



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 19-03954 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Eric Price, Esq., Department Counsel
For Applicant: *Pro se*

03/17/2021

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On August 18, 2020, the Defense Counterintelligence and Security Agency (DCSA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. An amendment to the SOR was issued on January 30, 2021. The action was taken 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 adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant’s answer to the SOR was undated, and he requested a hearing before an administrative judge. He answered the amended SOR on February 1, 2021. The case was assigned to me on January 26, 2021. The Defense Office of Hearings and Appeals

(DOHA) issued a notice of hearing on February 5, 2021. I convened the hearing as scheduled on February 24, 2021. The Government offered exhibits (GE) 1 through 7. Applicant offered Applicant Exhibits (AE) A through I. There were no objections and the exhibits were admitted into evidence. Hearing Exhibits I, II, and III are administrative documents. The record was held open until March 9, 2021, to allow Applicant to submit additional documents. He provided AE J through R that were admitted without objection, and the record closed. (Applicant made letter notations on his post-hearing exhibits. They were changed so the exhibits would be sequential.) DOHA received the hearing transcript on March 8, 2021.

Findings of Fact

Applicant admitted all of the allegations in the SOR and amended SOR. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 44 years old. He has earned some college credits, but not a degree. He was married from 1997 to 2004 and has two grown children from the marriage. He remarried in 2014 and has three grown stepchildren. His wife is employed by the state. Applicant was an independent contractor working for different federal agencies from 2012 to 2018. In 2018, he began working as a salaried employee for a federal contractor. (Tr. 24-31, 72)

Applicant testified that in 2012 he was self-employed as an independent contractor. He was aware that he was responsible for having sufficient funds to pay his tax obligations at the end of the year. He had become accustomed to having his taxes withheld from his pay when he was a salaried employee. He stated he repeatedly fell behind in addressing his tax issues because he prioritized paying other bills and then did not have sufficient money to pay tax debts. In 2014, 2015, and 2016 he failed to timely file his federal income tax returns. Applicant testified that he requested extensions to file his federal tax returns for those years, but failed to timely file the federal tax returns after the extensions expired. IRS documents reflect the returns for these tax years were filed in December 2017. (Tr. 31-34, 38; 53-54, 73-76, 83-86; GE 5)

Applicant failed to timely pay his federal income taxes in 2014 (SOR ¶ 1.a - \$37,469); 2015 (SOR ¶ 1.b - \$37,260); 2016 (SOR ¶ 1.c - \$38,626); and 2017 (SOR ¶ 1.d - \$24,989). He also failed to pay his state income tax in 2014 (SOR ¶ 1.e - \$7,646); 2015 (SOR ¶ 1.f - \$6,823); 2016 (SOR ¶ 1.g - \$6,621); and 2017 (SOR ¶ 1.h - \$5,786). In addition, a tax lien was entered against him by his state in 2013 (SOR ¶ 1.i - \$1,463). A federal tax lien was entered against him in 2018 in the amount of \$129,005. (GE 5, 6, 7)

Applicant stated that he requested an installment agreement with the IRS around 2014 and was consistently paying \$300 a month for a period of time. His IRS transcript for tax year 2012 reflects he had an installment agreement with the IRS for unpaid 2012 income taxes. He made payments of \$200 a month from August 2013 until July 2014 and then stopped the payments. He stated in 2014 his grandmother became sick for about six

months and he prioritized other bills. The transcript also reflects payments made from April 2020 through August 2020 that were collected through garnishment of his wages and applied to the 2012 tax year debt. The transcript reflects that as of February 2021 he has a balance owed of \$3,306 for tax year 2012. (Tr. 39-47, 56-61, 90; GE 5; AE L)

