



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



In the matter of: )  
)  
) ISCR Case No. 18-00673  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Benjamin R. Dorsey, Esq., Department Counsel  
For Applicant: *Pro se*

10/16/2018

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 3, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on May 11, 2018, and elected to have the case decided on the written record in lieu of a hearing.

The Government's written case was submitted on June 18, 2018. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on June 27, 2018. As of August 16, 2018, he had not responded. The case was assigned to me on October 11, 2018. The Government exhibits included in the FORM are admitted in evidence.

## Findings of Fact

Applicant is a 27-year-old employee of a defense contractor. He has worked for his current employer since May 2016. He served on active duty in the U.S. military from 2009 until he was honorably discharged in 2013. He deployed to Afghanistan twice while in the military. He attended college for a period without earning a degree. The most recent information available indicates that he has never married, but he lives with a cohabitant. He has two children.<sup>1</sup>

The SOR alleges state tax liens of \$5,217 and \$1,548; a \$4,014 debt for back child support; a \$1,523 debt to a state agency; and six miscellaneous delinquent debts totaling about \$25,000. Except as described below, the debts are established by credit reports, a search of state court records, or Applicant's admissions.<sup>2</sup>

Applicant denied owing the \$11,757 charged-off auto loan alleged in SOR ¶ 1.a. The September 2016 credit report shows the loan as opened in June 2016, current, with a \$20,431 balance. The February 2018 credit report lists the account as charged off, with the balance and the amount past due both reported as \$11,757. Applicant wrote in response to the SOR that he had been talking to the creditor about removing the account from his credit report. He did not submit any supporting documentation or state the nature of his dispute.<sup>3</sup>

Applicant admitted owing the \$4,014 child support arrearages alleged in SOR ¶ 1.c, but he stated that the amount owed was being taken out of his paycheck. He denied owing the \$1,523 debt to a state agency (SOR 1.i). It is unclear, but that debt may also be related to child support. The September 2016 credit report lists the \$1,523 debt to a state agency and child support accounts with balances of \$0, \$554, and \$2,044. The \$1,523 debt to a state agency is not listed on the February 2018 credit report. That report lists four child support accounts: three with \$0 balances and one with a \$4,014 balance. Applicant reported owing \$3,000 in child support arrearages on his August 2016 Questionnaire for National Security Positions (SF 86), but he stated the amount owed was nearly paid.<sup>4</sup>

SOR ¶ 1.g alleged a \$115 debt to a cable services provider. Applicant admitted owing the debt, but he stated that it was recently paid. He did not submit any supporting documentation. The debt is reported with a \$115 balance on the most recent credit report in evidence.<sup>5</sup>

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<sup>1</sup> Items 3, 4.

<sup>2</sup> Items 2-8.

<sup>3</sup> Items 2, 5, 6.

<sup>4</sup> Items 2-6.

<sup>5</sup> Items 2, 5, 6.

Applicant admitted owing the state tax liens of \$5,217 and \$1,548, filed in 2016 and 2017 respectively. On his August 2016 SF 86, he reported owing about \$5,000 in state and federal taxes for 2014 and \$2,000 in federal taxes for 2015. He noted that he did not have the money to pay the taxes when they were due, but he had payment plans in place. During his October 2017 background interview, he stated that his employer did not withhold enough for taxes from his paycheck in 2014. He stated that his child support obligations prevented him from completing the payment plans. He stated that he will not have any new tax problems because he changed the number of allowances to zero, which increased the amount withheld from his pay. He anticipated paying his taxes with his refund from tax year 2017. His response to the SOR included documentation from his state that \$301 was withheld from what would have been his tax refund for 2017 and applied to taxes owed from 2014. No additional documentation was provided about his taxes.<sup>6</sup>

Applicant admitted owing the four remaining delinquent debts, which total about \$13,300. He did not provide additional information about how or if he intends to pay the debts. He reported no periods of unemployment since he left the military. Except for the tax-withholding issue from 2014 and his child support obligations, there is little information about the cause of his financial problems. There is no evidence that he received financial counseling. Because he did not respond to the FORM, the current state of his finances is unknown.<sup>7</sup>

## **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(a), 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.

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<sup>6</sup> Items 2-4, 7, 8.

<sup>7</sup> Items 2-6.

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 security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable 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 annual Federal, state, or local income tax as required.

Applicant has a history of financial problems, including delinquent debts, child support arrearages, and unpaid state taxes. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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 stated that his employer did not withhold enough for taxes from his paycheck in 2014, and that his child support obligations prevented him from completing the payment plans he had in place to pay his taxes. He reported no periods of unemployment since he left the military. His failure to comply with tax laws suggests

that he has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018).

Applicant's statement that his child support is being withheld from his paycheck is accepted, as is his statement that the \$115 debt is paid. SOR ¶¶ 1.c, 1.g, and 1.i are mitigated. He denied owing the \$11,757 charged-off auto loan alleged in SOR ¶ 1.a, but he did not submit any supporting documentation or state the nature of his dispute. That debt is not mitigated. He admitted owing the remaining debts and state taxes, but except for \$301 that was withheld from what would have been his tax refund for 2017, he has not shown payments toward any of the debts.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his taxes. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. Concerns about Applicant's finances are not mitigated.

### **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 honorable military service, and particularly his deployments to Afghanistan.

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**

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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant

### **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge