DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 18-01246
	)	
Applicant for Security Clearance	)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

01/15/2019

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns, but he did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 2, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). Applicant responded to the SOR on May 24, 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 29, 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 July 9, 2018. As of August 27, 2018, he had not responded. The case was assigned to me on January 9, 2019. The Government exhibits included in the FORM are admitted in evidence.

Findings of Fact

Applicant is a 45-year-old employee of a defense contractor. He has worked for his current employer since 2012. He served on active duty in the U.S. military from 1992 until he retired in 2012. He is a high school graduate. He is married with an adult stepchild.[1]

Applicant did not file his federal income tax returns when they were due for tax years 2011 through 2016. His mother passed away in 2011, and he inherited an annuity of less than $10,000. His father and brother were upset that they did not inherit anything. His father threatened to disown Applicant if he did not sell the annuity and split it with his father and brother. Applicant sold the annuity, which may have created a tax liability, and split the results with his father and brother. He was overwhelmed by the loss of his mother and the strain placed on him by his family, and he did not feel that he was competent to prepare his federal income tax return. Rather than hire someone to prepare the return, he simply did nothing.[2]

Applicant thought he had to file the 2011 tax return before he filed subsequent years, and he did not file federal income tax returns for another five years. His wife was diagnosed with cancer, which also contributed to his failure to fulfill his obligations.[3]

Applicant submitted a Questionnaire for National Security Positions (SF 86) in April 2017. He reported that he did not file his 2011 federal income tax return, but he did not report his failure to file the additional years. He wrote that the estimated amount of taxes owed was $45,000, and that he was "Working with the IRS to resolve/Monthly payments." He also reported derogatory information under a different section.[4]

Applicant was interviewed for his background investigation in August 2017. He discussed his tax issues. He stated that he did not report the additional tax years on the SF 86 because he was unsure how to do so. He told the investigator that the $45,000 figure on the SF 86 was his income for 2011, and it did not reflect the taxes owed for that year. He stated that he recently contacted tax professionals to file his tax returns, and he would then pay the IRS what he owes.[5] After considering all the evidence, I find that Applicant did not intentionally provide false information on the SF 86.

Applicant provided documentation in his response to the SOR that he retained tax professionals. He asserted that the federal tax returns for 2011 through 2016 had been filed. He stated that he paid the IRS $15,910 as payment in full for tax years 2009

[1] Items 2-3.

[2] Items 1-3.

[3] Items 1, 3.

[4] Item 2.

[5] Item 3.

and 2010. He also indicated that when the IRS determines how much he owes for 2011 through 2016, the tax professionals will arrange a payment plan with the IRS.[6]

Applicant received financial counseling. He indicated that he has been forthcoming with his supervisors and leadership about his tax issues. He stated that he achieved every financial goal he set to address his tax problems. He is well regarded by the military units he supports.[7]

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.

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

[6] Item 1.

[7] Item 1.

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 is potentially applicable in this case:

> (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 did not file his federal income tax returns when they were due for tax years 2011 through 2016. The evidence is sufficient to raise the above disqualifying condition.

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; 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 mother passed away in 2011. He was overwhelmed by the loss of his mother and the strain placed on him by his family over an inheritance. His wife also developed cancer. He did not feel competent to prepare his 2011 federal income tax return. Rather than hire someone to assist him, he simply did not file federal income tax returns for the next six years. The loss of his mother and his wife's cancer are tragic events that were beyond his control, but he failed to act responsibly under the circumstances.

Failure to comply with tax laws suggests that an applicant 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 filing tax returns 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). This may be true even when the returns have been filed, as an applicant who begins to resolve his or her financial problems only after being placed on notice that his or her clearance is in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. *See, e.g.*, ISCR Case No. 16-03187 at 4 (App. Bd. Aug. 1, 2018).

The tax returns have been filed, but Applicant still owes the IRS an indeterminate amount. His tax issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable. AG ¶¶ 20(b) and 20(c) are partially applicable, and AG ¶ 20(g) is applicable, but they do not completely mitigate the judgment issues raised by Applicant's many years of shirking his responsibility to file his tax returns and pay his taxes. I find that security concerns about Applicant's finances remain despite the presence of some mitigation.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

> (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not intentionally provide false information about his tax returns on his 2017 SF 86. AG ¶ 16(a) has not been established. SOR ¶ 2.a is concluded for Applicant.

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 considered Applicant's honorable

military service and that he is well regarded by the military units he supports. However, he shirked his tax responsibilities for years, and he still owes the IRS an indeterminate amount.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns, but he 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
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	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.

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Edward W. Loughran
Administrative Judge