



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



Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

03/21/2025

Decision

BENSON, Pamela C., Administrative Judge:

Applicant did not file his income tax returns for at least two consecutive years, and he did not establish he acted responsibly to address his long-standing delinquent account. Given the entirety of the record evidence, I conclude Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On January 19, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The DCSA CAS 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 implemented by the DOD on June 8, 2017.

On February 23, 2024, Applicant responded to the SOR (Answer) and admitted all eight SOR allegations. He did not attach documentary evidence or provide an explanation as to why he had financial issues in his Answer. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned this case on September 12, 2024. DOHA issued a notice on November 18, 2024, scheduling the hearing for December 10, 2024. The hearing proceeded as scheduled via online video teleconferencing.

Department Counsel submitted Government Exhibits (GE) 1 through 5, which I admitted into evidence without objection. Applicant testified but did not submit any documents. I held the record open for one month in the event either party wanted to supplement the record. Department Counsel timely proffered a current credit report marked as GE 6, which I admitted into evidence without objection. Department Counsel also provided Applicant a blank personal financial statement after the hearing; however, Applicant did not documentation while the record was held open. DOHA received the hearing transcript (Tr.) on December 17, 2024. The record closed on January 10, 2025.

Findings of Fact

Applicant is 62 years old. After approximately 20 years of marriage, he was widowed in May 2016. He has adult children. He had three periods of unemployment between 2004 and 2014. From September 2014 to August 2022, he earned his current salary of \$54,000, due to working numerous overtime hours with a previous employer. He was unemployed for about a month-and-a-half in mid-2022 after leaving this employment with a severance package of about \$3,200. Since October 2022, he has worked for his current employer, a DOD contractor, as a test technician. His employer is sponsoring him for a DOD security clearance. (GE 1; Tr. 20-22, 26, 68-70, 72)

Financial Considerations

Applicant's financial issues started when his wife became ill and lost her job. In about 2009, she was diagnosed with a serious medical ailment, and she passed away from this condition in May 2016. They filed bankruptcy multiple times due to the accumulation of significant medical bills, the lack of insurance coverage for prescriptions, and to prevent foreclosure on their home. (Tr. 71)

The SOR alleges Applicant failed to file, as required, Federal income tax returns for tax years (TY) 2020 and 2021. (SOR ¶ 1.a) Applicant disclosed on his November 2022 security clearance application that he had not filed his TY 2021 income tax return. He had been too busy with work and life, and he listed, "I will get this filed ASAP." During his February 9, 2023 background interview, he told the investigator he had completed his 2021 income tax return, but he had not yet mailed it. He promised to have this tax return mailed by the end of the month, when he mailed his TY 2022 Federal income tax return. Applicant responded to interrogatories in October 2023, which requested he provide Internal Revenue Service (IRS) income tax transcripts for TY years 2019, 2020, and 2021. Applicant provided these transcripts, which showed he filed his TY 2019 Federal income

tax return, but he had not filed his Federal income tax returns for TY 2020 and 2021. During the hearing, Applicant admitted his income tax returns were completed, but he had not yet mailed the paperwork to the IRS, because he believed he owed \$1,200 for this tax year. He also admitted he had not filed his Federal income tax returns for TY 2022 and 2023, which was not alleged in the SOR. (GE 1, 2; Tr. 29-34)

SOR ¶ 1.b alleges Applicant filed for Chapter 13 Bankruptcy in about November 1996. The bankruptcy was discharged in about November 2001. He testified he was working during this period, but his wife was not employed when they filed bankruptcy. The debts included in this case were for unpaid credit cards and vehicles. (Tr. 34-37; GE 5)

SOR ¶ 1.c alleges Applicant filed for Chapter 13 Bankruptcy in about November 2001. The bankruptcy was discharged in about October 2005. He testified his wife was not working, and his hours had been cut by his employer. During this period, they had been using credit cards to pay bills and put gas in their car, and these expenses quickly accumulated on their credit cards. They were also behind in paying their mortgage. He acknowledged he completed financial counseling every time he filed for bankruptcy, which is a requirement. (Tr. 37-40; GE 5)

SOR ¶ 1.d alleges Applicant filed for Chapter 13 Bankruptcy in about June 2008. The bankruptcy was dismissed in about October 2012. He admitted he was working full time when he and his wife filed for this bankruptcy. He stated they chose to have the case dismissed because he was able to refinance their mortgage and successfully lower their payments. However, the bankruptcy records showed the case had been dismissed for failure to make payments in accordance with the Chapter 13 payment plan. He stated the other creditors included in the bankruptcy had already written off the debts and no longer sought payment even though the bankruptcy had been dismissed. (Tr. 40-44; GE 5)

SOR ¶ 1.e alleges Applicant filed for Chapter 13 Bankruptcy in about May 2013. The bankruptcy was dismissed in about October 2014. The bankruptcy records showed the case had been dismissed for failure to make payments in accordance with the Chapter 13 payment plan. He stated the only debt was listed in this bankruptcy case was his mortgage creditor, and he denied including any vehicle or credit-card debts. However, the bankruptcy petition showed multiple creditors, including the IRS, and his estimated liabilities were between \$100,001 to \$500,000. When questioned about this inconsistency, Applicant stated these creditors were creditors from his previous bankruptcy that had been dismissed in October 2012. (Tr. 44-48; GE 5)

SOR ¶ 1.f alleges Applicant filed for Chapter 13 Bankruptcy in about February 2016. The bankruptcy was dismissed in about June 2018. His estimated liabilities were between \$100,001 to \$500,000, as listed on the bankruptcy petition. Applicant stated that

the only debt listed in this bankruptcy case was his mortgage creditor, and he denied including any vehicle or credit card debts. Department Counsel pointed out that the bankruptcy records showed multiple creditors, including the IRS. Applicant's testimony contradicted the bankruptcy records. (Tr. 48-52; GE 5)

SOR ¶ 1.g alleges Applicant filed for Chapter 13 Bankruptcy in about September 2018. The bankruptcy was dismissed in about June 2020 for failure to make payments in accordance with the Chapter 13 payment plan. His estimated liabilities were between \$100,001 to \$500,000, as listed on the bankruptcy petition. Applicant testified that the only debt included in this bankruptcy was his mortgage creditor. He did not continue payments to the trustee because his mortgage creditor allowed him to roll his delinquent mortgage payments into his loan. On several occasions, Applicant's testimony contradicted the bankruptcy records. (Tr. 52-56; GE 5)

SOR ¶ 1.h alleges Applicant is indebted to a finance creditor in the amount of approximately \$14,305, for a van he had purchased in about 2015 and then stopped making payments. The vehicle was repossessed and sold at auction. In July 2018, this account was charged off as a bad debt. Applicant testified that, during the summer of 2018, he tried to negotiate with the creditor, but the creditor was unwilling to accept a lower amount. During his background interview in February of 2023, Applicant told the investigator he was not aware he had a delinquent balance and promised to contact the creditor, and if a balance was owed, he would arrange a payment plan. During the hearing, Applicant admitted he did not make contact with the creditor. He stated he disputed this debt, but he was unsure if he could provide supporting documentation because his dispute document was a hand-written letter that he could not reproduce. The December 2024 credit report reflected this delinquent account as unresolved. (Tr. 56-62, 73-74; GE 2, 4, 6)

Applicant testified he was current on all other accounts. The December 2024 credit report showed a new delinquent account in the amount of \$193 was owed to an insurance agency. This was not alleged in the SOR. Applicant testified he generally lives paycheck to paycheck. He does not have a monthly budget to track his spending. He recently purchased a Mercedes-Benz vehicle with a monthly payment of \$555. (Tr. 63, 66; GE 6)

Any adverse information not alleged in the SOR will not be considered for disqualification purposes but may be considered in evaluating application of mitigating conditions and in applying the whole-person concept. See, e.g., ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017).

Policies

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. . . .

Conditions that may raise financial considerations security concerns are provided 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.

Based on Applicant's admissions, he failed to timely file his Federal income tax returns for TY 2020 and 2021, and he continues to owe a significant vehicle loan debt of \$14,305. He filed multiple Chapter 13 bankruptcies since 1996, due to his history of indebtedness and financial issues. AG ¶¶ 19(a), 19(c), and 19(f) apply.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. 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 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; 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 bears the burdens of production and persuasion in mitigation. An applicant is not held to a standard of perfection in his or her debt-resolution efforts or

required to be debt-free. “Rather, all that is required is than 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.” ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014).

Applicant did not file his Federal income tax returns for TY 2020 and 2021, and he admitted at the hearing that he has not filed tax returns for TY 2022 and 2023. He claimed the tax returns were completed, but he had not yet mailed them to the IRS. He was worried he owed money for tax year 2020, but since he was due a refund for 2021, he has provided no plausible explanation for his failure to mail the 2021 income tax return. He disclosed in the November 2022 security clearance application that he planned to file his 2021 tax return as soon as possible. Over two-and-a-half years have passed, and Applicant has yet to file either his 2020 or 2021 income tax returns. He presented no evidence of reasonable efforts to file, pay, or otherwise resolve his delinquent tax filings, as required by law.

“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. See, ISCR Case No. 15-03481 at 5 (App. Bd. Sep. 27, 2016).

Applicant has a long history of financial troubles, which caused him to file bankruptcy on multiple occasions. He currently owes over \$14,000 for a van that was repossessed due to nonpayment. He testified he was fully aware and disputed this debt in 2018, but during his February 2023 background interview, he denied knowing he owed any money on this delinquent vehicle loan. He told the investigator he would contact the creditor, and if a balance was assessed, he would immediately arrange a payment plan. At the hearing, it was apparent that these promises were not kept by Applicant. He has been gainfully employed since at least 2022, and he has shown no effort to resolve this significant debt.

Applicant did not establish he acted responsibly and in good faith to address and resolve his unfiled tax returns and his long-standing delinquent account. His financial issues continue to cast doubt on his current reliability, trustworthiness, and good judgment. None of the mitigating conditions apply. Applicant did not mitigate the financial considerations security concerns.

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 and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant did not establish he acted responsibly to address his unfiled tax returns and resolve an unpaid vehicle loan for a repossessed van. He has been aware of the Government's concerns since at least 2023, but he has chosen not to take any action. He failed to demonstrate the high degree of good judgment and reliability required of persons granted access to classified information. See, ISCR Case No. 14-01894 at 5 (App. Bd. Sept. 27, 2016). Given the entirety of the record evidence, I conclude that 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.h: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge