy in August 2013. He is a member of an academic honor society. He has earned numerous certificates and completed multiple courses of training in his chosen line of work. (AE D.) He also submitted several letters of support written by friends, neighbors, and coworkers. All indicate Applicant has a good work ethic, is trustworthy, and honest. (AE G.)

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<sup>3</sup> Applicant's 2012, 2013, 2014, 2015, and 2016 late Federal Income tax returns and unpaid income taxes were not alleged on the SOR and will only be considered for purposes of mitigation or in the analysis of the whole person.

## Policies

When evaluating an applicant's 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 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 AG ¶ 2 describing 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 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 as to potential, rather than actual, risk of compromise of classified information.

Finally, 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 relating to the guideline 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. 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (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 failed to timely file and pay his Federal and state income taxes, as required by state and Federal law, for years 2008, 2009, 2010, and 2011. He also has three unresolved delinquent debts totaling \$19,023. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from Applicant's financial difficulties. The following mitigating conditions 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 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.

Applicant has a long history of financial delinquencies. He filed a Chapter 7 bankruptcy in 1997, and discharged over \$10,000 in debt. From 2008 to present, he has failed to timely file Federal income tax returns as documented on the account transcripts. He recently incurred additional Federal and state tax debt. He has three SOR-alleged unresolved delinquent accounts. His debt is ongoing and casts doubt on his reliability and judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to a series of events including: unemployment between May to September 2010 and August to November 2015; a costly relocation in 2012-2013; lending his daughter money; stress related to his mother's Alzheimer's care; and unanticipated vehicle repairs. Some of these were conditions beyond his control. However, the record lacks documentation to show he reasonably and responsibly addressed his delinquencies while they were accumulating. Mitigation under AG ¶ 20(b) is not established.

Applicant provided no documentation of financial counseling or that his debts are under control. There is insufficient evidence to conclude that he is making a good-faith effort to repay his remaining creditors. The evidence does not establish mitigation under AG ¶¶ 20(c) or 20(d).

Applicant did not provide documentary evidence of a reasonable basis to dispute his debt in SOR ¶ 1.e. AG ¶ 20(e) does not apply.

Applicant resolved his Federal and state tax debts from 2008 to 2011. However, he continued to miss Federal income filing deadlines and incurred additional tax debt. He provided evidence of recent payment arrangements to resolve his outstanding state and Federal tax debt, but has not made payments under those arrangements. Further, he failed to provide evidence to prove that his state tax returns have been filed. Documentation of compliance is necessary for full mitigation. AG ¶ 20(g) does not fully mitigate the Government's concern.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security eligibility 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 pertinent facts and circumstances surrounding this case. Applicant is 54 years old. He served honorably in the Air Force. He is respected for his honesty and trustworthiness by those that wrote letters on his behalf. However, Applicant has not provided sufficient evidence about his overall financial stability from which to determine that further tax problems or financial delinquencies are unlikely. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F.



## **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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against 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 access to classified information. National security eligibility is denied.

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Jennifer I. Goldstein  
Administrative Judge