



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



In the matter of:)	
)	
)	ISCR Case No. 19-02179
)	
Applicant for Security Clearance)	

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: *Pro se*

07/08/2021

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 December 13, 2019, the Defense Counterintelligence and Security Agency (DCSA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. 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 on June 8, 2017.

Applicant answered the SOR on January 8, 2020, and requested a hearing before an administrative judge. A hearing had been scheduled for April 2020, but due to the COVID-19 pandemic, it was delayed. On May 24, 2021, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing. I convened the hearing as scheduled by

the Defense Collaboration System on June 10, 2021. The Government offered exhibits (GE) 1 through 11. Applicant and three witnesses testified on his behalf. He offered Applicant's Exhibits (AE) A through C. There were no objections and all of the exhibits were admitted into evidence. The record was held open until June 24, 2021, to permit Applicant to submit additional documents, which he did. They were marked AE D through S. There were no objections, and they were admitted into evidence and the record closed. (Hearing Exhibit I) DOHA received the transcript on June 21, 2021.

Procedural Matters

The Government moved to withdraw SOR allegations ¶¶ 1.e, 1.g and 1.h. The motion was granted.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.d and 1.i. He denied the allegation in SOR ¶ 1.f. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 52 years old. He is a high school graduate and has some college credits, but not a degree. He married in 1993 and has four children, ages 28, 26, 23, and 17. They all live at home. The two oldest are employed. Applicant served in the Army Reserve from 1992 to 2000 and was honorably discharged in the paygrade of E-2. He has worked for his present employer, a federal contractor, since October 2016 as a mechanical engineer and currently earns approximately \$97,000. He has worked in the past for other federal contractors, as an independent contractor, and in non-government jobs. His wife is also employed and currently earns approximately \$100,000 per year. Applicant testified that he has held a security clearance for about 20 years. (Tr. 39-45; GE 1)

In December 2016, Applicant completed a security clearance application. In it he disclosed that he "failed to file by the tax deadline" his federal income tax returns for 2008 through 2012 and failed to pay the taxes owed. He disclosed that he "missed filing deadline" for tax years 2013 through 2015. He disclosed that he was currently working on a payment plan with the IRS for tax years 2008 through 2015. He estimated he owed approximately \$3,000 each year for tax years 2008 through 2012 and \$1,000 for each year from 2013 to 2015. He admitted in his answer to the SOR that he did not timely file state income tax returns for tax years 2008 through 2015 when he lived in two different states that require income tax filings. He did not disclose this information in his SCA. Applicant's failure to disclose his state tax issues will not be considered for disqualifying purposes, but may be considered in the whole person analysis, in mitigation, and in a credibility determination. (GE 1, 2)

Applicant testified that when he had completed his 2016 SCA he had been in direct contact with the IRS about his taxes. He said he was attempting to "work something out." (Tr. 96) He then said that the IRS never contacted him by email or mail after that time. He

said he never had a payment plan with the IRS. (Tr. 97) After completing his SCA, he failed to file his 2017 federal income tax return and a state income tax return for the state he had lived in for 10 months. (Tr. 97-99)

In August 2018, Applicant was interviewed by a government investigator under oath. During the interview, he stated that he failed to file his federal taxes on time and was currently working out a payment plan with the IRS for tax years 2014 through 2016. He indicated he owed about \$3,000 for each year. He admitted he had not been diligent with his finances and did not consider the seriousness of not filing tax returns on time. He stated he contacted the IRS on March 23, 2018, and was informed he owed taxes for tax years 2014 through 2016. He said his mother-in-law is a certified tax preparer, and she was currently in the process of taking care of his tax returns from 2014 to 2017. He said he had filed his tax returns for tax years 2008 through 2013, but not 2014 through 2016. Applicant told the investigator that he cannot recall having any contact with IRS officials prior to March 23, 2018. This contradicts his statement in his 2016 SCA where he said he was currently working with the IRS on a payment plan and his testimony. In his statement to the investigator, he said that he attempted to contact the IRS by telephone, but never made contact with a representative. He testified at his hearing that he attempted to reach out to the IRS, but they never got back him. (Tr. 100-102) I did not find Applicant's testimony credible.