The IRS transcript for tax year 2013 reflects he had an installment agreement, which began in June 2014 and he made payments of \$400 until March 2018. He missed five payments during this time period. Applicant provided an email from October 2019 indicating he was being assisted by a professional tax service to make an Offer in Compromise (OIC) to the IRS. An OIC was made to the IRS in April 2018 and was denied in September 2018. Applicant said he was offered an installment agreement, but the IRS notice was sent to an address where he no longer lived, so he missed the deadline. By the time he became aware of the installment agreement offer, it was no longer valid. A federal lien was then filed. He withdrew from the tax service he was using. He said he then worked on getting another installment agreement. The balance owed for tax year 2013 as of February 2021 is \$4,960. (Tr. 39-47, 56-61, 88-98; GE 5; AE M)

A September 2019 IRS transcript for tax year 2014 reflects Applicant made a payment of \$400 in January 2015. A September 2019 IRS transcript for tax year 2017 reflects a payment of \$2,000 in April 2019; \$500 in May 2019; and \$500 in June 2019. No other payments are reflected in these documents. Applicant provided a pay history from his employment from March 2020 through February 2021 which shows his wages are being garnished because of the tax lien. (Tr. 39-47, 56-61, 90; GE 5; AE J, M, N)

Applicant provided IRS correspondence documents. A March 2020 letter from the IRS notes an inquiry by Applicant about his 2012 income taxes. The IRS advised him that it was still processing all of his information and a response was forthcoming in 90 days. Another IRS letter to Applicant from October 2020 addresses his 2012 taxes with another 90-day response delay. A February 2021 IRS letter addresses tax years 2012 through 2018. It noted it had received Applicant's correspondence from January 2020 and his request for an installment agreement. The IRS established an installment agreement for the tax years 2012 through 2018 that was scheduled to begin in March 2021 with monthly payments of \$2,100. Post-hearing, Applicant provided a credit card receipt with a payment of \$2,201 on his installment agreement. (Tr. 39-47, 107-109; AE A, B, C, P) (Delinquent taxes for tax year 2012, 2013 and 2018 were not alleged and will not be considered for disqualifying purposes, but may be considered when making a credibility determination, in mitigation, and in a whole-person analysis.)

Applicant testified that he had an installment agreement to pay his state income tax debt. He provided a copy of the payment agreement from April 2019, which required him to pay \$770 a month beginning in May 2019. His balance at the time was \$24,513. Prior to then he had made six payments in 2017 (five were for \$298 and one was \$595); five payments in 2018 (four for \$818 and one for \$1,634). In May 2019, he began making installment agreement payments of \$770. He made consistent monthly payments from May 2019 until October 2019. He missed the November 2019 payment, but made December 2019 to February 2020, when he stopped the payments. Applicant testified

that he stopped his monthly installment payments to the state because the IRS began garnishing his wages in February 2020 due to the federal tax lien. (Tr. 39, 47-50, 98-101; AE D, E, F)

Applicant sent a letter to his state tax authority in April 2020 advising it that because his wages were garnished, he was unable to make his installment agreement payments. The state advised him that it was able to cancel his current payment arrangement “and place your case on hold through 6/20/2020 due to your financial hardship resulting from the COVID-19 health crisis.” (AE D). He was advised the extension would expire in July 2020 and reset. In September 2020, he was advised that the hold on his payment plan had been extended and would reset in October 2020 with resumption of payments due sometime in November 2020. As of October 2019 Applicant’s balance owed for his state tax liability was \$20,766. No payments have been made on that balance since February 2020. Applicant stated he was waiting for the state to advise him about the payment agreement restarting. Due to the pandemic it has been difficult to make contact with the state tax authority. Post-hearing, Applicant advised that payments would be reinstated in April 2021. He provided a copy of his tax balances owed for tax year 2015 (\$2,489); 2016 (\$8498); 2017 (\$7,764) and 2018 (\$1,698). The cumulative balance owed to his state is \$20,450. (Tr. 101-107; GE 5; AE D, E, F, G, Q).

Applicant has no savings and less than \$100 in his bank account. He has no investments. He has three credit cards on which he makes minimum monthly payments. He keeps a budget on a spreadsheet. He obtained a \$25,000 debt consolidation loan in January 2021 that has monthly payments of \$790; a credit union line of credit for \$15,000 with \$295 monthly payments; a private lender loan for \$5,600 with payments of \$564 a month; and another private lender loan he obtained in October 2019 of \$6,000 that he used to pay taxes owed for that year. The monthly payments are \$200 and the current balance is about \$4,000. He testified that his annual salary is approximately \$109,000. His wife earns about \$68,000. He thought she may have a credit card that is delinquent. In his February 2018 security clearance application, he noted that he took a vacation trip to the Dominican Republic and another in 2017 to Jamaica. He said he used an inheritance to pay for the 2017 trip. Applicant explained that he intends to meet the terms of the installment agreements by getting a part-time job in the future. (Tr. 53, 66-70, 77-83, 113; AE O)

Policies

When evaluating an applicant’s national security eligibility, the administrative judge must consider the AG. 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(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.” 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. Directive ¶ E3.1.15 states 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.

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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive 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. 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 provides conditions that could raise security concerns. The following are potentially 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.

Applicant failed to timely file his 2014 through 2016 federal income tax returns. He failed to pay his federal and state income taxes for 2014 through 2017 as required. He has an unresolved 2013 state tax lien. There is sufficient evidence to support the application of the above disqualifying conditions.

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, 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.

Applicant's tax issues began when he became self-employed as an independent contractor in 2012. He had been accustomed to having his taxes withheld from his pay. He was aware of the problem in 2012, but each year he failed to address it and his indebtedness continued to increase. He failed to timely file his 2014, 2015, and 2016 federal tax returns. Applicant made some payments through IRS installment agreements and an attempt to negotiate an OIC with the IRS, which was denied. He also had an installment agreement with his state tax authority. He failed to comply with the state installment agreement because the IRS issued a federal tax lien and began garnishing his wages.

Applicant's initial failure to plan for payment of his taxes when he became self-employed may be understandable. However, each year he repeated his conduct and failed to pay his federal and state income taxes, thereby accumulating large tax debts. His repeated and ongoing conduct raises issues about his reliability, trustworthiness, and good judgment. Under the circumstances, I cannot conclude that similar tax problems are unlikely to recur. AG ¶ 20a) does not apply.

As mentioned above, perhaps the first year Applicant was an independent contractor might be excused for his failure to timely pay his tax debt, but he repeated his actions for several years and became deeper in debt. I cannot find that the financial problems were beyond his control or that he acted responsibly under the circumstances. AG ¶ 20(b) does not apply.

There is no evidence he has received financial counseling. There is evidence that Applicant has an installment agreement with the IRS and had a payment plan with the state tax authority. However, he stopped making payments to the state in February 2020 when his wages were garnished. He recently made his first payment on the federal installment agreement. Applicant does not have a reliable track record of adhering to an installment agreement and consistent payments to satisfy his tax obligations. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant made an arrangement with the IRS to pay his delinquent taxes. Post-hearing he provided proof of his first payment. As noted above, he has not yet established a solid record of adhering to his current agreement. AG ¶ 20(g) applies to the extent that he has an installment agreement with the IRS, but it is too early to determine if he will make consistent payments. He had a payment plan with his state tax authority, but stopped it because his wages were garnished. He is no longer in compliance with this agreement. AG ¶ 20(g) does not apply to his state tax debt.

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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant neglected to file his federal income taxes for several years and also failed to pay his federal income taxes for those years. Despite being aware that he had an obligation to plan for his tax liability, he repeatedly failed to do so and a federal tax lien was entered in 2018 for \$129,000. He has made little progress on decreasing that liability. He also failed to pay his state income taxes for several years. He had a payment agreement with the state, but stopped payments when his wages were garnished. The DOHA Appeal Board has held that:

Someone 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. August 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. 12-10933 at 3 (App. Bd. June 29, 2016.))

Applicant's history of non-compliance with a fundamental legal obligation to timely file and pay his federal income taxes and pay his state income taxes raises serious concerns. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude

Applicant failed to 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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a-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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge