



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



In the matter of:)	
)	
)	ISCR Case No. 19-02102
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

07/01/2020

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns involving his failure to timely file federal and state income tax returns, pay federal income taxes, and his delinquent consumer debt. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On October 17, 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 November 18, 2019 (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 11, 2020. He did not respond to the Government's FORM. The case was assigned to me on April 28, 2020. The Government's documents identified as Items 1 through 6 are admitted in evidence without objection.

Findings of Fact

Applicant admitted all of the SOR allegations in his Answer. He is 49 years old. As of his 2017 security clearance application (SCA), he was unmarried, he did not have any children, and he has resided with his parents since July 2017. (Items 2, 3)

Applicant attended college in 2008 but did not earn a degree. He was unemployed from September 2011 to May 2012. As of his 2017 SCA, he worked as a quality assurance inspector for a DOD contractor since July 2016. He has never held a DOD security clearance. (Items 3, 4)

The SOR alleges that Applicant failed to timely file federal income tax returns for tax years 2012 and 2015 through 2017 and state income tax returns for tax years 2012 through 2018 (SOR ¶¶ 1.i, 1.j). It alleges that he failed to timely pay his federal income taxes for tax years 2012 and 2015 through 2018 and he owed the U.S. Government approximately \$6,963 in unpaid federal income taxes (SOR ¶¶ 1.k, 1.l). It also alleges that he has eight delinquent consumer debts, totaling \$63,389 (SOR ¶¶ 1.a-1.h).

In addition to his admissions in his Answer, Applicant listed his failure to file his 2015 and 2016 federal income tax returns and pay his taxes for those years on his 2017 SCA. He further discussed his financial issues during his December 2018 and January 2019 interviews with a background investigator, as well as in his August 2019 response to interrogatories. His consumer debts are reported on his 2017 and 2019 credit bureau reports. (Items 1-6)

Applicant attributed his financial predicament to caring for his ailing elderly parents. He stated that when he began providing daily in-home care for his father in 2009, he consequently had little time to collect his tax documents or find a tax accountant. In 2011, he became unemployed after exhausting his vacation and personal leave due to caring for his parents. In 2016, his finances further suffered when he provided financial assistance to his parents when they could not meet their obligations. He obtained an auto loan to lease a car in 2015 and permitted his domestic partner to use the car and make the payments on the loan, and then did not make the payments himself when his domestic partner could not afford to do so in June 2017. (SOR ¶ 1.a) (Items 3, 4)

Internal Revenue Service (IRS) tax account transcripts from August 2019 reflect that Applicant did not file a federal income tax return for tax year 2018, and he failed to timely file federal income tax returns for tax years 2012 through 2017. He filed his federal income tax returns for tax years 2012 through 2017 as follows: for tax year 2012, he filed in July 2013, and then he filed an amended return in July 2018; for tax years 2013, 2016, and 2017, he filed in August 2018; for tax year 2014, he filed in July 2015; and for tax year 2015, he filed in September 2018. The transcripts also reflect that Applicant owed a total of \$5,606 in federal taxes for tax years 2012 and 2015 to 2017, and he did not owe federal taxes for tax years 2013 and 2014. (Item 4)

Applicant stated during his background interviews that his May 2018 request to the IRS for a payment plan of \$250 monthly was denied in approximately October 2018. He further stated that he resubmitted another request in November 2018, for a payment plan of \$1,000 monthly, and he was still awaiting a response as of his December 2018 background interview. He provided documentation reflecting that he submitted a request to the IRS for an installment agreement of \$250 monthly in August 2019. He also stated in his August 2019 response to interrogatories that he had not yet filed his state income tax returns for tax years 2012 and 2015 through 2018. Though he stated that he had filed his state income tax returns for tax years 2013 and 2014, he was uncertain about the date in which he filed them and the amount he owed. (Item 4)

Applicant also discussed during his background interviews the repossession of his leased car (SOR ¶ 1.a), as discussed above, and his seven delinquent credit cards (SOR ¶¶ 1.b-1.h). He stated that he retained a debt consolidation service in August 2017 in an effort to resolve his delinquent consumer debt. He stated that he paid the service \$800 monthly until approximately April 2018, when he terminated the service after discovering that the company was only paying one of his consumer accounts. He stated that he intended to contact his employer's financial program in January 2019 for help with resolving his delinquent debts. (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 timely file his federal income tax returns for tax years 2012 and 2015 through 2017, and his state income tax returns for tax years 2012 through 2018, as required. He also failed to pay \$5,606 in federal taxes for tax years 2012 and 2015 to 2017. He was also unable to pay his debts. AG ¶¶ 19(a), 19(c), and 19(f) apply.

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.

Conditions beyond Applicant's control, as previously discussed, contributed to his financial problems. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under the circumstances. Applicant has not demonstrated that he is resolving his outstanding federal taxes or that he has filed his state income tax

returns for tax years 2012 through 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. 15-08782 at 3 (App. Bd. Apr. 5, 2017). In addition, since terminating the services of the debt consolidation company in April 2018, he has not demonstrated that he has taken any further steps toward resolving his significant delinquent consumer debt. 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.l:	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