



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-00827
)
Applicant for Security Clearance)

Appearances

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

03/29/2021

Decision

MURPHY, Braden M., Administrative Judge:

Applicant failed to file several years of state and Federal income tax returns until July 2019. He also has numerous delinquent debts that remain unresolved. Applicant has yet to establish a sufficient track record of financial responsibility. He did not mitigate financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 21, 2017, Applicant submitted a security clearance application (SCA). On May 24, 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 DOD CAF issued the SOR 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on October 14, 2019, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on January 5, 2021. On January 22, 2021, DOHA issued a notice scheduling the hearing for February 17, 2020. On January 29, 2021, I issued a Case Management Order to the parties by e-mail. It concerned procedural matters relating to the health and safety of the hearing participants due to the COVID-19 pandemic. The parties were ordered to submit and exchange their proposed exhibits in advance of the hearing, and they did so.

The hearing convened as scheduled. At the hearing, Department Counsel offered Government Exhibits (GE) 1-10. Applicant offered Applicant's Exhibits (AE) A-K. (Applicant included AE A-E with his Answer to the SOR). All exhibits were admitted without objection. Applicant testified in person and one other witness testified by phone. I held the post-hearing record open until March 3, 2021, to allow Applicant the opportunity to submit additional information. (Tr. 116) He timely submitted 46 pages of tax documents (AE L) and one other document (AE M) that are admitted without objection. DOHA received the hearing transcript (Tr.) on February 24, 2021.

Findings of Fact

Applicant admitted the SOR allegations (¶¶ 1.a-1.o), each with a brief explanation. His admissions and explanations are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 35 years old. He and his wife married in 2017, after being together for many years. He has six children, ages 17, 16, 13, 12, 9, and 4. Three of his children live with Applicant and his wife, including a son Applicant fathered with someone else. (Tr. 41-42, 94-97) They live together in Applicant's mother's home. (Tr. 48-49)

Applicant has been required to pay child support of some kind since about 2007. He has been in arrears for some time, and testified that he is unsure of what he owes. He said child support has come out of his pay regularly for the last five years. He was out of work for about eight months due to an injury. (Tr. 45)

Applicant has worked as a security officer for a variety of employers in the defense industry since 2007, at times working multiple jobs. (Tr. 56-58; GE 1) For a period of time in 2011 and 2012, he was living in another state, caring for his grandmother, and working odd jobs. This was one of the years for which he failed to file tax returns. (Tr. 57)

Applicant is employed as a diplomatic security officer for a State Department contractor. He currently holds a clearance. (Tr. 14-15) He said he earns about \$2,500 a month, after taxes and child support. (Tr. 50-51) However, he said at hearing that he is not currently working, because he did not pass a required proficiency test. He cannot return to work at the State Department until he passes the test, though he remains sponsored for a clearance and available for other possible assignments. This is his only job, so he is not currently earning any income. (Tr. 98-105) Applicant testified that he has

no savings account and has very little money in his checking. (Tr. 78) Applicant said his wife works in information technology and is a cleared government contractor. He estimated her annual salary at about \$110,000-\$115,000. (Tr. 49, 105-106)

Applicant disclosed some delinquent debts on his SCA, in 2017, including some private debts and his child support. He also noted that he was working with a credit counselor or debt consolidator. (GE 1 Tr. 62-66) He did not disclose any tax issues. (GE 1; Tr. 68)

Applicant failed to file his state and Federal income tax returns on time, as required, for tax years 2013-2018. (SOR ¶¶ 1.a, 1.b) DOHA sent him interrogatories in January 2019, concerning his interview summary and his taxes. (GE 2, GE 3) At the time, the information he provided showed that he had unfiled tax returns. (GE 2, GE 3; Tr. 69) Applicant filed most of his unfiled state and federal income tax returns in bulk, in July 2019, with the help of a tax advisor. (Tr. 70-73; AE B, C, D, E)

Applicant believes he has now paid all his past-due taxes and that all his past-due tax returns have been filed. (Tr. 45-46) AE B includes a state return for tax year 2015, but that year's federal return is not included in AE C. Applicant testified that he thought he might not have made enough income to warrant filing a 2015 tax return. (Tr. 109-114) However, the 2015 state return details "Adjusted gross income from your federal return" of \$7,239. (2015 state return, page 1, in AE B)(Emphasis added). Documentation as to the 2015 federal return was not provided by the IRS in the post-hearing materials Applicant provided. (AE L at 22)

