



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



In the matter of:

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ISCR Case No. 23-01472

Applicant for Security Clearance

Appearances

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

06/27/2025

Decision

PRICE, Eric, Administrative Judge:

Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On July 24, 2018, and February 28, 2022, Applicant completed Electronic Questionnaires for Investigations Processing or a security clearance application (SCA). On February 29, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant alleging security concerns under Guideline F. The DCSA CAS acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

On March 5, 2024, Applicant provided his response to the SOR. On March 17, 2025, the case was assigned to an administrative judge. On April 17, 2025, the case was transferred to me for administrative reasons. On April 3, 2025, the Defense Office of

Hearings and Appeals (DOHA) issued a notice scheduling the hearing for May 20, 2025. The hearing was held as scheduled using the Microsoft Teams video teleconference system.

Department Counsel offered Government Exhibits (GE) 1 through 7. (Hearing Exhibit (HE) I) Applicant testified and offered Applicant Exhibits (AE) A through D. The record was held open to permit Applicant to submit additional documentary evidence. He timely submitted AE E through M on June 12, 2025. On June 18, 2025, I notified Applicant that AE I and AE J were duplicate files and invited him to submit additional documents on or before June 24, 2025. (HE II) He did not submit any additional documents. GE 1 through 7, and AE A through M were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on June 2, 2024, and the record closed on June 25, 2025.

During the hearing, Department Counsel moved to amend the amount of delinquent taxes alleged in SOR ¶¶ 1.c and 1.e. to comport with evidence submitted by Applicant, and I granted the motion without objection. (Tr. 10-11)

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.e, with explanations. His admissions are incorporated in my findings of fact.

Applicant is a 38-year-old information technology (IT) site manager employed by a federal contractor since July 2021. He was employed by other federal contractors in IT positions from August 2007 to July 2021 except when unemployed from September 2010 to December 2010 and from November 2013 to March 2014. He has earned college credits and several IT certifications. He never married but has cohabited with a partner since about 2016. He has no children. He has held a security clearance since 2010. (GE 1; AE L-M; Tr. 9, 25-28)

In Applicant's July 2018 and February 2022 SCAs, he denied failing to file or pay federal or state income taxes as required by law in the previous seven years; he denied that he was then delinquent on any federal debt; and he denied being more than 120 days delinquent on any debt except a vehicle loan. (GE 1 at 33-35, GE 2 at 36-37) Court records show state tax liens totaling \$19,018 were entered against Applicant in March 2012, April and July 2019, February 2020, and May and August 2022. The first lien for \$1,741 was released in April 2013, and he satisfied three liens totaling \$11,310 from December 2022 to January 2023. (GE 5)

In his November 2022 response to interrogatories, Applicant stated he "was not understanding of taxes. I have recently filed all my back taxes. Currently awaiting my payment plan amount." (GE 3 at 6-13) In his February 2024 response to interrogatories, Applicant reported filing federal income tax returns for tax years (TY) 2018 through 2021, and said he filed for an extension for his TY 2022 federal tax return and would file it. (GE 4 at 1-3) He reported filing state income tax returns for TY 2018 through 2021 and said he planned to file his TY 2022 state income tax return. He submitted evidence he paid

the state \$1,000 in February 2024 and reported overdue state taxes for TY 2014 through 2018 totaling \$18,139, as of February 10, 2024. (GE 4 at 5-8)

Applicant attributes his failure to timely file and pay his federal and state income taxes to inexperience, irresponsibility, insufficient withholding, and underemployment. He testified that he had filed all overdue income tax returns; was in payment plans for delinquent federal and state taxes; and that he would timely file future tax returns. He stated he could not afford to pay his TY 2021 income taxes because he had purchased a \$400,000 home with his partner in April 2021. In June 2022 he cosigned a \$90,000 vehicle loan with his partner. His partner made the down payment and some monthly payments, but Applicant now makes all monthly payments of \$1,500 because he and his partner are separating. He plans to sell the vehicle and buy a cheaper one. He and his partner are considering whether to sell their house. A tax preparer has helped him file income tax returns since 2019. (GE 4; Tr. 24-42, 59-70, 75-77)

The evidence concerning the SOR allegations is summarized below:

