



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



In the matter of: )  
 )  
----- ) ISCR Case No. 17-01430  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel  
For Applicant: *Pro se*

05/23/2018

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On July 18, 2017, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns arising under Guideline F (Financial Considerations).<sup>1</sup> On August 4, 2017, Applicant responded to the SOR and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on February 27, 2018. The matter was scheduled on April 13, 2018, for a May 9, 2018, hearing. The hearing was convened as scheduled.

The Government offered five documents, which were accepted into the record without objection as Government exhibits (Exs.) 1-5. Applicant gave testimony and offered eight documents, accepted without objection as Exs. A-H. The record was left open through May 17, 2018, to provide the parties with sufficient time to submit additional materials. In the interim, a transcript (Tr.) of the proceedings was received on

<sup>1</sup> 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 (AG) effective within the DOD on or after June 8, 2017.

May 18, 2018. With no additional materials received, the transcript was closed on May 22, 2018, and the record was closed. After review of the record as a whole, I find that Applicant mitigated financial considerations security concerns.

### **Findings of Fact**

Applicant is a 39-year-old service engineer who has worked for the same government contractor for a year. He presently generated approximately \$120,000 a year in income. Applicant has earned a high school diploma. He served on active duty in the U.S. military from 1997 until 2005, when he received an honorable discharge. For many years, Applicant maintained a part-time consulting position in addition to his work as an engineer. Applicant has worked continuously with no breaks in his primary employment since 2005.

Applicant was late in filing his tax years (TY) 2013-2015 tax returns. Initially, in TY 2013, this was due, in part, because his part-time consulting income had unexpectedly caused him to owe taxes, rather than received a refund, for the first time. He could not pay the sum, approximately \$1,900, and he was unaware he could have worked out a payment plan or some other accommodation with the Internal Revenue Service (IRS). (Tr. 20) He faced the same dilemma the next year after preparing his tax returns for TY 2014.

In the end, Applicant filed tax returns for TY 2013, TY 2014, and TY 2015 in April 2017, owing tax money for that three-year period for the same reasons noted above. He submitted his already prepared tax returns after a friend recommended he contact the IRS to arrange for a payment plan. (Tr. 22) After filing his federal returns, a payment plan was established with the IRS, under which about \$270 a month would be debited from his checking account. Applicant ended up owing the IRS \$1,900 for TY 2013 and about \$900 for TY 2015. In addition, refunds owed for TY 2016 and TY 2017 were applied to his debt. He completed this IRS payment plan around April 2018. (Tr. 23)

Also in around April 2017, Applicant filed his state income tax returns for those same years. With his state tax situation, he was owed refunds from his state for each year. His refunds were largely directed to his federal debt and applied toward the IRS payment plan. (Tr. 24-25)

Aside from these tax issues, Applicant acquired some delinquent debt over the past decade. That debt mostly arose when Applicant's mother-in-law, brother-in-law, and sister-in-law all moved in with Applicant and his wife for various periods of time around 2008-2010. Their presence increased household expenses on everything from utilities and transportation to groceries. Their addition to his household became particularly onerous in 2010.

In early 2010, Applicant lost his second job, a highly lucrative part-time position paying approximately \$2,400 a month. This happened when his employer's workload was reduced and Applicant's consulting services were no longer needed. (Tr. 32-33)

After losing that income, Applicant could barely afford to cover all of his family's expenses plus the financial needs of his in-laws. (Tr. 31) That reduction in income serves as a backdrop to the creation of most of the delinquent debts noted in the SOR:

1.c – Collection account (\$500) – *Paid*. Applicant had thought this account had been paid off. (Tr. 25) By the time he discovered a balance owed, he no longer had documentation regarding his past payments on that account. Therefore, he setup a payment plan to address the balance owed. The balance was satisfied by December 2017 and is now zero. (Ex. A)

1.d – Utility collection account (\$85) – *No documentation of payment*. Applicant testified that he paid this debt and said he would try to find a receipt for the account reflecting a zero balance, but none was received. (Tr. 27)

1.e – 1.i - Medical collection accounts (\$80, \$65, \$56, \$56, \$56) – *Paid*. Applicant was previously unaware of these outstanding debts. (Tr. 27-28) He had not noted them on his credit report as he did not recognize the name of the collection entity. When they were brought to his attention, he called the collection agent and discovered he owed a total balance of approximately \$391.95. Applicant showed that the debt was paid and the balance is now reflected as zero. (Tr. 28; SOR Response, attachment)

1.j – Adverse medical judgment (\$260) – *Paid*. Unbeknownst to Applicant, this judgment was filed against Applicant in January in 2013. Applicant provided documentary evidence reflecting that it was paid before the issuance of the SOR. (Tr. 29; SOR Response, attachment)

1.k – Adverse judgment (\$942) – *Paid*. This debt was also filed against an unknowing Applicant in January 2014. The obligation is related to a merchant-based credit card. Applicant provided documentary evidence reflecting this balance was satisfied in December 2016, before the issuance of the SOR. (Tr. 30; SOR Response, attachment)

Today, Applicant is living well within his means. At present, Applicant is making adjustments to the family budget using a computer-based program. His in-laws are no longer a part of his household. Applicant generally has a net monthly remainder to reserve for emergencies. He owns his home. His wife works for a private school and earns about \$9-\$10 an hour. Applicant has not received financial counseling. (Tr. 38)

Free from payments to the IRS, Applicant has additional income to pay off a credit card on which he is currently in timely repayment on a \$300 balance, but which he wishes to cancel due to a recent data breach. (Tr. 34) The card became compromised and was initially cancelled without Applicant's knowledge, so now he wants to resolve any balance owed, cancel the replacement card, and distance himself from the compromised institution. He is also disputing a cable bill charge for equipment that Applicant returned. He is actively working with the company to resolve the matter.