SOR ¶ 1.o is a state tax lien for \$5,497. (GE 10) Applicant believes it relates to his child support issues. He believes the matter is resolved, but this is undocumented. (Tr. 45-46)

Applicant attributed his tax issues to a lack of maturity, as well as the money he was paying in child support. He also acknowledged that he was motivated to clear up his taxes so it would not impact his clearance. He wants to rebuild his credit and make a better life for his family. (Tr. 71-72, 91-93 107-108) Applicant documented that his 2019 tax returns were filed on time. (AE F, AE G, AE H, AE J) He testified that he will file his tax returns on time in the future. (Tr.109)

Applicant indicated that he had been working with several debt consolidators to resolve his debts, paying one about \$300 a month. (Tr. 73-77) His most recent credit counselor offers financial classes and information, and Applicant plans to participate. The debt consolidation service has led to items being removed from his credit report. (Tr. 88-90, 114-115; AE I)

The SOR debts total about \$16,312. They are largely established through Applicant's credit reports from May 2017 and October 2018, as well as his most recent credit report from January 2021, shortly before the hearing. (GE 6-GE 8). Most of the debts are on GE 6, and may have dropped off later credit reports. Applicant also disclosed several of his debts on his SCA and discussed them in his background interview. (GE 1,

GE 2) (The record also includes earlier credit reports, from November 2008 and August 2011, showing various debts that may have been delinquent at the time but which are not alleged to be currently delinquent). (GE 4, GE 5)

SOR ¶ 1.c (\$3,768) is a charged-off debt to a credit union. It was charged off in 2013. (GE 7) Applicant said this was a loan he took out for his brother. He believes the debt consolidation company is resolving the debt, but this is not documented. (Tr. 73-77)

SOR ¶ 1.d (\$178) is a debt to a creditor bank for a credit or debit card. It is unresolved, though Applicant intends to pay it. (Tr. 78-79, 90; GE 8)

SOR ¶ 1.e (\$904) is a debt to a homeowner's association in a timeshare community. A judgment is outstanding. (GE 9) Applicant noted that the creditor did not deliver what they had promised, and he and his wife never benefited from the arrangement. He has been unable to resolve the matter, though he said in his Answer that he was setting up a payment plan. (Tr. 80-81)

SOR ¶¶ 1.f (\$2,654) and 1.g (\$1,350) are past-due federal student loans relating to Applicant's time attending a trade school. (GE 6) He testified that he believes the debts have been paid and resolved since 2019, because he no longer has money taken out of his pay for the debts, he is not certain. (AE A; Tr. 50-51, 81-83, 106) AE A reflects a single payment of \$114 in July 2019. Full payment on these two accounts is not documented. These debts are unresolved.

SOR ¶ 1.h (\$791) is a cell-phone debt in collection. (GE 6) Applicant said he has the same cell carrier now, without incident. He said in his Answer that he had made two payments to resolve the debt, but at the hearing he disputed the debt. After the hearing, he provided documentation that his cell phone bill, with the same carrier, is current. (AE L) This account is resolved.

SOR ¶¶ 1.i (\$459), 1.k (\$208), and 1.m (\$63) are medical debts in collection. (GE 6) Applicant believes the debt consolidator should have resolved them, but this is undocumented. (Tr. 84-87)

SOR ¶ 1.j (\$229) is an account placed for collection by a bank. (GE 6) Applicant believes the debt is resolved, but this is undocumented. (Tr. 85-86)

SOR ¶ 1.l (\$180) is a cable bill in collection. (GE 6) Applicant believes the debt is resolved, but this is undocumented. (Tr. 86-87)

SOR ¶ 1.n (\$31) is a debt in collection with an apartment complex. (GE 6) It appears unresolved. (Tr. 87-88)

After the hearing, Applicant submitted 46 pages of documents he had received from the IRS about his federal taxes. (AE M) Those documents reflect that Applicant owes \$2,200 in past due taxes for tax year 2012 and intends to pay it. (AE M at 2-6, 12-13) His 2014 federal return reflects a refund of \$587. (AE M at 20) His 2016 federal return reflects

a refund of \$811. (AE M at 27) For tax year 2017, the IRS documents reflect receiving a return for which the IRS needed verification from Applicant. (AE L at 30, 42-47) His 2018 federal tax return reflects a \$1,558 refund. (AE L at 35) There is no allegation in the SOR of any past-due federal tax owed, and in any event, Applicant appears to owe only for tax year 2012, so I will not consider this information as disqualifying conduct.

Applicant's testifying character witness (W) has been friends with him since 2007. W is a database administrator employed by another government agency. He holds a high-level clearance. On the basis of their long friendship, W attested that Applicant is a "stand-up guy" and good family man. He is responsible, dependable, and trustworthy. (Tr. 119-122)

Applicant's supervisor provided a letter attesting to Applicant's excellent communication skills. He is a supportive team player, both personally and professionally. He is driven, self-confident, proactively helpful, and smart. (AE K)

Another friend and co-worker attested that he is discreet and does not discuss sensitive information, and is respectful of the rules and regulations regarding protection of such information. Applicant is also "an upstanding citizen and proactive member of the community." He is a good father, and is supportive towards others. He is trustworthy and has high integrity. (AE K) A local law-enforcement officer who has known Applicant for over 20 years also attested to his fine character, as did Applicant's wife. (AE K)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

The AGs 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(c), 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 ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ 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 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.

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. 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Applicant has had financial delinquencies, several years of unfiled state and Federal income tax returns, and a state tax lien. The following AGs are applicable:

- (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.

The DOHA Appeal Board has long held that failure to file tax returns is a security concern:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified

information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. *See, e.g.*, ISCR Case No, 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, *neither is it directed towards inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. Id.* 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. 14-01894 at 5 (App. Bd. Aug. 18, 2015); *See Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis added)

Conditions that could mitigate 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, or 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 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 failed to file his state and Federal tax returns for many years. He attributed his tax issues to a lack of maturity and a lack of income due to having to pay child support. Neither circumstance was beyond his control, so AG ¶ 20(b) does not apply.

Applicant was prompted to cure the problem by the realization that his tax issues might impact his eligibility for a clearance. He then filed most of his past-due tax returns in July 2019, after submitting his SCA, and after receiving interrogatories about his taxes from DOHA. (Applicant may well have filed all of his past-due returns at that time, but he did not provide sufficient documentation that his 2015 Federal return was filed as well). His history of failure to file his tax returns on time, as required, continues to cast doubt on his judgment, trustworthiness and reliability. AG ¶ 20(a) does not fully apply, even though his belated actions warrant some credit under AG ¶ 20(g).

Applicant also incurred a variety of delinquent debts. He engaged a credit counselor to help him gain better financial stability, so AG ¶ 20(c) is partially applicable. He did not provide enough evidence that his financial issues are being resolved or are under control, so it does not fully apply.

Most of Applicant's debts have now dropped off his credit report, but that fact alone does not establish that they are resolved. Applicant believes that some debts are paid, or are being resolved by his debt consolidator, but he did not provide documentation to support those assertions. The Appeal Board has held that "it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts." See ISCR Case No. 09-07091 at 2 (App. Bd. Aug 11, 2010). Whether Applicant seeks to establish good-faith efforts to pay or resolve the debts under AG ¶ 20(d) or to dispute the validity of certain debts under AG ¶ 20(e), he did not provide sufficient documentation that his debts are being paid, settled, resolved, or are no longer his responsibility. Applicant did not provide enough evidence that the debts have been or are being resolved or that his tax issues are sufficiently in the past to mitigate the resulting security concerns.

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(c):

- (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 the testimony of his character witness and the whole person evidence from other references, from both his personal life and his job, of whom vouch for Applicant's character. But Applicant failed for several years to file his state and Federal income tax returns on time, as required, and he only did so belatedly during the security clearance application process. He also has numerous old and unresolved past-due debts. Applicant needs to establish a consistent track record of financial stability and compliance with tax filing requirements in order to mitigate financial security concerns. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not provide sufficient evidence to mitigate financial 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.g, 1.i-1.m:	Against Applicant
Subparagraph 1.h:	For Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge