



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 17-02620
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

03/23/2018

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant failed to timely file his federal income tax returns for eight tax years. He accumulated delinquent taxes for five tax years, totaling approximately \$20,716. Additionally, he owes six delinquent credit accounts totaling over \$41,000. His evidence is insufficient to establish a track record of financial responsibility. The financial considerations security concerns are not mitigated. Clearance is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on November 18, 2015. He was interviewed by a government investigator on December 14, 2015. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) on October 25, 2017, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on November 6, 2017, and requested a decision based on the written record in lieu of a hearing.

A copy of the Government's file of relevant material (FORM), submitting the evidence supporting the security concerns, was provided to Applicant by letter dated November 28, 2017. Applicant received the FORM on December 13, 2017. He was

allowed 30 days to submit any objections to the FORM and to provide material to refute, extenuate, and mitigate the concerns. Applicant responded to the FORM with a one-page letter, received by the Defense Office of Hearings and Appeals (DOHA) on January 2, 2018. Applicant raised no objections, and I admitted and considered the Government's proposed evidence. The case was assigned to me on February 27, 2018.

### **Findings of Fact**

Applicant admitted all of the SOR allegations (§§ 1.a through 1.m). His admissions are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is 41 years old. He is a self-employed graphics designer working for a federal contractor. He graduated from high school in 1994, and received his associate's degree in 1996. He married in 1997 and divorced in 2005. He has two children, ages 18 and 17.

Applicant disclosed in his 2015 SCA that he was employed between 2004 and 2015. He was laid off for lack of business during two months in 2015. His current employer, a federal contractor, hired him in November 2015, and he has been working for the same employer since then. This is his first SCA.

Applicant disclosed in his 2015 SCA that he had financial problems in his early 20s that prevented him from enlisting in the U.S. military. In his response to Section 26 (Financial Record) of his 2015 SCA, he disclosed financial problems related to his failure to timely file his federal income tax returns and to pay his taxes. Applicant filed his federal income tax returns for tax year 2004 in 2008; for 2006 in 2009; for 2007 in 2009; for 2008 in 2011; for 2010 in November 2011; for 2011 in June 2012; and for 2012 in August 2013. No requests for extensions are reflected on the IRS Account Transcripts, and late-filing penalties were assessed for both 2011 and 2012. As of September 2017, Applicant owed back taxes for tax years 2004 (\$9,602); 2007 (\$1,698); 2011 (\$3,194); 2012 (\$1,541); and 2016 (\$4,681), totaling approximately \$20,716. (FORM, Item 3)

Applicant claimed in his 2015 SCA that he forgot to file his federal income tax return for 2004 because he was going through a divorce. He mistakenly claimed he filed his income tax returns for all other tax years, but failed to pay the taxes owed because he did not have the money. He also averred he was making monthly installments to the IRS and trying to negotiate an Offer in Compromise for the tax years owed. Additionally, Applicant owes six delinquent credit card accounts totaling over \$41,000. He stated he used the credit cards to supplement his living expenses. He did not have sufficient earnings to repay his credit cards.

During his December 2015 interview, Applicant told the investigator that the IRS had contacted him concerning his failure to file his 2007 income tax return and to pay his taxes. He established a monthly payment plan, but after a couple of months stopped

making payments because he did not have sufficient income to pay his living expenses, child support obligation, and the past-due taxes. Applicant also stated that for the same reasons, he failed to pay his 2008 through 2011 back taxes. The IRS filed an \$8,024 lien against Applicant in December 2008 for unpaid taxes. He failed to disclose it in his 2015 SCA because it was not filed against any property he owned.

In his November 2017 SOR answer, and in his January 2018 response to the FORM, Applicant stated that the delinquent accounts alleged in SOR ¶¶ 1.a through 1.e were his credit card accounts that he closed. He contacted a credit repair firm to help him establish settlement agreements with the creditors, but decided to do it himself and avoid their expensive fees. He claimed most of those debts he has been carrying since his 2004 divorce, moving the debts from credit card to credit card. He noted he would work on settling those accounts in the future. He presented no documentary evidence of any contacts with creditors, payments made, settlements or payment plans established, or of any disputed accounts.

Concerning his failure to file federal income tax returns, his tax lien, and the delinquent taxes alleged in SOR ¶¶ 1.g through 1.m, Applicant stated he had been working with the IRS for the last several years to pay his late taxes. He noted he paid two late tax years during 2017 and anticipated paying other late tax years in 2018. Applicant explained that he did not timely file for several years because he was struggling to make ends meet and it was not until 2012 that he was financially able to start addressing his debts. He stated he struggled financially between 2004 and 2012 because of the debt from his divorce, not being able to find a well-paying job, and having to pay child support.

Applicant highlighted as part of his plan to address his delinquent taxes, that the tax lien alleged in SOR ¶ 1.g would be expiring in 2018. He also believes that the tax debts for tax years 2004 and 2007 are uncollectable.

Applicant believes he has a viable four-year plan to address his delinquent debts. Once he comes to an agreement with his creditors, he intends to start making payments on the principal owed. He then intends to save money to pay his back taxes, and because his child support obligation ends in 2018, he intends to apply that money to his delinquent debts. Applicant stated he is “not trying to weasel out of what he owes, but he is doing what is allowable to make things right, and [he] is living well within his means.” He claimed to be keeping his finances well within his budget.

Except for his 2015 statement to the investigator that his “finances were good” and all other debts were being paid on time, Applicant presented no evidence about his current financial situation. He gave no indication that he had participated in financial counseling.

## Policies

The SOR was issued 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* (Directive) (January 2, 1992), as amended; and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. 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 relating to 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 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 . . . .

Applicant's history of financial problems is documented in the record. He failed to timely file his federal income tax returns for tax years 2004, and 2006 through 2012. He accumulated delinquent taxes for tax years 2004, 2007, 2011, 2012, and 2016, totaling approximately \$20,716. Additionally, he has six delinquent credit card accounts totaling over \$41,000. AG ¶ 19 provides disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(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 . . . . income tax as required." The record established the disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

Five 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;<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. Sep. 24, 2013).

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 recent and ongoing. Applicant claimed that circumstances beyond his control contributed to or aggravated his financial problems - his 2004 divorce, subsequent child support obligation, and his inability to find a well-paying job.

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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. Jun. 4, 2001)).

Applicant's evidence is insufficient to show that issues beyond his control adversely imparted his financial situation. Even considering for argument purposes, that his 2004 divorce, child support, and two months of unemployment in 2015 were circumstances beyond his control, Applicant's scant evidence is insufficient to establish that he was financially responsible under the circumstances. Applicant did not show the changes in his income over the years in question, and he did not establish he was unable to make any payments to address his SOR debts. Lack of income does not explain or excuse his failure to timely file his income tax returns.

Applicant did not present sufficient evidence of a good-faith effort to pay his tax debts. I considered that Applicant made some payments to the IRS over the years, but those were precipitated by IRS threats of wage garnishments and liens. The tenor of Applicant's statements suggests he has been waiting for the tax lien to expire and for the passing of the statute of limitations that would make some of his tax debt uncollectable. I specifically considered mitigating condition AG ¶ 20(g), and for the above reasons determined that it does not apply.

Applicant neglected his legal obligation to timely file his income tax returns and to pay his taxes during extended periods. "Failure to comply with federal and state tax laws suggests that an applicant has a problem with abiding to well-established Government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information." ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). This is true even if the returns have been filed. See ISCR Case No. 15-03481 at 5 (App. Bd. Sep. 27, 2016).

Applicant's inability to pay his taxes does not relieve him of his legal responsibility to timely file his income tax returns. His repeated failure to file his federal income tax returns in a timely manner does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Sept. 27, 2016).

Applicant presented no evidence to show he participated in financial counseling or that he is following a budget. There is no documentary evidence of Applicant's current financial situation, including his income, and whether his income is sufficient to pay for his living expenses and debts. Applicant failed to demonstrate financial responsibility. The financial considerations security concerns are not mitigated.

### **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. Security Executive Agent Directive (SEAD) 4, App. A, ¶¶ 2(a) and 2(d). I have incorporated my comments under Guideline F in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant, 41, has been employed with a federal contractor since 2015. This is his first SCA. Applicant's evidence is insufficient to demonstrate his financial responsibility and his eligibility for a clearance.

### **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
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Subparagraphs 1.a - 1.m:	Against Applicant
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### **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 Applicant's eligibility for a security clearance. Clearance is denied.

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JUAN J. RIVERA  
Administrative Judge