Applicant acknowledged to the investigator that in June 2008 he filed Chapter 13 bankruptcy because he had approximately \$50,000 of debt due to a car repossession, his son's medical expenses, and student loans. He did not have a steady job at the time, and although his and his wife's household income was approximately \$90,000, it was used to pay their living expenses. He stated he had no other options than to file bankruptcy and start fresh. (GE 5) The bankruptcy documents show the case was dismissed in June 2010 for failure to make plan payments. (GE 9) Applicant also filed Chapter 13 bankruptcy in 2000 and the plan was discharged in 2005. (GE 10) Applicant testified that he did not recall the earlier bankruptcy. I did not find his testimony credible. This bankruptcy was not alleged in the SOR and will not be considered for disqualifying purposes, but may be considered for the same purposes as noted above. (Tr. 74-76, 118-120)

Applicant acknowledged to the investigator he was aware of the debt alleged in SOR ¶ 1.d (\$13,412) for a charged-off account. He explained it was a car loan. He gave the car to his son who was unable to make the payments. The car was repossessed in 2013. He stated he intended to contact the creditor and resolve the debt. (GE 5) In his answer to the SOR, he stated the debt was from the repossession that took place in 2014 and is being scrutinized. He hired an attorney to assist him to determine if the amount owed is accurate, if the debt should be dismissed; and if the amount is accurate to determine if a settlement amount or payment plan will be acceptable. Applicant testified that he last had contact with the creditor in April 2020. He is determining what the best approach is regarding the debt. He did not provide evidence of actions he has taken to resolve this debt that he has been aware of for years. The debt is unresolved.

In response to Government interrogatories from September 2019, Applicant disclosed that he had filed his federal income tax returns for tax years 2008 through 2013, but had not filed for 2014 through 2018. He indicated the estimated amount owed for tax years 2008 through 2013 was approximately \$57,642, presumably this does not include penalties and interest. He did not indicate an amount he estimated he owed for tax years 2014 through 2018. (Tr. 80; GE 2)

Applicant stated in his interrogatories that he was currently working with a tax firm to file his federal income tax returns for 2014 through 2018, and he would have them filed before the end of 2019. He also stated he was working with the tax firm to assist with establishing a repayment plan with the IRS before the end of 2019. Regarding his state income tax returns, he said he was also working with the tax firm to contact the two states where he had lived and was required to file, to request information, but at that time he had not received the requested documents. He provided copies of IRS Form 4506-T that requests transcripts of federal tax returns for years 2008 through 2018. (Tr. 102-106; GE 2)

Applicant sent an email to a Government representative on October 4, 2019, as a supplement to the September 2019 Government interrogatories. The email stated:

The attached tax documents are what the accounting firm will be filing once I apply my signature. Unfortunately, I have been in the process of moving this week and I am not able to manually sign the documents. Please accept these documents as the information requested for my security clearance application. (GE 3)

The documents provided were for tax years 2014 through 2018 and stamped across them in large bold letters was: "PREVIEW COPY-DO NOT FILE." He testified that the accounting firm told him the tax returns were filed in 2019. He did not provide any documentary evidence from the tax firm or explanation for why he did not have a copy for his records. His testimony was he believed this tax firm was going to file his returns. He did not follow up to see if they were filed. The tax returns were not filed at that time. He did not reach out to the firm to set up a payment plan with the IRS because he believed their services did not include doing this. (Tr. 52-57, 102-107) I did not find his statements credible.

On October 17, 2019, Applicant sent another email as a supplement to his September 2019 Government interrogatories. This email stated that he anticipated having "feedback today on the terms of a repayment plan for the IRS." He further stated:

The amounts shown being owed for the years 2008-2018 are due to not having the opportunity to include any deductions for 1099 work conducted during those years. These amounts would have been much less, had I taken advantage of these available deductions for business expenses. (GE 4)

Applicant offered no explanation for why he did not have the “opportunity” to include his deductions, other than he failed to file the returns and the IRS filed a substitute return for him.

In Applicant’s January 2020 answer to the SOR, he stated that he never intended to hide any illegal tax dealings from the IRS. He further stated: “I am completely in compliance with the filing of all tax years at this time, and I am working with a company called (XYZ). He said XYZ is working closely with the IRS on his behalf to resolve all of his prior tax obligations. He did not know the amount of his federal tax debt at that time. He admitted that he failed to timely file his state income tax returns for tax years 2008 through 2015, and again XYZ was working to resolve them. He stated XYZ was working with the IRS on his state returns, but presumably he meant the specific states’ tax authorities. (Answer to SOR). Applicant did not provide supporting tax documents with his SOR Answer to show he had filed his delinquent federal or state tax returns.