## **Policies**

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 used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. These guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under the AG, 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 in making a decision.

The protection of the national security is the paramount consideration. Any 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 record evidence. Under the Directive, the Government must present evidence to establish controverted facts. An applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate admitted facts or facts proven by the Government, and has the ultimate burden of persuasion to obtain a favorable security decision.

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and confidence in those to whom it grants access to classified information. Decisions include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard classified information. Decisions are in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant.

## **Analysis**

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 or sensitive information.

Here, the Government introduced credible evidence indicating that Applicant failed to timely file both federal and state income tax returns for TY 2013-2015 and had acquired some delinquent debt in the past decade. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so;

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.

Under these facts, five conditions could potentially mitigate the finance-related security concerns posed here:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

Unaware he could establish a payment plan with the IRS when he found he owed federal taxes in TY 2013, Applicant put off filing his tax return for that year. That same scenario repeated itself in TY 2014 and 2015. In the end, as he prepared to complete his TY 2016 tax return, Applicant learned that he could work with the IRS and establish a payment plan. He immediately contacted the IRS and established such a plan to address the approximately \$3,000 owed. He has since satisfied his IRS debt. In failing to file federal tax returns for those years, Applicant also failed to file state tax returns for those years. However, he remedied that situation as well when he prepared his TY 2016 federal and state tax return. His state refunds were largely applied to satisfying his IRS debt. Applicant's tax situation was completely resolved before the DOHA hearing.

In addition, Applicant acquired a little over \$2,000 in delinquent debt in recent years. Much of that debt he attributed to added expenses he incurred while helping support his mother-in-law, brother-in-law, and sister-in-law, as they resided with Applicant and his family around 2008-2010. Helping his in-laws financially overlapped with a difficult period of economic adjustment he experienced after his lucrative part-time job was eliminated.

Applicant provided documentary evidence indicating all of the delinquent debts at issue, except for one for \$85, have been paid. Indeed, some of those debts were satisfied before the issuance of the SOR. As for the \$85 debt, Applicant credibly testified that the account had been previously satisfied, but that he had lost the related paperwork. Meanwhile, he is taking the money once devoted to IRS payments to satisfy the balance owed on a compromised credit card so he can terminate the account.

Given Applicant's diligence in meeting his other obligations, I have no doubt the \$85 utility bill balance was previously paid, and that Applicant has merely lost related receipts. Regardless, I am confident he will remedy the situation expeditiously and have the credit report entry reconciled appropriately. Today, Applicant is living within his means and is in control of his finances, which he monitors with a computer-based program. In light of all of the above, although Applicant has not received financial counseling, there is sufficient evidence to raise AG ¶ 20(a), (b), (d), and (g).

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 39-year-old service engineer who has worked for the same government contractor for a year. He is a high school graduate who served on active duty in the U.S. military from 1997 to 2005, at which point he was honorably discharged. Applicant has worked continuously since that time with no breaks in employment, to include the maintenance of a highly lucrative second job he worked for several years until his position was terminated in 2010.

Applicant's failure to timely file the federal and state tax returns he had previously prepared for TY 2013, TY 2014, and TY 2015 was attributable to his naiveté. He was simply unaware that he could work with the IRS and generate a reasonable payment plan for the approximately \$3,000 he owed for the three years at issue. Because he did not file his federal returns, he likewise withheld his prepared state tax returns for those years, even though his state returns reflected that refunds were due. In the end, Applicant completed his IRS payment plan and is now in good standing with both

federal and state taxing authorities. Going forward, he better understands how to handle his tax issues and now knows where to turn if he has tax questions.

As for his approximately \$2,000 in delinquent debt, Applicant was honestly unaware that some, if not most, of that debt was outstanding. He began satisfying those accounts before the SOR was issued. He provided documentary evidence that all but one debt, with an \$85 balance outstanding, have been paid. As for that \$85 debt, it seems more than likely it has already been paid. However, as he researches the issue further, I am confident Applicant will honorably satisfy any remaining balance owed.

Today, Applicant is living within his means and there is no evidence that he is currently experiencing any of the financial distractions that adversely impacted him in the past. He ends each month with a net remainder to apply where needed. He volunteered that he is working on two accounts not raised in the SOR: one involving a compromised credit card he wishes to satisfy and terminate, and one regarding an honest dispute involving the return of cable television equipment. Again, Applicant has the sound judgmental qualities and wherewithal to tackle these matters before they become issues, and the ability to continue living within his means. I am convinced going forward Applicant will be in control of all his tax and finance-related issues. I find Applicant mitigated financial considerations security concerns.

### **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:	FOR APPLICANT
Subparagraphs 1.a-1.k:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Arthur E. Marshall, Jr.  
Administrative Judge