



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



In the matter of:)
)
) ISCR Case No. 20-03078
)
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

02/04/2025

Decision

BLAZEWICK, Robert B., Chief Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SF-86) on November 19, 2019. On December 2, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). DOD issued the SOR 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* (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on November 8, 2021, (SOR answer), admitting all ten allegations and providing brief amplifying information. He requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

The case was assigned to me on September 19, 2023. On November 1, 2023, DOHA issued a notice scheduling the hearing for November 14, 2023, a date requested by the Applicant. (Hearing Exhibit (HE) I, II) Prior to the hearing, the Government provided fourteen exhibits (GE 1-14). Applicant provided none.

The hearing convened as scheduled. Department Counsel offered 13 exhibits (GE 1-11, 13, and 14) after withdrawing previously forwarded GE 12. GE 1-11, 13, and 14 were admitted into evidence without objection. I left the record open through December 8, 2023, to allow the parties to submit additional documentation. Applicant timely submitted ten exhibits (AE) A – J, which were admitted into evidence without objection. I reopened the record on September 17, 2024, through October 11, 2024, due to the length of time to complete the decision and allowed both parties to submit additional evidence. Department Counsel submitted one additional exhibit (GE 15), which was admitted without objection. Applicant did not submit additional material or object to the Government's additional exhibit. DOHA received the hearing transcript (Tr.) on November 27, 2023.

SOR Amendment: Paragraphs 1.a. and 1.b.

During the hearing, based on the evidence adduced, the Government moved to amend SOR allegations 1.a. and 1.b. to add the years 2019-2022 for failure to file Federal and state income tax returns, respectively. I granted the Government's motion, amending the SOR to conform it to the evidence. Applicant did not object. I noted Applicant would be given additional time to reply.

Findings of Fact

Applicant admitted all of the SOR allegations with explanations in his SOR answer. His admissions are included in my findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following additional findings of fact.

Applicant is 65 years old. He has worked for his current defense contractor since April 2018. He was granted his first clearance in October 2009, from the DoD. He was issued a position of public trust in February 2017 for employment as a contractor with another government agency. Applicant is a high school graduate. He has been married three times. He was divorced from his first wife in 1986. He married his second wife in 1986 and she passed away in 2014. He married his third wife in 2015 and she passed away in April 2021. He is currently widowed with an autistic adult dependent stepson, his third wife's son, who resides with him. He has one adult child from his first wife but that son does not reside with him. (Tr. 23-27; GE 1; AE G; AE H)

The SOR, as amended, alleges Appellant failed to file his Federal and state income tax returns for tax years 2017, 2018, 2019, 2020, 2021, and 2022. (SOR ¶¶ 1.a and 1.b). The SOR further alleges over \$114,000 in delinquent accounts (SOR ¶¶ 1.c – 1.j). In his answer to the SOR, Applicant discussed his reason for his financial difficulties and stated

he had hired counsel to assist him in getting his finances in order including his tax returns. He also stated he was considering filing Chapter 13 bankruptcy. To date, he has not filed for bankruptcy. (SOR; SOR Answer; Tr. at 73)

Applicant worked for a defense contractor who had a contract with his state from 2009 through 2017. He made a lateral move in February 2017 to a second contractor, which had a contract with another U.S. Government agency. Applicant stated he left his position at the first contractor because that contract was ending. He was let go from the second contractor in November 2017. He stated he was let go because that contract was also ending. During his enhanced subject interview (ESI), applicant was confronted with the allegation that the second contractor let him go due to frequent work absences for health issues. Applicant disputed this characterization but admitted he was let go. There is no evidence of any misconduct or that he was terminated. He stated this lay-off was unexpected and added to his financial difficulty, which he admitted was already tenuous. Applicant remained unemployed until April 2018 when he was hired by his current contractor. (SOR Answer; Tr. 18-22; GE 1 at 11-15, 17-20; GE 7 at 3-10)

Applicant's third wife had been in an accident in approximately 2010. Her back was severely injured. Applicant stated her condition had continued to deteriorate and she was put on expensive medication, much of which was not covered by insurance. He stated he also had developed health issues. The financial strain continued until his third wife passed away in April 2021. She had several medications; one of which cost \$800 per month. In addition, he stated there were the costs of specialists and doctor visits. Their health insurance covered some of the costs, but not all. (SOR Answer; Tr. 23-25)

In his SCA, Applicant noted he had not filed either his state or Federal income tax returns for tax years 2017 and 2018. His explained he had "paid into the tax system" but the added complication from his withdrawing money from his retirement plan due to his unemployment was at fault. He noted he had hired an attorney to assist with his delinquent filings. He expected a refund. Applicant also listed the debts alleged in SOR ¶¶ 1.d, 1.g, 1.i, and 1.j. He stated the debts in ¶¶ 1.g and 1.j were the result of billing issues and those in ¶¶ 1.d and 1.j were the result of his increasing medical expenses and his seven-month unemployment period. He stated he was working with the loan servicing company regarding the debt alleged in SOR ¶ 1.i which he estimated as approximately \$90,000. (GE 1 at 46-53)

During Applicant's January 16, 2020 ESI, he stated he intended to have his 2017 and 2018 tax returns filed by February 2020 but had not yet filed because he was awaiting receipt of documents. He would set up payment if he owed money. He confirmed he had hired an attorney to assist him. He provided no documentation to the investigator. The investigator gave Applicant an opportunity to submit further documentation during and after the interview, but Applicant did not provide anything additional. (GE 7 at 7-11)

At the hearing, Applicant reiterated he had not yet filed his 2017 and 2018 Federal and state tax returns. He also stated he had not filed his tax returns for tax years 2019, 2020, 2021, and 2022. As noted, I amended the SOR on Department Counsel's motion,

and after no objection from Applicant to add the failure to file Federal and state tax returns for tax years 2019, 2020, 2021, and 2022. Applicant hired an accountant to assist him in completing and filing his returns for all of the tax years alleged. He stated even though it was over two years since his last wife had passed, he had not been doing anything regarding these returns because he had lost some of his documents and has a “terrible irrational fear of dealing with the IRS” which brings on anxiety. Due to the medical expenses and his period of unemployment in 2017-2018, he had to withdraw money from his retirement account which complicated his taxes. He admitted he had not reached out to get the documents he needed to complete his tax returns for 2017. He stated that in the past two weeks he finally had accumulated all the documents he needed to complete his 2017, 2018, and 2019 returns and had a meeting scheduled two days after the hearing with his tax accountant. (Tr. 28-35)

Before the record closed, Applicant timely submitted completed Federal tax returns for tax years 2020, 2021, and 2022. All three were dated November 30, 2023, and electronically signed by Applicant’s tax preparer complete with appropriate EIN numbers for the preparer. Applicant’s 2020 Federal return indicates a refund of \$5,203 was due. His 2021 Federal return indicates a tax due of \$3,347, and his 2022 Federal return indicates a tax due of \$821. Applicant stated in his cover letter he was awaiting the original documentation for “the remaining years.” (AE AI; AE H; AE I; AE J)

The debt alleged in **SOR ¶ 1.c and SOR ¶ 1.f** is a judgment taken in October 2019 by a consumer bank in the amount of \$9,310. The same debt is alleged in SOR ¶ 1.f as charged off by the same consumer bank. This debt was for a credit card. Applicant could not recall when it went delinquent. Applicant stated he had not paid the judgment because his wages were being garnished for it and he wished to let that take its course. For some reason of which he was unaware, the garnishments ceased and his pay was returned in 2022, which was why this debt was still on his credit bureau report (CBR). He stated he had not paid the judgment from 2019 because he did not know how to go about doing so. Before the judgment, he tried to work out a payment plan with the bank but they would only accept full payment, which he could not manage at the time. Applicant testified that he had been paying this off for the past week prior to the hearing and that now it was satisfied. In his supplemental documentation, he provided documentation to substantiate his payment. The April 2024 CBR indicates no balance due and states, “payment after charge-off/collection.” This debt is resolved. (Tr. 35-41; GE 3 at 2; GE 4 at 13; GE 5; GE 7 at 5; GE 15 at 1; AE G)

The debt alleged in **SOR ¶ 1.d** is a charged-off debt to a bank in the amount of \$47,707. Applicant testified this was for a home equity line of credit. He and his second wife took this loan out for some major projects at their home. He testified that he still owed \$11,000 on the account and that he was making payments of \$2,000 per month. He stated he had paid \$6,000 to date. Appellant provided no documentation to support his statement and the April 2024 CBR still listed it as charged off with a balance owed of \$56,428. This debt is not resolved. (Tr. 41-46; GE 2 at 4; GE 3 at 2; GE 4 at 11; GE 7 at 6/8; GE 8 at 5; GE 15 at 1)

The debt alleged in **SOR ¶ 1.e** is a credit card debt charged off in the amount of \$35,242. Applicant did not list this debt in his SCA but did confirm it during his ESI. He said he used this card for medical expenses during his period of unemployment. He stated he expected to be caught up by December 2021. At his hearing, he testified that his second wife was a compulsive gambler who used this card for all of their daily bills as well as to fund her gambling habit. He did not realize the balance was so high until his second wife passed away. He testified the creditor had contacted him frequently to resolve this debt, so he was aware of it, but he was financially incapable of doing so at that time. He has not been in contact with the creditor in over a year. He tried to set up a payment plan, but the creditor wanted payments too large for him to afford. He intends to pay it off when he is more financially capable. This debt is not resolved. (Tr. 46-49; GE 1 at 2; GE 4 at 12; GE 7 at 5; GE 8 at 4; GE 15 at 1)

The debt alleged in **SOR ¶ 1.g** is a charged-off debt to a bank for an unpaid car payment in the amount of \$853. Applicant listed this debt in his SCA and confirmed it during his ESI. He said this was the result of a mix-up in the autopay system and his final car payment was not made. He discovered it when it fell into collection. He paid it in full approximately a week before the hearing. This debt is resolved. (Tr. 50-51; GE 1 at 50; GE 3 at 3; GE 4 at 13; GE 7 at 5; GE 15 at 1; AE E)

The debt alleged in **SOR ¶ 1.h** is an account placed for collection by a creditor in the amount of \$228. Though he admitted it in his answer to the SOR, Applicant testified he did not recognize this debt or this creditor. In his SOR answer he stated it was being investigated by his attorney for possibly adding to a Chapter 13 bankruptcy petition. However, by the hearing date he had been unable to confirm it. This debt appeared only in Applicant's July 2020 CBR. I find the evidence insufficient to support this allegation. (Tr. 51-52; GE 3 at 3)

The debt alleged in **SOR ¶ 1.i** is a loan that was past due in the approximate amount of \$11,823 and a total balance of \$82,063. This is Applicant's mortgage. In his SOR answer he stated he had made arrangements to pay off all delinquent amounts on November 19, 2021. During his ESI, he stated he was making double payments to catch up on the delinquent amounts. He refinanced his mortgage, which is why it changed lenders. The April 2024 CBR showed this debt as caught up and in "paid/paying as agreed" status. This debt is resolved. (SOR Answer; Tr. 52-54; GE 1 at 51; GE 2 at 4; GE 3 at 2; GE 4 at 3; GE 7 at 6; GE 15 at 2)

The debt alleged in **SOR ¶ 1.j** is a medical account placed for collection in the amount of \$150. Applicant stated this had to do with ongoing billing issues he had with a medical lab. He paid off the bill before filing his SCA. This debt is resolved. (GE 1 at 3; GE 4 at 14; GE 7 at 5)

Applicant has additional debts not alleged in the SOR which included default judgments against him in his county. He stated two judgments, totaling \$700, were for having non-operable cars on his property. The third for \$363 was for failure to pay his homeowners' association (HOA) fees. The fourth judgment was a medical judgment for

nearly \$2,000 including attorneys' fees. He stated he took two years to pay them off because paying judgments was not something he was familiar with. He paid them off the week before the hearing. He admitted once he found the proper point of contact, payment was swift. While these debts cannot be used as basis for revocation, I may consider them under the whole-person analysis. (Tr. 56-65: AE A; AE B; AE C; AE D)

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 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, judgments, and failure to file tax returns from 2018-2022. He is unable to pay all of his debts and had not yet filed tax returns for several of the tax years. Some of the debts are small, others are large. Some of his debts have been ongoing since at least 2018. The concerns under AG ¶¶ 19(a), 19(c), and 19(f) are established except as to SOR ¶ 1.h. I find insufficient evidence to support the debt alleged in SOR ¶ 1.h: it appears in only one CBR and Applicant testified he has no knowledge of it. It is a small debt and as Applicant has been otherwise very truthful, I find his denial persuasive.

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;
- (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.

The allegations in SOR ¶¶ 1.a and 1.b are not mitigated. Applicant produced no documentation, even with the reopening of the record 10 months post-hearing, regarding the status of his 2017, 2018, or 2019 Federal tax returns. His 2020, 2021, and 2022 Federal tax returns do appear to be completed and signed and though he did not provide evidence they were in fact filed, I find his statement that they have been filed to be credible. He provided no evidence regarding any of his state tax returns. Though I find he has filed for some of the years alleged, even that filing does not in itself mitigate the failure to file. There is no evidence he has made arrangements with either the Federal or state tax authorities to file his delinquent returns. This was also during the years his wife's health was declining. Applicant's stated irrational fear of the IRS was palpable during the hearing but it does not mitigate his failure to file. AG ¶ 20(g) does not apply.

The debts alleged in SOR ¶¶ 1.d and 1.e, totaling \$82,949, remain unresolved and are not mitigated. Applicant has stated he intends to pay them when he has the resources to do so. These debts continue, therefore AG ¶ 20(a) is not applicable. AG ¶ 20(b) is only partially applicable in that the conditions that resulted in these debts were beyond Applicant's control as they were due to his second wife's gambling issues and her proclivity to run up debt and his third wife's, and his, medical conditions. These were exacerbated by his being unemployed for a period in 2016-2017. However, the evidence is insufficient to establish Applicant acted responsibly under the circumstances. No other potential mitigating condition applies. SOR ¶ 1.d and 1.e remain unmitigated.

The debts alleged in SOR ¶¶ 1.c and 1.f are resolved. AG ¶ 20 (b) is applicable. It is not clear when, or for what, this debt was incurred. It appears to have been from the time Applicant was unemployed and his third wife was incurring medical expenses. Therefore, I find they were due to circumstances beyond his control. His pay was initially garnished for this debt after a judgment was taken. While that would usually weigh against

finding he acted responsibly under the circumstances, in this case and with this Applicant, I found his testimony sincere that he did not know how to resolve this and thought the garnishment was an appropriate way to pay it back. Though his garnished wages were returned, he ultimately paid this off in full. It is a close call, but I find SOR ¶ 1.c and 1.f to be mitigated.

The debts in SOR ¶¶ 1.g and 1.j are mitigated under AG ¶ 20(a). These were small debts that have been fully paid. They both were the result of some type of accounting/billing issue and are not likely to recur. Applicant noted these in his SCA.

The debt in SOR ¶ 1.i is mitigated under AG ¶ 20(b). Applicant fell behind on his mortgage payments due to his period of unemployment and large medical expenses. He has refinanced his mortgage, paid the past-due amounts, and his mortgage is in good standing. He acted responsibly under the circumstances.

Applicant stated he plans to pay all of his debts. His statement was sincere. However, intentions to resolve debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013). Based on Applicant's credible testimony, significant action on several debts, and determination to clear up the remaining debts, I believe with time he will likely establish a track record that could lead to a different result. But that time has not yet arrived.

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.

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.e:	Against Applicant
Subparagraphs 1.f-1.g:	For Applicant
Subparagraphs 1.h-1.j:	For 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.

Robert B. Blazewick
Chief Administrative Judge