SOR ¶ 1.a-1.c: failed to timely file federal income tax returns, as required, for TY 2018 and TY 2020-2022 and owed delinquent federal income taxes of about \$1,912 for TY 2021. Applicant admitted he failed to timely file the federal income tax returns alleged and said he had since filed all delinquent returns and was in a payment plan for his delinquent federal income taxes. (Answer; Tr. 24-25, 77; GE 4) Available tax records including federal tax account transcripts dated February 4, 2024, and May 20, 2025, show the following. (GE 4 at 9-15; GE 7 at 13-15; AE F, AE H, AE J-K)

| TY | Federal Tax Return Filed | Extension Requested | Installment Agreement(s) /Payments Made | Balance due/Date |
|------|--------------------------|---------------------|---|--------------------------|
| 2018 | May 2024 | No | July 2024/None April 2025/None | \$5,017/ May 20,2025 |
| 2019 | May 2020 | No | N/A/\$905 credit transferred to TY 2015 | \$0 |
| 2020 | No Return Filed | May 2021 | None | Unknown |
| 2021 | November 2022 | April 2022 | July 2024/None | \$1,912/February 4, 2024 |
| 2022 | February 2025 | May 2023 | April 2025/None | \$12,547/ May 20,2025 |
| 2023 | March 2025 | April 2024 | April 2025/None | \$17,685/ May 20,2025 |

Applicant acknowledged his February 2024 federal tax account transcript showed that no income tax return had been filed for TY 2020. He testified that he subsequently filed it and would submit an updated tax account transcript. (GE 4 at 12-13; Tr. 36-37) On July 27, 2024, Applicant entered a payment agreement for overdue federal taxes for TY 2015, TY 2018, and TY 2021, with a balance due of \$11,761 and monthly payments of \$250 through June 2029. (GE 7 at 13-15) On April 2, 2025, he entered a payment

agreement for overdue taxes for at least TY 2018, TY 2022, and TY 2023. (AE F, AE J-K). On April 3, 2025, he authorized a private collection agency to debit his bank account for payments totaling \$35,400 from April 2025 until January 2035. (AE A) As of May 20, 2025, he owed at least \$35,429 for overdue taxes for TY 2018, TY 2022, and 2023. (AE F, AE J-K) He submitted no evidence of payments made under the July 2024 or April 2025 payment agreements.

SOR ¶¶ 1.d and 1.e: failed to timely file state income tax returns, as required, for TY 2018, 2020, and 2022, and owed delinquent state taxes of about \$19,139 for TY 2014 through 2018. Applicant admitted the allegations and reported all delinquent state income tax returns had been filed. (Answer; GE 4 at 5-8, GE 5; Tr. 24, 77) He testified he was on a payment plan and submitted evidence of a \$1,000 payment in February 2024, and of total payments of at least \$2,500 under a payment plan for TY 2014 through 2018 that reduced the balance to \$16,082, as of April 15, 2025. (AE B-D; GE 7 at 1-11; Tr. 10-11, 24-31, 47-52)

Applicant submitted copies of state income tax returns for TY 2018 through 2023 that show the following. (AE E)

| TY | Tax Return Signed | Adjusted Gross Income/State Tax Withheld | Amount (Owed) or Refund | Evidence Amount Owed or Paid |
|------|-------------------|--|-------------------------|------------------------------|
| 2018 | March 22, 2024 | \$47,924/\$1,965 | (\$1,303) | No but see AE B-C |
| 2019 | March 5, 2021 | \$42,874/\$3,465 | \$542 | N/A |
| 2020 | June 9, 2025 | \$57,286/\$5,523 | \$1,459 | N/A |
| 2021 | October 26, 2022 | \$60,740/\$5,710 | \$3,009 | N/A |
| 2022 | January 5, 2025 | \$86,812/\$7,556 | \$2,334 | N/A |
| 2023 | June 9, 2025 | \$83,234/\$6,896 | \$332 | N/A |

During the hearing Applicant was informed of the importance of providing documentary evidence of income tax filings and payments, and efforts to address or resolve his tax issues. (Tr. 14-15, 22-24, 56-58, 78-84)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

Analysis

Financial Considerations

The security concern under this guideline 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. . . .

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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the documentary evidence show his failure to timely file federal and state income tax returns or to pay taxes due, as alleged in SOR ¶¶ 1.a through 1.e, as amended, and establish 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.

Applicant's failure to timely file some income tax returns or to pay income taxes when due that were not alleged in the SOR were not considered for disqualifying purposes but may be considered for the following five purposes: (a) to assess his credibility; (b) to evaluate his evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether he has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) for whole-person analysis. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted)

The following mitigating conditions under AG ¶ 20 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's tax problems date back to at least March 2012. He had six state tax liens entered against him from March 2012 to August 2022 (four of which have been released or satisfied), owed delinquent state taxes for TY 2014 through 2018 totaling \$16,082 as of April 15, 2025, and late-filed state income tax returns for TY 2018 through 2023. He late-filed federal income tax returns for TY 2018 and TY 2021 through 2023, failed to file a TY 2020 return and, as of May 20, 2025, owed at least \$37,341 for overdue federal income taxes.

