



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



In the matter of:)
)
) ISCR Case No. 19-01558
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

08/12/2020

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns involving his failure to timely pay federal income taxes and his delinquent consumer and medical debts. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On December 11, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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), implemented by DOD on June 8, 2017.

Applicant responded to the SOR on February 13, 2020 (Answer), and elected to have his case decided on the written record in lieu of a hearing. The Government

submitted its written case on March 4, 2020. 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 Government's FORM on March 20, 2020. He did not respond to the Government's FORM. The case was assigned to me on July 6, 2020. The Government's documents identified as Items 1 through 6 are admitted in evidence without objection.

SOR Amendment

Department Counsel amended SOR ¶ 1.j so that it reads: "You are indebted to AARGON COLLECTION AG for a medical account #1790192053 that has been placed for collection in the approximate amount of \$111.00. As of the date of this Statement of Reasons, the account remains delinquent."

Findings of Fact

Applicant admitted all of the SOR allegations in his Answer. He is 71 years old, married, and he has one stepchild and three children, all adults. (Items 2, 3, 4)

Applicant graduated from high school in 1968. He served honorably in the U.S. military from 1970 to 1991. As of his 2017 security clearance application (SCA), he worked as a pier riser/cable technician for a DOD contractor since November 2016. He worked for a previous DOD contractor in the same capacity from 2005 to 2016. He was first granted a DOD security clearance in 1972. (Items 3, 4)

The SOR alleges that Applicant failed to timely pay his federal income taxes for tax years 2014 through 2016. It also alleges that he is indebted to the U.S. Government for \$38,244 in unpaid federal income taxes for tax years 2005, 2009, 2010, and 2013 through 2016, as well as incurring two federal tax liens in the amounts of \$9,808 and \$5,868 entered against him in June 2009 and January 2013, respectively. (SOR ¶¶ 1.a-1.d). The SOR and amended SOR also allege that he has an \$823 delinquent consumer debt and five delinquent medical debts totaling \$2,773 (SOR ¶¶ 1.e-1.j).

In addition to his admissions in his Answer, Applicant listed in his SCA that he failed to file and pay his 2014 through 2016 federal income returns and taxes, in the amounts of \$3,192, \$10,388, and \$6,560, respectively. He further discussed his financial issues, to include his delinquent federal income taxes of \$38,244 and his federal tax liens totaling \$15,676, during his October 2015 and August 2018 interviews with a background investigator and in his July 2019 response to interrogatories. His tax liens and his medical debts in SOR ¶¶ 1.h, 1.i, and 1.j are reported on his 2015 credit bureau report. His tax liens, his consumer debt, and all of his medical debts are reported on his 2018 credit bureau report. (Items 1-6)

Applicant attributed his tax liens, in his 2015 background interview, to his wife losing money in her 401(k) retirement account in tax year 2000, his withdrawal of money

from his 401(k) retirement account in tax year 2001, and their failure to pay the correct amount of federal income taxes for tax periods 2000 and 2001. He stated that after the IRS informed them of their resultant tax indebtedness, they worked with a tax attorney and reached a payment plan with the IRS of \$250 monthly to resolve his liens, which he paid from 2005 to January 2015. He stated that he contacted the IRS in 2015 because he was not employed full time, and the collection of his liens were consequently placed on hold. (Item 4)

Applicant attributed his delinquent federal income taxes for tax periods 2014 through 2016, in his 2018 background interview, to his tax preparer's failure to file, unbeknownst to him and his wife, their joint federal income tax returns for those years. He also stated that their tax preparer told them that they did not owe any federal income taxes for those years. He stated that he first learned about his predicament in approximately 2017, when the IRS mailed him and his wife correspondence informing them about their federal tax indebtedness for tax periods 2014 through 2016. He stated that when he and his wife were set to begin paying their delinquent taxes for those years, they received another letter from the IRS in around mid-2017 stating that their taxes were not in collection, though they were still responsible for paying them. He further stated that the IRS told them not to begin repaying their delinquent federal taxes until they were told to do so, and they had not since heard from the IRS. He stated in his 2019 response to interrogatories that he was in a payment plan with the IRS of \$265 monthly. (Items 3, 4)

Applicant attributed his delinquent medical debts, in his 2015 background interview, to a 2012 surgery. He stated that he would contact his medical creditors to verify the debts and make efforts to resolve them. In his 2018 background interview, he stated that he was unaware of his delinquent consumer and medical debts, as his wife handled their finances, but he would look into and pay them if they were valid. (Items 3, 4)

IRS documentation from August 2017 reflects that Applicant and his wife owe \$38,244 in federal taxes for tax years 2005, 2009, 2010, and 2013 through 2016. It reflects that the IRS "temporarily closed [their] collection case" after determining that it was "currently not collectible" and Applicant could not "pay the money [he] owe[d] at this time." However, it also reflects that Applicant still owed the amount, which included penalty and interest calculated to September 1, 2017, and that the IRS would continue to charge penalties and interest until he paid the amount owed in full. It also reflects that the IRS would file a federal tax lien to protect the U.S. Government's interest, and that the IRS "may re-open [his] case and resume collection activities in the future if [his] financial situation improves." (Item 4)

Applicant stated in his 2015 background interview that he had not received any financial counseling or engaged any debt consolidation services. In his 2019 response to interrogatories, he stated that he was working with a tax attorney to resolve his tax issues. (Item 4)

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 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, these guidelines are applied 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 access to classified information 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. 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 *also* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

- (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 failed to pay \$38,244 in federal income taxes for tax years 2005, 2009, 2010, and 2013 through 2016, as required. He was also unable to pay his consumer and medical debts. AG ¶¶ 19(a), 19(c), and 19(f) apply to SOR ¶¶ 1.b and 1.e to 1.j. Since SOR ¶¶ 1.a, 1.c, and 1.d essentially duplicate the underlying facts of SOR ¶ 1.b, I find for Applicant on those allegations.

I have considered all of the mitigating conditions under AG ¶ 20 and considered the following relevant:

- (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; 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.

The following conditions beyond Applicant's control contributed to Applicant's financial problems: Applicant's 2012 surgery; Applicant's tax preparer's failure to file, unbeknownst to him and his wife, their joint federal income tax returns for tax years 2014 through 2016; the tax preparer's indication to them that they did not owe federal income taxes for those tax years; and Applicant's loss of full-time employment in 2015.

For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under his circumstances. Applicant has not demonstrated that he made efforts to resolve or is currently resolving his outstanding federal taxes. He has not provided any documentation to corroborate his claims of payment to the IRS. A person who fails repeatedly to fulfill his or her legal obligations 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. 15-08782 at 3 (App. Bd. Apr. 5, 2017). In addition, he has not demonstrated that he has taken any steps toward resolving his delinquent consumer and medical debts. I find that AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(g) are not established.

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), 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. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has not mitigated 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.c, 1.d:	For Applicant
Subparagraph 1.b, 1.e-1.j:	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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge