



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



Appearances

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

05/02/2025

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant did not mitigate the financial consideration security concerns. National security eligibility for access to classified information is denied.

History of the Case

On January 28, 2025, the Department of Defense (DOD) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on January 31, 2025, and elected to have a hearing. (Answer) The case was assigned to me on March 3, 2025. On March 18, 2025, the Defense Office of Hearings and Appeals (DOHA) notified Applicant the hearing was scheduled for April 7, 2025. I issued an order to both parties to produce their documentary evidence by March 31, 2025. I convened the hearing as scheduled via video teleconference. Government's Exhibits (GE) 1-7 and Applicant Exhibits (AE) A-M, were admitted without objection. Applicant objected to GE 8 based upon the relevancy of some of the reported information. I sustained the objection regarding the 2008 and 2000

judgments, as they were not alleged in the SOR, and they were 17 years and 25 years old, respectively. I allowed GE 8 into evidence but will not consider the information related to the 2008 and 2000 judgments. Applicant testified, and I marked various procedural documents as Hearing Exhibits (HE) I - IV. DOHA received the completed transcript (Tr.) on April 17, 2025, and the record closed.

Findings of Fact

Applicant, 47, was married to his first wife from 2002 to 2006, and they have a 21-year-old daughter. He married his second wife in 2012, their daughter was born in 2015, and he has 20-year-old stepdaughter. He completed a Bachelor of Science in computer science in 2000 and additional certifications in his field. Since January 2024, he has worked as a systems engineer manager, a first-level managerial position, for his current employer. This is his first security clearance application (SCA). (GE 1 - 2; Tr. 17-24)

The SOR alleged Applicant has nine delinquent consumer debts, totaling over \$25,000; his wages are being garnished for a child-support arrearage; in 2021, his property was foreclosed upon; and he failed to file his state and Federal income tax returns for tax years (TY) 2022 and 2023. Applicant admitted SOR ¶¶1.a, 1.b, 1.k, and 1.l and denied SOR ¶¶1.c – 1.i. The SOR allegations were established by Applicant's admissions in his February 2024 SCA; March 2024 background interview conducted by an authorized DOD investigator; and February 2024, September 2024, and January 2025 credit bureau reports (CBR). (GE 1 – 7)

Applicant attributes his financial issues to his period of unemployment between April 2002 and January 2024; his tenants' failure to pay rent; his wife's inability to work for several years after their daughter was born prematurely in 2015; periodically providing financial support to his mother during the COVID-19 pandemic; and in 2023, the loss of approximately \$12,000 in an investment. (GE 1 - 2; Tr. 62, 111)

Applicant worked for a large corporation (Co. A) from March 2004 to March 29, 2022. His last position at Co. A was director of content strategy and development, and his position was eliminated due to a reduction in force. Co. A gave him an 18-month severance package (late March 2022 to late September 2023) of full-pay (\$117,000 annually) and benefits. He also received his 2022 annual bonus of approximately \$20,000. Sometime during the summer of 2023, he started receiving unemployment benefits of approximately \$300 weekly or bi-monthly. In 2017, he started his own company, and to date, he has made approximately \$10,000 total in profit. (GE 1 - 2; Tr. at 20-23, 79-81, 85-89, 112-113)

Several years before Applicant lost job his at Co. A., his tenant failed to make rent payments on Prop. A. He purchased this home with his ex-wife in 2002, and it was his primary residence until 2015, when he purchased his current home, Prop. B. A month after purchasing Prop. B, he was able to rent Prop. A. to his first set of tenants. The monthly mortgage payments of \$1,250, were offset by the monthly rental income. His second set of tenants moved into Prop. B in 2018, and after about six months they stopped paying rent. He was unable to make the mortgage payments himself, and he had

difficulty evicting them, ultimately leading to the foreclosure of the property in 2021. (Tr. 55-62)

In 2023, Applicant purchased Prop. C with several other individuals. Their intent was to renovate Prop. C and “flip” it. His initial outlay was \$10,000, and he spent an additional \$6,000 toward repairs. He used his 2022 bonus from Co. A to fund this endeavor. The property was sold within a few months after it was purchased, and of the approximately \$16,000 he spent toward the property, he received a return of about \$4,000, thus realizing a loss of \$12,000. He stopped making payments toward the majority of the alleged SOR debts between April 2022 and September 2023, because he could not afford the minimum monthly payment amounts. While unemployed and not paying his financial obligations, Applicant took a family vacation in the summer of 2023. (Tr. 42, 48-49, 63, 71-80, 93, 112)

The following debts were alleged in the SOR:

SOR ¶1.a – Garnishment for Child Support Arrearage – \$22,196 – Admits: Applicant stopped making required child-support payments for his daughter after he lost his job in March 2022. He provided documentation demonstrating he made payments directly to his ex-wife and daughter between April 2022 and June 18, 2024, totaling \$6,324. He made direct payments to his ex-wife between June 18, 2024, and August 23, 2024, totaling \$2,378. However, in October 2024, a court order was entered against him to garnish his wages bi-weekly in the amount of approximately \$1,039. He testified that he anticipates this obligation will be satisfied in July 2025. (Answer; GE 2; GE 6 - 7; AE D - H; Tr. 36, 45-47, 49-54, 82, 116-118)

SOR ¶1.b – 2021 Foreclosure – Admits: The CBRs reflect there is no outstanding balance for this debt. (GE 2 - 5; GE 7; AE L; Tr. 38, 47, 55-62)

SOR ¶1.c – Time Share – outstanding amount \$960, balance of \$6,387 – Denies: Applicant provided documentation demonstrating this debt is current and in good standing. The outstanding balance of \$6,271 is less than the amount alleged in SOR. (Answer; GE 2 - 5; GE 7; AE M; Tr. 38, 63-71, 76-77)

SOR ¶¶1.d – Credit Card – \$3,022; 1.f Credit Card – \$2,205; 1.g Credit Card – \$2,178; 1.j Car Repairs – \$475 – Denies: Applicant retained a credit counseling company (CCC) in August 2023, to negotiate the balances of SOR ¶¶ 1.d, 1.f, 1.g, and 1.j on his behalf. Starting in September 2023, he has made monthly payments of \$200. CCC distributes these payments between the four accounts. According to CCC, the debts initially totaled \$8,383, and it negotiated the combined balance to just over \$4,500. Applicant provided documentation demonstrating the negotiated balance and current balance of each debt (at the time of the hearing), respectively: 1.d \$1,943/\$411; 1.f \$1,332/\$699; 1.g \$1,075/\$771; 1.j \$172/\$147. (Answer; GE 1 - 5; GE 7; AE A; Tr. 33-36, 89-93, 98-105)

SOR ¶1.e – Credit Card – \$4,030 – Denies: Applicant does not dispute this is his debt. However, in approximately January 2024, he hired an attorney to represent him in court,

and using the Consumer Credit Act, he was able to prevent the creditor from proceeding with continued collection efforts. (Answer; GE 2 - 5; GE 7; AE C; Tr. 93-98, 102)

SOR ¶¶1.h – Credit Card – \$4,859 and 1.i – Credit Card – \$8,076 – Denies: In April 2024, Applicant, through his attorney, agreed to consent judgements for both debts. He settled SOR ¶1.h for \$3,230, with monthly payments of \$90, and SOR ¶1.i for \$5,270, with monthly payments of \$155. His most recent CBR reflects he is making the agreed upon payments. (Answer; GE 1 -5; GE 7 - 8 at 1-2; AE B; Tr. 101-102, 118)

SOR ¶¶1.k – Federal and 1.l – State – Income Taxes for Tax Years 2022 and 2023 – Admits: Applicant stated in his SCA that his Federal and state income taxes for TY 2022 and 2023 were unfiled. During his March 2024 interview, he claimed he would file his TY 2022 taxes with his TY 2023 taxes. At the hearing, he acknowledged all income taxes for both TYs remain unfiled, due to “financial hardship,” but claimed he plans to file them in 2025. He owes an unknown amount for both years. Prior to leaving Co. A, he took a loan from his 401k, but he did not repay the loan, and he has not yet paid the requisite taxes and penalties for the loan. (GE 1 - 2; GE 7; AE K; Tr. 106-110)

Applicant earns \$169,000 annually at his current position, and his wife earns approximately \$31,000 annually. When he left Co. A, he rolled his 401k (worth approximately \$300,000) into an annuity. He currently has about \$10,000 in his 401k at Co. B, which has an outstanding loan of \$4,500. Applicant follows a written budget, his most recent CBR reflects no new delinquent debt, and he has \$1,000 in savings. (GE 2; Tr. at 20-21, 43-44, 112-116)

Applicant provided documentation demonstrating he paid his TY 2021 Federal taxes of \$551.53 on March 7, 2025, despite telling the investigator in March 2024, he would pay the obligation as soon as possible. In September 2023, he entered a six-month deferred payment plan for his home mortgage. The delinquent taxes and mortgage issues were not alleged and will not be considered as disqualifying conduct; however, I may consider these unalleged financial issues for the purpose of evaluating mitigation and the whole-person concept. (GE 1; GE 7; AE I – K; Tr. 36-37, 110-111, 116)

Policy

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 several 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 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

Failure to meet one's 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. An individual who is financially overextended is at a greater risk of having to engage in illegal or otherwise questionable acts to generate funds. (AG ¶ 18)

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.

The record evidence of Applicant's delinquent debts establishes the following 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;
- (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 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; 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's initial financial problems were caused by events beyond his control – his daughter's 2015 premature birth, and his wife's subsequent inability to work for several years; the effect of his tenants' failure to pay rent in 2018 and 2019; and the financial support he provided his mother for approximately 18 months during the COVID-19 pandemic. He was unemployed from late March 2022 to mid-January 2024; however, he received an 18-month severance package, a \$20,000 bonus, and unemployment benefits, and was in effect unemployed for less than four months (between the end September 2023 and mid-January 2024). Based upon the record evidence, while he was receiving severance, he chose to continue to take a vacation in 2023 and made risky investment choices rather than pay the minimums on his financial obligations and pay child support for his daughter. Therefore, he receives only partial credit for AG ¶ 20(a) and (b).

Applicant engaged a credit counseling service in August 2023 to negotiate settlements for four of his debts, and he has made the required payments since September 2023. Thus, he receives credit for AG ¶ 20(c). He is also paying two debts

through settlement agreements that were the result of consent judgments. He was able to eliminate a debt, he acknowledged was his responsibility, by relying upon state and local consumer protection laws. Finally, his child support is being garnished from his current paychecks. However, as he settled most his debts for lesser amounts than he owed, and his child-support payments are being garnished, he receives only partial credit for AG ¶ 20(d).

Applicant has not filed his state and Federal income tax returns for TYs 2022 and 2023. He made repeated promises in his SCA, interview with the government investigator, and answer to the SOR that he would resolve his outstanding tax filings and pay his 2021 Federal tax debt. However, he waited until less than a month before the hearing to pay his TY 2021 Federal taxes, and as of the hearing he had not filed his TY 2022 and 2023 state and Federal tax returns. Therefore, AG ¶ 20(g) is not applicable.

Based on the record, Applicant is not a suitable candidate for access to classified information at this time. In reaching this conclusion, I also considered the whole-person factors at AG ¶ 2(d). Security clearance adjudications are not debt collection proceedings. Rather the purpose of the adjudication is to make “an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk.” (AG ¶ 2(a)) Furthermore, applicants are not held to a standard of perfection. All that is required is that he develop a plan for filing and paying his state and Federal income tax returns and take actions to execute that plan.

Formal Findings

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

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a – 1.j: For Applicant
Subparagraphs 1.k – 1.l: Against Applicant

Conclusion

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

CAROLINE E. HEINTZELMAN
Administrative Judge