A security clearance adjudication is not a tax-enforcement procedure. It is an evaluation of an individual's judgment, reliability, and trustworthiness. The filing of delinquent tax returns or the existence of a payment arrangement with an appropriate tax authority does not compel a Judge to issue a favorable decision. The "timing of corrective action is an appropriate factor for the Judge to consider in the application of mitigating condition 20(g) as well as in considering aspects of other overlapping mitigating conditions, such as, in determining whether an applicant acted responsibly under the circumstances, whether an applicant's past financial deficiencies are unlikely to recur, or whether an applicant initiated good-faith efforts to resolve financial problems." ISCR Case No. 17-01807 at 3-4 (App. Bd. Mar. 7, 2018) (citations omitted)

AG ¶ 20(a) is not established. Applicant's failure to timely file and pay federal and state income taxes is longstanding, ongoing, and did not occur under circumstances unlikely to recur. His financial behavior continues to cast doubt on his reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is not fully established. Applicant's periods of unemployment and underemployment were largely beyond his control. While his partner's decision to make a downpayment on a luxury sedan for Applicant was largely beyond his control, his decision to co-sign the vehicle loan was not. Additionally, he has not provided sufficient evidence that he acted responsibly under the circumstances.

AG ¶ 20(c) is not established. Applicant submitted no evidence of financial counseling, and there are no “clear indications” that his tax problems are under control.

AG ¶¶ 20(d) and 20(g) are established for his overdue state taxes for TY 2014 through 2018 alleged in SOR ¶ 1.e. Applicant made a \$1,000 payment in February 2024, entered a payment arrangement with state tax authorities in March 2024, has made regular payments on his state tax debt, and, as of April 15, 2025, had reduced the amount due from \$19,139 to \$16,082.

AG ¶¶ 20(d) and 20(g) are not established for his overdue federal taxes alleged in SOR ¶ 1.c. Applicant submitted no evidence of payment of overdue taxes for TY 2021. Although he entered a payment agreement for overdue taxes for TY 2015, TY 2018, and TY 2021 in July 2024 and he entered a payment agreement for overdue taxes for at least TY 2018, TY 2022, and TY 2023 in April 2025, he submitted no evidence of payments made under either agreement. It is unclear from the available evidence whether overdue taxes for TY 2021 were included in the April 2025 agreement. As of May 20, 2025, he owed at least \$35,429 for overdue federal income taxes, including \$30,232 for TY 2022 and TY 2023. Even if he had made payments in accordance with the April 2025 agreement (\$150 per month); his repeated failure to pay taxes when due and the timing of his payment arrangements with the IRS are insufficient to support full mitigative credit for compliance with his recent arrangement with the IRS or to support a finding that he is adhering to a good-faith effort to repay his overdue federal income taxes.

AG ¶ 20(g) is partially established for past-due federal income tax returns alleged in SOR ¶¶ 1.a-1.b (TY 2018, TY 2021, and TY 2022) and past-due state income tax returns alleged in SOR ¶ 1.d (TY 2018, TY 2020, and TY 2022), which have been filed. However, it is not established for the unfiled TY 2020 federal income tax return. Although not alleged in the SOR, his failure to timely file federal and state income tax returns for TY 2023 negatively impacts application of mitigative credit.

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 the 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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall common-sense judgment based upon careful consideration of the guidelines” and the whole-person concept. I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I considered Applicant’s age, education, employment history, security clearance history, and that his financial problems were caused, in part, by circumstances beyond his control. I considered that he has filed all but one delinquent income tax return alleged in the SOR. I considered his efforts to pay his delinquent federal and state income taxes. I considered that he filed federal and state income tax returns for TY 2023 in early 2025. I also considered that he incurred additional federal tax debt totaling \$30,232 for TY 2022 and TY 2023 after purchasing and co-signing a \$90,000 loan for a luxury vehicle in 2022. The record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance.

After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the financial considerations security concerns. This decision should not be construed as a determination that he cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards establishment of a track record of timely filing federal and state income tax returns and paying income taxes when due, he may well be able in the future to demonstrate persuasive evidence of his security clearance worthiness.

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 through 1.d: | Against Applicant |
| Subparagraph 1.e: | For Applicant |

Conclusion

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

Eric C. Price
Administrative Judge