



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 REDACTED) ISCR Case No. 19-01054
)
 Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

01/02/2020

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant filed his federal income tax returns after their due dates for tax years 2011, 2012, and 2014. The Internal Revenue Service (IRS) had no record of him filing a return for tax year 2018 as of May 2019. Since July 2016, Applicant has been repaying his past-due income taxes for tax year 2014, but he has made little progress toward resolving more than \$69,000 in consumer-credit debts charged off or placed for collection. Clearance is denied.

Statement of the Case

On July 12, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action 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 *National Security Adjudicative*

Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AG) effective within the DOD on June 8, 2017.

On July 29, 2019, Applicant responded to the SOR allegations and requested a decision based on the written record in lieu of a hearing. On September 5, 2019, the Government submitted a File of Relevant Material (FORM), consisting of nine exhibits (Items 1-9). The Defense Office of Hearings and Appeals (DOHA) forwarded a copy of the FORM to Applicant on September 6, 2019, and instructed him that any response was due within 30 days of receipt. Applicant received the FORM on September 16, 2019. No response was received by the October 16, 2019 deadline. On November 26, 2019, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file on December 5, 2019.

Findings of Fact

The SOR alleges under Guideline F that, as of the July 12, 2019 SOR, Applicant failed to timely file federal income tax returns for tax years 2011, 2012, 2014, 2015, 2017, and 2018 (SOR ¶ 1.a), and that he owes \$8,512 in past-due federal income taxes for tax year 2014 (SOR ¶ 1.b). Additionally, the SOR alleges that he owes \$51,878 in delinquent credit-card debt (SOR ¶¶ 1.c-1.d and 1.f-1.i) and \$11,821 on a charged-off vehicle lease (SOR ¶ 1.e). When Applicant answered the SOR allegations, he denied that he had failed to timely file federal income tax returns, but he admitted owing the alleged debts. He presented documentation showing that he was in an installment repayment plan for his federal taxes for tax year 2014. (Items 1-2.) After considering the FORM, which includes Applicant's Answer to the SOR (Item 2), I make the following findings of fact:

Applicant is a 59-year-old college graduate with a bachelor's degree awarded in May 1983. He served as an officer in a branch of the National Guard from May 1982 to May 1983 and as an officer in the inactive reserve from March 1983 to February 1985. He has been married to his current spouse since July 2013. He was married to his first wife from October 1983 to March 2012. He has two sons, ages 21 and 26, from that marriage. (Items 3-4.)

Applicant worked as a civilian project manager for a branch of the U.S. military from September 2001 to November 2004. He held a DOD secret clearance for that job. As of June 2002, he was making payments on a credit-card account in collection and on \$6,789 in student-loan debt. A federal tax lien of \$13,011, filed in October 1997, was satisfied in April 2003. (Item 9.) He left federal service for a director's position with a defense contractor in November 2004, and while in that job, his clearance eligibility was upgraded to top secret in December 2012. He stayed on with his then employer after a corporate merger, but in 2014, the new company ceased operating due to financial problems. Applicant worked as a consultant from April 2014 to January 2015 for a company that serviced federal and state agencies. In January 2015, he began his current employment in the defense industry as the director of a company that manufactures custom mechanical systems. (Items 3-4.)

On April 14, 2017, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) on which he responded “Yes” to an inquiry concerning whether, in the last seven years, he had failed to file or pay federal, state, or other taxes, when required by law or ordinance. He indicated that he had worked as a consultant in 2014 and failed to have enough taxes withheld. He commented that he was currently repaying an \$8,500 tax debt for tax year 2014 (SOR ¶ 1.b) at \$185 a month to the Internal Revenue Service (IRS) under a repayment plan. In response to inquiries concerning any delinquency involving routine accounts in the last seven years, Applicant listed a \$16,000 auto-lease debt for a vehicle “returned” (voluntarily surrendered) in 2015 (SOR ¶ 1.e). He explained that he had to pay child support and medical expenses for his spouse. (Item 3.)

A check of Applicant’s credit on June 21, 2017, revealed several credit-card delinquencies. A credit card with an \$8,140 balance was past due 30 days for \$163 (SOR ¶ 1.g). Two credit-card accounts obtained from a bank were in collection for \$16,219 (SOR ¶ 1.c) and \$10,606 (SOR ¶ 1.f) with no activity on the accounts since 2015. A credit-card account opened in February 2013 was placed in collection for \$3,346 (SOR ¶ 1.i). A credit-card debt from December 2015 was in collection for \$4,040 (SOR ¶ 1.h). A credit-card debt of \$12,900 from January 2016 had a collection balance of \$14,072 (SOR ¶ 1.d). He reportedly owed \$11,698 on the defaulted automobile lease (SOR ¶ 1.e). Applicant was making timely payments on a credit card with a balance of \$154; on a car loan obtained for \$4,046 in December 2014 with a \$1,116 balance; and on a mortgage balance of \$209,585. He obtained the mortgage in June 2012 for \$231,282. (Item 7.)

On August 14, 2018, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). When asked about his financial delinquencies, Applicant did not dispute the debts in SOR ¶¶ 1.c-1.e. He indicated that the debts were incurred because his spouse was unemployed and had significant medical issues that were not covered by insurance. Additionally, he had to remain current with his child support payments. Concerning the credit-card debt in SOR ¶ 1.c, Applicant stated that he was working on a settlement offer and expected to have a payment plan in place no later than October 2018. As for the debt in SOR ¶ 1.d, which he admitted was in collection, he stated that he would contact the collection entity about a possible settlement and repayment plan by October 2018. Regarding the lease for the surrendered vehicle (SOR ¶ 1.e), Applicant indicated that he was awaiting correspondence from the creditor about any deficiency balance. When asked whether he had any other delinquent accounts, Applicant volunteered that he had a second account with the bank identified in SOR ¶ 1.f on which he settled a \$2,250 balance for \$640 paid in three installments. He denied any other delinquencies, but then did not dispute the debts in SOR ¶¶ 1.f, 1.h, and 1.i when confronted. Applicant indicated that the creditor owed the debts in SOR ¶¶ 1.h and 1.i refused to settle and wanted lump-sum payments that he could not afford. He expressed his intention to pay the debts. As for the credit card that was 30 days past due (SOR ¶ 1.g), Applicant indicated that the account was closed and had never been over 120 days delinquent. Applicant denied he was delinquent on any federal state or local income taxes, explaining that he was current on his payment plan with the IRS for his 2014 taxes. (Item 4.)

Applicant made no progress toward resolving his delinquent credit-card balances by March 2019. Contrary to what Appellant had claimed during his OPM interview, the account in SOR ¶ 1.g had become \$3,595 past due and was charged off. He reportedly owed \$8,923 on the account as of March 2019. Additionally, a \$295 medical debt from February 2018 was in collection (not alleged in SOR). (Item 6.)

In response to May 9, 2019 interrogatories from DOHA, Applicant provided proof of his installment plan for his federal income tax delinquency for tax year 2014. He also submitted requested IRS account transcripts for tax years 2011 through 2015 and 2017 through 2018. Applicant indicated that his account transcript for tax year 2016 was not available on the IRS' system because of identity theft. In response to a June 13, 2019 request from Applicant for his tax transcript, the IRS informed him that the IRS was unable to process the requested tax year at this time, but that he could contact the identity theft number for any tax year not available. (Item 5.)

Applicant submits that he has filed all of his federal tax returns according to IRS tax requirements. However, tax account transcripts from the IRS (Item 5) show that he filed late returns for tax years 2011, 2012, and 2014. Relevant tax information as reported by the IRS is set forth in the following table.

T

Tax Year	Filing Date	Adjusted Gross Income (AGI)	Balance due
2011	June 11, 2012; on August 27, 2012 assessed penalty for late return	\$178,540 as married	\$0 as of October 26, 2015
2012	October 22, 2013; had extension to October 15, 2013	\$110,140 as single	\$0 as of October 9, 2017
2013	June 27, 2014; had extension to October 15, 2014	\$18,203 as married per IRS transcript but \$23,849 in W-2 withholdings	\$0 as of October 26, 2015; tax refunded by IRS of \$23,927 September 26, 2014.
2014	October 20, 2015; had extension to October 15, 2015	\$198,937 as married	\$8,521 as of June 24, 2019
2015	April 15, 2016	\$96,102 as married	\$0 as of December 4, 2017; \$5,174 refund credited to tax year 2014 on April 15, 2016
2016	No IRS transcript available; Asserts timely filed April 15, 2016 [sic]	AGI not available	Asserts \$0 owed

2017	April 15, 2018	\$137,747	\$0 as of August 27, 2018
2018	Asserts timely filed April 15, 2018 [sic]; IRS had no record of return as of May 13, 2019.	AGI not available	Paid \$3,268 on April 17, 2019

The \$18,203 AGI for tax year 2013 does not seem accurate, given his W-2 withholdings were \$23,849. There is no explanation in the record to explain the low AGI. The IRS tax transcript for tax year 2014 shows that Applicant had only \$8,143 in federal income taxes withheld on a tax liability of \$50,518 (SOR ¶ 1.b). He had worked for a company until April 2014 that year, which explains the withholdings. He apparently made little or no tax payments on his income as a consultant. Concerning repayment of delinquent taxes for 2014, the IRS tax transcript shows that he made a payment to the IRS of \$7,339 on April 15, 2015. When he filed his return on October 20, 2015, five days past the extended deadline, he paid \$13,792 with his return. He was penalized \$1,369 plus \$656 for late payment. On January 14, 2016, Applicant entered into an installment agreement to repay his tax delinquency at \$185 per month. His tax refund of \$5,174 for tax year 2015 was credited to his account on April 15, 2016, and he made a payment of \$5,880 on May 31, 2016. His payments under the installment agreement began on July 21, 2016. As of June 24, 2019, the IRS was reporting a balance owed of \$8,521 for tax year 2014. (Item 5.)

On July 22, 2019, Applicant received the SOR alleging financial considerations, because of his outstanding tax delinquency for tax year 2014 and unpaid consumer-credit delinquencies. When he responded to the SOR allegations on July 29, 2019, he denied late filing of returns but admitted the debts. (Item 2.) Applicant received the Government's FORM on September 16, 2019. Applicant presented no evidence of any payments on the seven consumer-credit delinquencies alleged in the SOR (SOR ¶¶ 1.c-1.i) either in response to the SOR or the FORM. The IRS tax transcripts report some income information for Applicant, but he provided no information about his monthly expenses apart from his \$185 monthly payment to the IRS. Applicant also provided no information about the extent of his spouse's medical expenses or his child support payments that reportedly caused his financial difficulties.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. 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 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 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. Section 7 of EO 10865 provides that 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are articulated 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. . . .

An applicant is not required to be debt free, but is required to manage his finances in a way as to exhibit sound judgment and responsibility. The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

Guideline F security concerns are established when an individual fails to comply with his tax filing obligations whether or not any taxes are owed. Available IRS tax transcripts for Applicant show that he filed his income tax returns late for tax years 2011 (almost two months late), 2012 (one week late), and 2014 (five days late). His tax returns were filed on time for tax years 2013, 2015, and 2017. No tax transcript was available for tax year 2016, which Applicant claims was filed on time. He also asserts that he filed a timely federal income tax return for tax 2018. The IRS had no record of receiving a return as of May 13, 2019, although it had received a tax payment of \$3,268 on April 17, 2019. The tax filing deadline was April 15, 2019. See www.irs.gov. It is unclear whether he filed for an extension of the filing deadline for 2018.

The tax transcript for tax year 2014 shows that he underpaid his federal income taxes by more than \$42,000 when he worked as a consultant. After payments of \$7,339 in April 2015 and \$13,792 with his return on October 20, 2015, he entered into an installment agreement with the IRS in January 2016. As of June 24, 2019, he had reduced his tax delinquency to \$8,521 for tax year 2014. Disqualifying condition AG ¶ 19(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," applies because of his late tax filings for several tax years and his substantial tax delinquency for tax year 2014.

The evidence also establishes a record of substantial consumer-credit delinquency that implicates disqualifying conditions AG ¶¶ 19(a), "inability to satisfy debts," and 19(c), "a history of not meeting financial obligations." In addition to the \$11,821 charged-off balance on the auto lease (SOR ¶ 1.e), Applicant defaulted on his payments on the six credit cards alleged in the SOR. As of March 2019, the balances on those accounts totaled approximately \$57,206.

The burden is on Applicant to mitigate the negative implications for his financial judgment raised by his late tax filings and delinquent debts. Application of the aforesaid disqualifying conditions triggers consideration of the potentially mitigating conditions under AG ¶ 20. One or more of the following conditions may apply in whole or in part:

(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 person has received or is receiving 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 explained that he experienced financial difficulties because of his spouse's out-of-pocket medical expenses and his child support payments when his spouse was unemployed. He presented no evidence of whether her medical issues are ongoing and unlikely to recur. Even if his spouse's medical illness is considered a unique circumstance of the type contemplated within AG ¶ 20(a), Applicant benefitted from the credit extended to him, and he has yet to make any payments toward the consumer-credit delinquencies alleged in the SOR, which became seriously past due between 2015 and 2017. The debts are considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)). AG ¶ 20(a) does not apply.

Applicant has not provided documentation of his spouse's medical expenses that could substantiate that his debts were caused by unexpected or unforeseen factors contemplated within AG ¶ 20(b). IRS tax transcripts show some decline in Applicant and his spouse's income in 2015, when the debts in SOR ¶¶ 1.c, 1.f, and 1.h became past due. Applicant and his spouse's joint AGI for tax year 2015 was \$96,102, a significant decline from their AGI of \$198,937 in 2014 when Applicant worked as a consultant. Income figures were not available for Applicant or his spouse for 2016, when the accounts in SOR ¶¶ 1.d and 1.i were charged off. However, their joint AGI rose to \$137,747 in tax year 2017. Applicant provided no evidence that could reasonably explain or justify his failure to take steps to resolve his delinquencies since 2017.

I have to consider whether Applicant acted in a reasonable manner when dealing with his financial difficulties. See ISCR Case No. 05-11366 at 4, n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether Applicant maintained contact with his creditors. During his OPM interview in August 2018, Applicant indicated that he would try to have repayment plans established by October 2018. There is no evidence of any attempts to settle or resolve his debts. AG ¶ 20(b) is not clearly established.

As of March 2019, Applicant's credit report showed no progress toward addressing his consumer-credit delinquencies. He has had ample opportunity to provide evidence of actions taken, if any, to make payments on his delinquent consumer credit debts, and he submitted no evidence of any payments. Neither AG ¶ 20(c) nor AG ¶ 20(d) can reasonably apply in mitigation. AG ¶ 20(e) was also not established because the debts are undisputed.

Applicant has a credible case for some mitigation of his late tax filing and tax payment issues. While the Government argued in the FORM that Applicant has consistently filed his federal income tax returns past their due dates, the IRS transcripts show some reform by Applicant in that his federal income tax returns were filed on time for tax years 2013, 2015, and 2017. He asserts, without corroboration, that he also filed his income tax returns on time for tax years 2016 and 2018. With respect to tax year 2016, where no tax transcript was provided, the Government's case for a late filing was not proven. Concerning tax year 2018, whereas the IRS tax transcript shows no record of a return having been filed by May 13, 2019, or of any request for a filing extension, Applicant has the burden to prove that he filed a timely tax return, and he presented no documentation to corroborate his claim that he filed a return on April 15, 2019. Applicant's timely installment payments to the IRS since July 2016 sufficiently mitigate the security concerns raised by his tax indebtedness. AG ¶ 20(g) has some applicability because his delinquent federal income tax returns for tax years 2011, 2012, and 2014 were filed well before the SOR was issued; his federal income tax returns for tax years 2013, 2015, and 2017 were filed on time; and he has demonstrated a sufficient track record of timely payments for his 2014 income tax debt to safely conclude that he is likely to continue to make his payments. Absent proof that he filed his federal income tax return for tax year 2018 on time, some concern arises about whether he can be counted on to file his tax

returns on time in the future. That being said, at this time, the primary concern is with his failure to take any steps to address his substantial consumer-credit delinquencies. His ongoing disregard raises considerable doubts as to whether he can be counted on to comply with security requirements. The financial considerations security concerns are not sufficiently mitigated.

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 her conduct and all relevant circumstances in light of the nine adjudicative process factors in 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.

Applicant requested a decision on the written record, so it was incumbent on him to provide the evidence that might extenuate or mitigate the poor judgment raised by his history of late tax filings and his outstanding delinquent debt. Although Applicant has expressed an intention to resolve his debts, promises to pay at some future date are not a substitute for a track record of payments. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). After applying the disqualifying and mitigating conditions to the evidence presented, I conclude that it is not clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant.

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
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.i:	Against Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge