

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



In the matter of:)
)
-----) ISCR Case No. 19-03905
)
Applicant for Security Clearance)

Appearances

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

05/25/2021

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the financial security concerns arising from his delinquent consumer debts and delinquent income taxes. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 22, 2015. On February 28, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. The DOD CAF acted 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*, effective within his

Applicant answered the SOR on March 5, 2020, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals

(DOHA), in lieu of a hearing. He included some documents with his Answer, and they are included in the record. On January 5, 2021, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 11. Applicant received the FORM on January 14, 2021. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM. The SOR and the answer (Items 1 and 2) are the pleadings in the case. Items 3 through 11 are admitted without objection. The case was assigned to me on April 12, 2021.

Findings of Fact

Applicant admitted his delinquent taxes, SOR ¶¶ 1.a. through 1.f, and he denied his consumer debts, SOR ¶¶ 1.g. through 1.i. He included some documents with his answer. 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 64 years old, divorced but remarried with no children. He has a bachelor's degree. Applicant has been employed by a defense contractor overseas since March 2016. Items 2, 3, and 4.

Applicant's admissions in his Answer and the Government's exhibits establish that he is delinquent on his federal income taxes in the amount of just over \$300,000. This covers the years 2005 through 2009 and 2014. Applicant is making \$600 payments per pay period to the IRS. Applicant did not disclose his tax delinquencies on his December 22, 2015, e-QIP. He disclosed them during his May 9, 2019, personal subject interview (PSI). Items 2, and 4 through 10. The record shows that federal tax liens were filed against Applicant in 2011 and 2017. Items 8 through 10.

Applicant's three consumer debts totaling \$1,041 are supported by the record. Item 11. Applicant claims that the cellphone debt was incurred by an ex-wife. The two other debts, medical accounts, should have been paid by his health insurer. Item 2.

Applicant was audited for 2001 through 2005 and was found to owe \$15,000 in income taxes. Applicant claims that because he deployed overseas he appointed his brother-in-law to handle his tax matters but that his brother-in-law failed to do so. Applicant has since retained a tax-relief advocate and a tax lawyer to clear up his tax problems. Applicant said that his tax issues should be resolved by March 27, 2020. He did not, however, provide any new or additional information. Item 2.

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 the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

(a) inability to satisfy debts; and

(f) failure to file...annual Federal income tax returns...or failure to pay annual Federal ... income tax as required.

The SOR tax delinquencies are established by the Items 2 through 10, and the consumer debts are established by the credit report in the record. Item 11. AG ¶¶ 19(a) and 19(f) apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is compliance with those arrangements.

Applicant has provided plausible explanations for the consumer debts. Medical debts are often incurred under circumstances largely beyond an applicant's control. In addition, the magnitude of Applicant's consumer debts does not, in itself, raise security concerns. I find in favor of Applicant on SOR ¶¶ 1.g.through 1.i.

Applicant's failure to pay his federal income taxes presents a more troublesome issue. Those failures extend as far back as 2005, if not earlier. His excuse that his brother-

in-law was entrusted to handle his taxes while Applicant was deployed is at best only a partly mitigating circumstance. Paying federal income taxes is a serious obligation. Applicant should at least have exercised at some minimal oversight of his brother-in-law. Apparently, Applicant did not do so. That calls into question Applicant's judgment and reliability to have access to classified information. ISCR Case No. 98-0608 at 4 (App. Bd. Jun. 27, 2000). I find against Applicant on SOR ¶¶ 1.a. through 1.f.

Under AG ¶ 2(a), 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 also considered the whole-person concept.

Applicant leaves me with questions and doubts as to his eligibility and suitability for a security clearance. For these reasons, I conclude Applicant did not mitigate the security concerns arising under Guideline F, financial considerations.

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.f	Against Applicant
Subparagraphs 1.g. - 1. i	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 access to classified information. Eligibility for access to classified information is denied.

Philip J. Katauskas
Administrative Judge