



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-00867

**Appearances**

For Government: Erin P. Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

04/30/2018

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate the financial considerations concerns raised by his failure to timely file federal income tax returns between 2007 and 2012. Moreover, he deliberately falsified his 2016 security clearance application (SCA) to cover his failure to timely file his income tax returns and resulting federal and state tax debts. The financial considerations and personal conduct security concerns are not mitigated. Clearance is denied.

**Statement of the Case**

Applicant submitted an SCA on May 18, 2016. He was interviewed by a government investigator on October 27, 2016, and answered a set of interrogatories on June 28, 2017. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) on April 13, 2017, alleging security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant answered the SOR on July 27, 2017, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

DOHA assigned the case to me on January 17, 2018, and issued a notice of hearing on March 6, 2018, setting the hearing for March 20, 2018. The hearing was held as scheduled. At the hearing, the Government offered six exhibits (GE 1 through 6). Applicant testified and submitted three exhibits at the hearing (AE 1 – through AE 3), and he submitted AE 4 post-hearing. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on March 28, 2018.

### **Procedural Issues**

At the hearing, the Government moved to amend SOR ¶ 1.a by deleting the years “2013 through 2016”. I granted the motion as requested. As a grammatical correction, the word “and” was inserted between the years “2011, and 2012.”

### **Findings of Fact**

Applicant admitted the factual allegations in SOR ¶¶ 1.a (as amended), 1.j through 1.p, 2.a, and 2.b. He denied the allegations in SOR ¶¶ 1.b through 1.i. Although Applicant admitted the allegations in SOR ¶¶ 2.a and 2.b, he averred his falsifications were not deliberate. Thus, I considered both SOR ¶¶ 2.a and 2.b denied. His admissions to the SOR and at his hearing are incorporated herein as findings of fact. After a thorough review of the record evidence, including his testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 41-year-old employee of a federal contractor. He graduated from high school in 1994. He is currently in college working on his associate’s degree. He enlisted in the U.S. Coast Guard in January 1995, and honorably served on active duty until his discharge in July 1999. He has a 50% service-connected disability. He married in 1996 and divorced in 2015. (AE 1) He has a 20-year-old daughter of this relationship. Applicant married his current wife in April 2017. He has some grown stepchildren.

Applicant has been working for federal contractors from July 2001 to present. He was granted a secret clearance shortly after he was hired in 2001, which has been continued to present. In addition, Applicant worked part-time in retail stores between May 2015 and May 2016. In May 2013, Applicant’s current employer, a federal contractor, hired him. His current yearly salary is about \$72,000. His wife is not currently working because she is taking care of her ill father.

Applicant’s adjusted gross income (married filing jointly) for 2008 was close to \$98,000; for 2009, over \$90,000; for 2010, over \$77,000; for 2011, close to \$88,000; for 2012, close to \$92,000; for 2013, over \$100,000; and for 2014, over \$101,000. Applicant’s adjusted gross income (filing as head of household) for 2015 was close to \$67,000; and for 2016, was close to \$80,000. Applicant vacationed to the Bahamas in June 2015. He stated the trip was a graduation present for his daughter, and claimed he only spent \$400 in the trip. He took a cruise to Honduras, Belize, and Mexico with his then fiancé, now wife, in May 2016. He stated she paid for the cruise.

In his May 2016 SCA, Applicant disclosed that he had financial problems, which included being over 120 days delinquent on a debt, and he and his ex-wife had two cars repossessed in 2011 and 2015. He disclosed no additional delinquent or charged off accounts.

Section 26 (Financial Record) of Applicant's 2016 SCA specifically asked Applicant to disclose, among other things, whether in the past seven years he: (1) had failed to file or pay federal, state, or local taxes when required by law or ordinance; (2) had a lien placed against his property for failing to pay taxes; (3) was currently delinquent on any federal debt; and (4) had his wages, benefits, or assets garnished or attached for any reason. Applicant answered "No" to all the questions and deliberately failed to disclose that: (1) he had failed to timely file his federal and state income tax returns for tax years 2007 through 2012; (2) the IRS placed a lien on his assets in December 2015; (3) he had an extensive federal tax debt; and (4) his assets had been attached by the IRS.

Applicant admitted making incorrect statements in his responses to the questions in Section 26. However, he claimed that his failure to disclose the information was an oversight, and that the 2016 SCA questions were confusing, hard to manage, and difficult to fill out. He denied any intention to falsify his SCA or to mislead the government.

Applicant explained that up until 2012, his ex-wife was handling his finances, including the preparation, signing, and filing of their income tax returns. He claimed he was unaware of his tax problems until 2012, when he received 15 registered-mail documents from the IRS that revealed his tax situation. The IRS documents warned Applicant the IRS intended to levy his wages. (Tr. 26-30) He contacted the IRS and found out about his ex-wife's failure to file the income tax returns. Applicant claimed he then took control of his finances, changed his withholdings to avoid future tax debt, and thereafter, timely filed his tax returns.

Applicant's IRS account transcripts for 2008 through 2012 (all dated as of June 28, 2017) show he filed late his income tax returns for all the alleged years, and was assessed penalties and interests. Applicant also admitted he filed late his 2007 income tax return. However, he failed to submit his tax year 2007 account transcript. Applicant's IRS account transcript for 2008 shows Applicant established installment agreements with the IRS in December 2009, February and October 2011, September 2012, December 2013, and January 2015. He established the installment agreements, but stopped making payments after the first or second payment because "at the time we were tight on money" and he could not afford to continue making his payments. (Tr. 31) As of his hearing day, Applicant had only made four payments to the IRS since 2012. (Tr. 35)

The IRS placed a \$19,182 tax lien on Applicant's assets in December 2015, and notified him of the lien and of his right to a collection due process hearing that same month. (Tr. 34, SOR ¶ 1.1) The IRS issued to Applicant 20 "collection due process

notices of intent to levy” in June 2016 (after he submitted his May 2016 SCA). Applicant established another installment agreement with the IRS in July 2016, which he failed to honor. As of May 2017, Applicant had been in the process of establishing another installment agreement. Applicant testified the IRS told him to wait until the end of the 2017 tax year to contact them because one of his tax debts was approaching the statute of limitation and would be removed. As of his hearing day, Applicant had not contacted the IRS. He claimed he called several times, but was placed on hold for hours and had not talked with the IRS.

Concerning the other SOR allegations, I find that:

SOR ¶ 1.b (\$8,868) alleged a charged-off car loan. Applicant’s divorce decree establishes the court awarded his ex-wife the car and all its financial responsibility. I find this allegation for Applicant. (Tr. 36, AE 1)

SOR ¶ 1.c (\$1,131) alleged a delinquent phone services account. Applicant’s documents show he disputed the account and was resolved in his favor. (Tr. 37-38)

Applicant’s evidence shows he paid the medical debts alleged in SOR ¶¶ 1.d through 1.h (\$110, \$110, \$110, \$110, and \$110, respectively). (AE 2)

SOR ¶ 1.i (\$30) alleged a delinquent medical debt. Applicant claimed he paid the debt, but submitted no corroborating documentary evidence. I find for him on this debt.

SOR ¶¶ 1.j (\$1,600), 1.k (\$2,086), and 1.m through 1.p (\$8,063; \$4,559; \$1,477; and \$1,654, respectively) alleged unpaid tax liens entered against Applicant by his state. Applicant made twelve \$400 monthly payments between 2016 and 2017, and a \$1,477 lien was released. (AE 4) He stated he was asked by his state tax authority to contact them to establish another installment agreement, but he has failed to do so. He has not made payments to the state since 2017.

Applicant believes that his financial situation is in good shape. His wife owns the home they live in free and clear. He has tenants who pay the mortgage on his rental property, and his car is paid off. He receives disability payments from the VA. He stated he has a \$4,000 surplus at the end of the month. (Tr. 54) He has not participated in financial counseling.

Applicant has been working in his position for 17 years, and for the same direct supervisor during the last 15 years. He has established an excellent reputation for his professionalism, work ethic, knowledge, and the quality of his work. He is well liked by his supervisors, clients, and coworkers. He is considered to be a hardworking IT professional, dependable, responsible, and instrumental on his employer’s success. He has been a teacher, mentor, and a positive role model for junior technicians. Applicant loves his job, working for his agency, and he takes his responsibilities very seriously.

Applicant acknowledged the importance of national security and the fiduciary responsibilities one acquires when holding a clearance. He understands that his lack of financial responsibility may show a lack of judgment, but he believes that it does not show he is untrustworthy. Applicant believes he is not a threat to the United States. He considers himself to be an honest, patriotic, and dedicated American. He would like to continue serving the United States through his work for federal contractors.

### **Policies**

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *National Security Adjudicative Guidelines* for determining eligibility for access to classified information (AG), implemented by the DOD on June 8, 2017.

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, § 2. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch 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).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.”

*Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the security concern for financial problems:

Failure or inability 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 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.

Applicant's history of financial problems is documented in the record. He had numerous delinquent accounts that were in collection. Moreover, he failed to file his federal income tax returns for tax years 2007 through 2012, the IRS filed a lien of over \$19,000 against him, and his state filed another lien of over \$19,000. AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying 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 . . . income tax as required." The record established the disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

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, 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 person has received or is receiving 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;<sup>1</sup>

(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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

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<sup>1</sup> The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

None of the financial considerations mitigating conditions are fully raised by the facts in this case and they do not mitigate the security concerns. Applicant's financial problems are ongoing and recent. Some of his financial problems could be attributed to, or were aggravated by, his 2015 divorce. Notwithstanding, considering the evidence as a whole, I find that Applicant failed to establish he was financially responsible under the circumstances, and that his financial problems are unlikely to recur.

Applicant acknowledged he should have been more responsible in addressing his delinquent accounts and his tax obligations. On balance, the record shows he showed some responsibility addressing most of his delinquent consumer accounts. Nevertheless, Applicant failed to establish his financial responsibility concerning the filing of his income tax returns for tax years 2007 through 2012.

Applicant has held a clearance since 2001. He knew or should have known of the Government's financial concerns raised by his failure to file his income tax returns. He was again made aware of the raised security concerns when he submitted his 2016 SCA, when he was interviewed by a government investigator in October 2016, and when he answered the interrogatories in 2017. Notwithstanding, as of his hearing day, Applicant had not established installment agreements to resolve his delinquent federal and state taxes.

Applicant's promises to resolve his longstanding tax situation in the future do not mitigate the financial considerations concerns. His failure to file his income tax returns shows a lack of judgment and an unwillingness to abide by laws, rules, and regulations, all of which can raise questions about his reliability, trustworthiness, and ability to protect classified and sensitive information.

## **Personal Conduct**

The personal conduct security concerns are based on the same facts alleged under Guideline F, SOR ¶ 1.a. For the sake of brevity, they will not be repeated again.

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16(a) describes a condition that could raise a security concern and may be disqualifying in this case: "deliberate omission, concealment, or falsification of relevant



facts from any personnel security questionnaire . . . used to conduct investigations, . . . determine security clearance eligibility or trustworthiness. . . .<sup>2</sup>;

Considering the evidence as a whole, I find Applicant deliberately omitted that: he had failed to timely file his federal and state income tax returns for tax years 2007 through 2012; the IRS placed a lien on his assets in December 2015; he had an extensive federal tax debt; and his assets had been attached by the IRS. His deliberate failure to disclose the above information satisfies the above disqualifying condition.

AG ¶ 16 describes conditions that could mitigate the personal conduct security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

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<sup>2</sup> The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

None of the mitigating conditions is fully applicable to the facts in this case and they do not mitigate the personal conduct security concerns. Applicant's explanations and purportedly exculpatory statements in his 2016 SCA, October 2016 interview, and at his hearing are contradicted by the 2008-2012 IRS Accounts Transcripts. Applicant claimed he was not aware of his federal tax problems until he received certified documents from the IRS in 2012. However, Applicant's IRS account transcript for 2008 shows Applicant established installment agreements with the IRS in December 2009, February and October 2011, September 2012, December 2013, and January 2015. Additionally, the IRS placed a \$19,182 tax lien on Applicant's assets in December 2015, and notified him of the lien and of his right to a collection due process hearing that same month.

Applicant was required to disclose this information in his May 2016 SCA. He failed to do so because he was aware the information would raise financial considerations security concerns that could adversely impact his eligibility for a clearance. Applicant's falsification is a serious offense (felony), it did not occur under unusual circumstances, and it continues to cast doubt on his reliability, trustworthiness, and good judgment.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶¶ 2(a) and 2(d). I have incorporated my comments under Guideline F and Guideline E in my whole-person analysis. Some of these factors were addressed under those guidelines, but some warrant additional comment.

Applicant, 41, received an honorable discharge from the U.S. Coast Guard after four years of service. While in the service, Applicant possessed a clearance that has been continued to present. Applicant demonstrated some responsibility by resolving most of his consumer financial obligations. Regardless, he failed to present sufficient evidence of financial responsibility to mitigate the concerns raised by his failure to file federal income tax returns between 2007 through 2012. He owes a substantial tax debt to the IRS and his state. Moreover, Applicant deliberately falsified his 2016 SCA to cover his failure to timely file his income tax returns and to pay his tax debts. The financial considerations and personal conduct security concerns are not mitigated.

### **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.j-1.n, and 1.p:	Against Applicant
Subparagraphs 1.b-1.i, and 1.o:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to grant eligibility for a security clearance to Applicant. Clearance is denied.

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JUAN J. RIVERA  
Administrative Judge