On June 6, 2021, Applicant provided an updated response to the SOR as part of his evidence. (AE B) He stated:

I have since realized that the reason for any outstanding debt to the IRS was due to me failing to apply the correct number of deductions in order to maintain a lower tax liability by the end of each tax year. After reviewing my tax account with irs.gov, it was determined that the IRS has already calculated a predetermined amount of liability for the years 2008 to 2013, so filing those tax years is no longer applicable. During further research regarding tax years 2014-2018, I learned that those documents had not been filed as promised by the company I was working with at the time. After learning this disturbing fact, I immediately contacted a company called [ABC] and was able to get all of the tax years filed. I am happy to say that I am completely in compliance with all federal tax filings at this time, including 2019 and 2020. (AE B)

In his updated answer to the SOR, Applicant did not provide any additional evidence regarding the status of his state income returns or tax debt alleged in SOR ¶ 1.c. He reiterated the same information regarding the debt for the repossessed vehicle alleged in SOR ¶ 1.d that he did in his January 2020 answer, but provided no evidence of any action he has taken to resolve this debt from 2014. He stated in both his January 2020 answer and June 2021 updated answer that he disputed the debt in SOR ¶ 1.f (\$1,450) owed to a mobile phone carrier. In both responses, he said the debt was no longer on his credit report. The debt is reported on both his February 2020 and June 2019 credit reports. Applicant did not provide any proof to the contrary. This debt is not resolved. (Tr. 72-74; GE 6, 8; AE B)

Applicant testified that he did not timely file his 2008 through 2018 federal income tax returns. He stated that he was aware that he would owe taxes for some of these years due not having a sufficient amount withheld from his pay and his 1099 independent contractor income. He stated he did not have documents to show when he filed his 2008

and 2013 federal income tax returns, but he believed he had. He said he did file his 2014 through 2018 returns, but not on time. When questioned why he said in the abovementioned email from October 2019 as a supplement to his interrogatories that he did file them, he said that he had been told by his accountant that they were filed. He did not provide copies of the returns. When asked if he contacted the tax professionals to retrieve a copy, he said he had not. Throughout the hearing I did not find Applicant's testimony credible or believable. Based on the documentary evidence provided by both the Government and Applicant, he repeatedly made claims that were not true. (Tr. 48, 65-68)

Post-hearing, Applicant provided documents to show that on June 9, 2021, he mailed his 2014 through 2020 federal income tax returns to the IRS. A week before his hearing, Applicant hired a new tax professional. Based on the tax professional's calculations, presumably not including penalties and interest, he owes \$66,009 for those tax years. I will not consider for disqualifying purposes that Applicant filed his 2019 federal tax return late, but may consider it as noted above. Applicant testified that he failed to timely file his 2019 federal income tax return because he and his wife wanted to figure out what the best way to file jointly. (Tr. 59-63, 69-71, 108-109; AE E through L)

In addition, Applicant provided documents to show his 2011 federal income tax return was filed in September 2012 - balance owed is \$6,771; 2012 was filed in November 2013 - balance owed is \$7,747; 2013 filed in June 2015 - balance owed is \$8,082. The approximate total tax owed for these years is \$22,600. He did not provide an explanation for why he failed to pay his taxes for these years. He did not provide additional information as to the current status of his delinquent state income tax returns. They remain unresolved. (AE D, M, N, O)

Applicant stated he was unable to retrieve the tax transcripts for tax years 2008 through 2010. He assumed it was because they were older than ten years. Applicant testified that he believed he owes about \$20,000 in federal income taxes for the past two tax years (2019 and 2020) in addition to the previous amounts discussed. His federal income tax debt is likely over \$100,000. When asked how he intended to pay the amount, he stated that the tax professionals at ABC will continue to work on his behalf and with the IRS to reach a payment agreement and get the amount he owes reduced. He hopes to have his debt to the IRS paid within five years. He provided copies of forms increasing his federal income tax withholding, a power of attorney for his tax representative, tax representative authorization, and payment receipts to his tax professional. (AE D, P, Q, R, S)

Applicant and his wife own rental property in another state that they purchased in 2006. He estimated it is valued at approximately \$340,000 and they owe about \$188,000 on the mortgage. In 2011 and 2014, Applicant had debt canceled and received IRS 1099C forms for approximately \$21,000 and \$39,000 respectively. Applicant and his wife purchased a house in October 2019 and their monthly mortgage payment is \$2,750. Applicant testified that he has no money in his savings account and approximately \$4,000 in his checking account. He estimated he has approximately \$2,500 in expendable

income each month after paying expense. He estimated he has about \$10,000 in his 401(k) retirement account. When asked how he intended to pay his tax debt, he stated he was going to use the money in his retirement account. (Tr. 117-128; GE 4, 11)

Three character witnesses testified on behalf of Applicant. He was described as an upstanding citizen with integrity. He volunteers at his church and is a Christian family man. He is a person that can be trusted as a friend, colleague, and employee. He is calm, and fair. He can be trusted and is a person who can be relied upon. His witnesses believe he should continue to hold a security clearance, and they have never had a reason to believe he is any kind of threat or concern to the United States. (Tr. 28-39)

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;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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 federal income tax returns for tax years 2008 through 2018. He failed to timely file state tax returns for tax years 2008 through 2015. He is indebted to the IRS for past due taxes in the amount of at least approximately \$71,726.

He has a delinquent debt from 2014 for a car repossession. He has been aware of his responsibility to resolve this debt and continues to delay taking action on this seven-year-old debt. He also has a cellphone debt that remains unresolved. Applicant filed Chapter 13 bankruptcy in 2008 and it was dismissed in 2010 for failure to make payments. 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;

(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 has a long history of failing to timely file his federal income tax returns and pay the taxes he owes. He has repeatedly misled the Government about his actions regarding his tax issues. In his 2016 SCA, he indicated he was working with the IRS on a payment plan, which was untrue. After being placed on notice through his SCA that taxes were a Government concern, he failed to timely file his 2016, 2017, and 2018 federal income tax returns. He sent emails to the Government indicating his tax returns were being filed and then failed to follow up on their status. Applicant was again on notice when he received the SOR in 2019 about the Government's concerns. He eventually filed his delinquent federal income tax returns a day before his rescheduled hearing. He does

not have a payment plan with the IRS, but is working with a tax professional. He has not provided any documentary evidence that he has contacted the state tax authorities to resolve his state tax issues. Despite being aware that his vehicle was repossessed in 2014, Applicant continues to delay taking any action on this debt that is now seven years old. He failed to provide evidence that he resolved a debt to a cellphone company.

Applicant's financial issues are recent and ongoing. They did not occur under circumstances that are unlikely to recur. To the contrary, he has established a pattern of failing to file and pay his federal income taxes for many years. His repeated conduct casts doubt on his reliability, trustworthiness, and good judgment. Applicant's financial problems were within his control. There is no evidence he has received financial counseling. He has sought the services of a tax professional to help him resolve his past tax issues. He has not made a good-faith effort to repay his delinquent taxes or other debts. He continues to procrastinate in resolving the debt for his repossessed vehicle. He failed to provide evidence he has a legitimate dispute regarding his delinquent debts and has not offered evidence of actions to resolve them. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do not apply. Despite stating in the past that he was working with the IRS regarding a payment plan, he has failed to produce one. He is working with a tax professional with hopes of securing a plan in the future, but at this juncture he does not have one. AG ¶ 20(g) applies only to the extent that Applicant has mailed his delinquent federal tax returns to the IRS.

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 is 52 years old. He has a history of financial problems. He made minimal efforts to file his delinquent federal income tax returns for many years. Despite being on notice after completing his 2016 SCA, he failed to timely file his 2016 through 2019 federal income tax returns. They were not completed until a day before his hearing. He has not made any payments on his federal tax debt. His delinquent state tax returns remain unfiled. The DOHA Appeal Board has held that:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with these things is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). 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).¹

Applicant's history of non-compliance with a fundamental legal obligation to file his federal tax returns, state tax returns, and to pay his income taxes raises serious concerns. His failure to pay a creditor he owes after seven years is also a concern. The record evidence leaves me with serious 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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraph 1.e	Withdrawn
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g-1.h:	Withdrawn
Subparagraph 1.i:	Against Applicant

¹ ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

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