



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



In the matter of: )  
)  
) ISCR Case No. 17-02921  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

08/14/2018

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**Decision**

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HEINTZELMAN, Caroline E., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns raised by his delinquent debts and his taxes. National security eligibility for access to classified information is denied.

**History of the Case**

Applicant submitted a security clearance application (SCA) on May 17, 2016. On September 7, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F, financial considerations. Applicant answered the SOR on November 20, 2017, and requested a hearing before an administrative judge. The Government was ready to proceed on December 14, 2017, and the case was assigned to me on March 16, 2018. On April 26, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 24, 2018. I convened the hearing as scheduled.

Government's Exhibits (GE) 1 through 6 were admitted, without objection. Applicant testified and Applicant's Exhibits (AE) A through M, were admitted without objection.<sup>1</sup> I received the completed transcript (TR) on June 8, 2018. I held the record

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<sup>1</sup> On December 14, 2017, a discovery package was sent to Applicant. I marked that as Hearing Exhibit (HE) I, but did not admit it into evidence.

open until July 31, 2018, to allow Applicant to submit additional documentation, but he did not provide a submission.

### **Findings of Fact**

Applicant is 48 years old. He has worked as a program manager for a defense contractor since 2003. He previously held a security clearance from 2003 to 2007. Applicant was married between 1998 and 2015, and has two teenage children. He received his college degree in 2005 and his master's degree in 2006.

Applicant failed to file his state and federal tax returns for tax years 2013 and 2014, as required. Although not alleged in the SOR, he also failed to file his state and federal tax returns for tax years 2015 and 2016, as required.<sup>2</sup> (TR at 45-47)

Applicant's tax problems were the result of his May 2013 separation and 2015 divorce. During the separation, he continued to provide for his wife and children financially. He thought his wife filed their 2013 taxes for them as a joint return, but instead she filed by herself and claimed both of their children as dependents.<sup>3</sup> This resulted in him owing money to the IRS and his state.<sup>4</sup> Additionally, he owed taxes each year, because he claimed too many deductions. He reduced his deductions in 2016 from four to zero. (TR at 17, 27, 36-37, 83-84)

In late 2017, Applicant consulted with a certified public accountant (CPA) who helped him complete his 2013, 2015, 2016, and 2017 tax returns in January 2018, and filed them in April 2018. He also met with the CPA in 2015, and she helped him prepare his 2014 returns in June 2016. These returns were also filed in April 2018. (TR at 17, 27, 39-41, 87; AE D to AE K)

Below is a summary of the status of Applicant's state and federal taxes for tax years 2013 through 2017:

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<sup>2</sup> This information was not alleged in the SOR and will not be considered in the evaluation of the disqualifying conditions; however, I will consider it to evaluate mitigation and whole person.

<sup>3</sup> Because Applicant's wife has primary physical custody of their children, she is entitled, under state law, to claim both of their children as her dependents on her tax returns. Their divorce decree did not address their taxes. (TR at 59, 82-83)

<sup>4</sup> In his May 2016 SCA, Applicant indicated he intended to file his returns in June 2016 and expected that he would owe no money to the IRS or his state for tax years 2013 and 2014. (GE 1 at 26-27)

<b>Tax</b>	<b>Amount</b>	<b>Status</b>	<b>Proof</b>
2013 Federal	\$7,396 owed	Prepared January 2018; filed April 2018; no payment plan	GE 1 at 26; GE 3 at 4; AE D
2013 State	\$413 owed	Filed April 2018; no payment plan	GE 1 at 26; GE 3 at 4; AE E
2014 Federal	\$6,894 owed	Prepared June 2016; filed April 2018; no payment plan	GE 1 at 27; GE 3 at 4; AE F
2014 State	\$459 owed	Filed April 2018; no payment plan	GE 1 at 27; AE G
2015 Federal	\$6,161 owed	Prepared January 2018; filed April 2018; no payment plan	AE H
2015 State	\$115 owed	Filed April 2018; no payment plan	AE I
2016 Federal	\$2,437 owed	Prepared January 2018; filed April 2018; no payment plan	AE J
2016 State	\$182	Filed April 2018; no payment plan	AE K
2017 Federal	Claims Refund	Filed April 2018; and anticipates a refund of \$4,000 to \$5,000	TR at 35-36
2017 State	\$500 owed	Filed April 2018; no payment plan	TR at 35-36

Applicant filed all of these returns in April 2018; however, he had not yet established a payment plan with the IRS or his state to repay his delinquent taxes. His CPA advised him to wait several months after the April deadline to contact the IRS to establish a payment plan. As of May 2018, he had not yet contacted the IRS. (TR at 49) For tax years 2013 and 2014, he owes the IRS \$14,290, and he owes his state \$872. For tax years 2013 to 2016, Applicant owes the IRS \$22,888, and he owes his state \$1,169. Applicant did not provide documentation supporting his claim that he will receive from the IRS a refund of between \$4,000 and \$5,000 for tax year 2017. Applicant has “pennies” remaining at the end of each month, limiting his ability to establish and make payments. (TR at 35-38, 42, 63; AE D to AE K)

Applicant filed for Chapter 7 bankruptcy protection in June 2014, and his debts were discharged. His assets totaled \$70,000, and his liabilities totaled \$190,000. (TR at 69-70; GE 1; GE 3 at 4). The debts included in the bankruptcy were his marital home and a \$20,000 credit card. Applicant was behind on his mortgage payments prior to the April 2013 separation; however, the dissolution of his marriage further contributed to his difficulty in making payments. In June 2014, Applicant’s checking accounts were frozen and his pay was garnished for one month by his bank.<sup>5</sup> His divorce and his bank’s actions were the impetus for him filing for bankruptcy. (TR at 51-54, 56; GE 3 at 4)

The debts alleged in SOR ¶¶ 1.c through 1.e are all medical debts, totaling \$992. These debts are related to Applicant’s five surgeries between 2015 and 2018, which also

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<sup>5</sup> Applicant’s mortgage and checking accounts were at the same banking institution. (TR at 53)

contributed to his financial difficulties. He intends to pay these debts, but cannot afford to set up payment arrangements. (TR at 64-67; GE 2 at 1-2; GE 3 at 5; GE 4 at 2-3)

The debts alleged in SOR ¶¶ 1.f through 1.j are student-loan accounts, totaling \$20,821. Applicant's loans were in forbearance from 2012 until approximately 2016, when they went into default. During their separation, his wife did not give him access to his student-loan paperwork, which contributed to his inability to pay these debts. In 2016 and 2017, his pay was garnished three separate times by one of his student-loan creditors. This left him with no available funds to pay his other obligations. (TR at 25-27, 33; GE 2 at 3-10; GE 3 at 4-5)

In August 2017, Applicant initiated the process to consolidate all of his student-loan accounts, including some that were not included in the SOR. His total student-loan debt is approximately \$33,531. Applicant testified that since August 2017, he has been making monthly payments of \$148, but did not provide documentation reflecting payments. (TR at 25, 27-32, 70; GE 4 at 4-15; AE C)

Applicant does not follow a budget, nor has he received credit counseling. (TR at 71-72) He currently earns approximately \$99,000 a year. (TR at 26) In late 2017, he withdrew \$11,000 from his 401K to pay for Christmas presents for his children, not to pay or resolve any of his delinquent debts. (TR at 42, 44, 71) He provided multiple letters of recommendation, work-related awards and commendations, and other favorable character evidence. (AE L)

### **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines in conjunction with the factors listed in 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.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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.” The applicant has the ultimate burden of persuasion to obtain a favorable security 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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 concern under Guideline F (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 . . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>6</sup>

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<sup>6</sup> ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the documentary evidence establish three disqualifying conditions under AG ¶ 19:

- (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 annual Federal, state, or local income tax as required.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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;
- (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.

I considered that Applicant is not required to be debt-free in order to qualify for a security clearance.<sup>7</sup> Applicant experienced a divorce, medical issues, and other financial stressors. However, he did not meet his burden to establish that he acted responsibly to file and pay his state and federal tax returns and address his other unpaid debts in a timely manner. Additionally, he failed to provide documentation showing that he has been making payments or otherwise resolved any of the debts alleged in the SOR. Mitigation under AG ¶¶ 20(a), 20(b), 20(d), and 20(g) was not established.

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<sup>7</sup> ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017) (An applicant does not have to be debt-free in order to qualify for a security clearance. Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct" that is, actions which evidence a serious intent to effectuate the plan).

## Whole-Person Concept

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

## Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c to 1.j:	Against Applicant

## Conclusion

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

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CAROLINE E. HEINTZELMAN  
Administrative Judge