



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



In the matter of:)
)
) ISCR Case No. 19-00187
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro Se*
06/24/2021

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns raised by his state and federal tax issues and delinquent debts. National security eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on November 16, 2016. On June 20, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on July 9, 2019, and requested a hearing before an administrative judge (Answer). The case was assigned to me on February 18, 2020, but the hearing was delayed due to COVID-19. On March 3, 2021, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for April 14, 2021. Two days before the scheduled hearing, Applicant requested a continuance based upon feeling ill after his second COVID-19 vaccination. I granted his continuance, and the hearing was continued to April 28, 2021. I convened the hearing as scheduled via video teleconference on the Defense Collaborative System.

I marked the March 3, 2021 prehearing order as Hearing Exhibit (HE) I and Department Counsel’s exhibit list as HE II. Government Exhibits (GE) 1 through 8 were admitted, without objection. Applicant testified, and Applicant Exhibits (AE) A through D were admitted, without objection. After the hearing, Department Counsel offered GE 9

through 12, and Applicant offered AE E through J. All of the post-hearing submissions are admitted into evidence without objection. I received the transcript (Tr.) on May 14, 2021, and the record closed on May 19, 2021.

Findings of Fact

Applicant is 55 years old. He married his ex-wife in 1994, they separated in approximately 2014, and divorced in 2019. They have two adult children. He received a Bachelor of Science degree in chemical engineering in 1993. He has attended some post-graduate courses but has not obtained a master's degree. He has worked for defense contractors since 1994, and has worked for his employer since 2006, where he is currently a mechanical engineer. He also volunteers as an advisor at a local university for fourth-year chemical engineering students. Applicant's first security clearance was granted in 1993, it was renewed in 2002, and revoked in 2014 due to financial issues related to investments. (GE 1; GE 2; AE I; Tr. 12-14, 20, 83, 96)

The SOR alleged that Applicant failed to file his state and federal income tax returns and pay his state and federal income taxes in a timely manner for tax years 2011 through 2015, and 2017, as required. In 2016, the Internal Revenue Service (IRS) filed a tax lien against him for \$67,521. Additionally, he disclosed in his response to interrogatories that he owed approximately \$1,005 to State A and \$12,467 to the IRS for tax year 2014. Finally, the SOR alleged Applicant has five delinquent consumer debts totaling \$49,369. Applicant admitted all of the SOR allegations.

In his November 2016 security clearance application (SCA), Applicant disclosed that he failed to file his state and federal income tax returns for tax year 2014. He did not include that he failed to file tax returns for 2011, 2012, 2013, and 2015 as well, but he estimated that he owed approximately \$30,000 in total tax debt. (GE 1)

During his August 2018 personal subject interview, Applicant told the background investigator that he failed to file his 2013 and 2014 federal and state income tax returns in a timely manner, but planned to file both tax returns soon. At that time, he claimed he had filed tax returns for 2015 and 2016. He also stated that he had filed an extension for tax year 2017, but intended to file his returns before the extension expired. At the hearing, Applicant admitted that he had not yet filed his 2011 to 2015 state and federal income tax returns, this is discussed in depth below. (GE 2 at 13; Tr. 81)

According to Applicant, he suffered financial issues, and he did not file his state and federal income tax returns for tax years 2011 through 2015, and 2017 in a timely manner, because:

- Applicant was significantly injured in 2007 or 2008, while playing a basketball game, which resulted in him being unable to work. For approximately one year, he received disability pay, which was 70% of his normal pay. As a result of the injuries, he did not have the energy to file his tax returns. He was the family member responsible for filing the tax returns. He has never used a professional tax preparer. (GE 1; GE 2; Tr. 38-40, 70-71, 81, 83)

- Applicant and his wife experienced marital issues after he was injured in 2007/2008. They separated in approximately 2014, and divorced in 2019. He supported two households and paid child support. Due to their marital issues, they could not agree to file or pay their taxes. (GE 1; GE 2; Tr. 42-43, 71, 85)
- Per their divorce agreement, Applicant is responsible for their federal and state tax debt and consumer debt. (Tr. 71-72)
- Applicant and his wife started a shutter business prior to his 2007 or 2008 injury. This business failed, and they owed an unrecalled amount in credit card debt. According to Applicant, the failed business also contributed to the delinquent consumer debts alleged in the SOR. (GE 1; GE 2; Tr. 44, Tr. 72-74)
- Applicant's wife was unemployed from approximately 2011 until 2014. Prior to losing her job, she earned between \$50,000 and \$60,000 annually. At that time, Applicant earned between \$100,000 and \$130,000 annually. (GE 1; GE 2; Tr. 37-38)
- Applicant's mother had acute medical issues, and he was her primary caregiver until she passed away in July 2019. (GE 1; GE 2; AE I; Tr. 44)
- Applicant moved into his mother's house in 2014 due to his marital issues and to help care for her. During the move, he put his personal belongings in storage, including his tax documentation. (GE 1; GE 2; Tr. 85)
- Applicant owned a primary residence and a rental property and lost both of them through foreclosure. He lost the rental property due to the economic downturn in around 2008 when his renter failed to pay the monthly rent. (GE 1; GE 2; Tr. 74)

Applicant admitted at the hearing that as of the hearing date, he had not filed his federal and State A income tax returns for tax years 2011 through 2015. Additionally, although the failure to file his tax returns for tax year 2019 was not alleged in the SOR, he also admitted that he had not filed his 2019 federal or state income tax return after the extension expired in October 2020. As noted in the chart below, Applicant claimed in his post-hearing submissions that he filed his 2011 through 2015 federal and state income tax returns on May 17, 2021. He did not provide copies of the returns, proof that the returns were filed, or proof that the returns were accepted by either the IRS or State A. (GE 1; AE E; AE F; AE G; Tr. 84-86, 89-90)

Although Applicant asserted that he is entitled to significant refunds, from both the IRS and State A, he provided no documentation to support these claims. Additionally, the documentation provided by Government counsel indicates that even if Applicant were entitled to a refund for one or more tax years, he would be precluded from receiving a refund for tax years 2011 through 2015, due to the IRS's three-year and State A's four-year statute of limitations (SOL). The SOLs indicate that taxpayers must file a claim for refund after the original return due date within a specified time period to receive the refund. Finally, the balances provided by Applicant, below, do not reflect any potentially

applicable penalties or interest owed to the IRS and/or State A. (GE 10; GE 11; GE 12; Tr. 92)

	IRS Status	IRS Balance	State A Status	State A Balance
2011	Filed May 17, 2021 (AE E; Tr. 56, 81, 86-87, 89)	Refund \$11,381	Filed May 17, 2021 (AE E; Tr. 56, 81, 86-87, 89)	Refund \$6,123
2012	Filed May 17, 2021 (AE E; Tr. 56, 88)	Refund \$10,519	Filed May 17, 2021 (AE E; Tr. 56, 88)	Refund \$5,716
2013	Filed May 17, 2021 (AE E; Tr. 56, 89)	Refund \$15,431	Filed May 17, 2021 (AE E; Tr. 56, 89)	Refund \$6,552
2014	Filed May 17, 2021	Refund \$13,485	Filed May 17, 2021	Refund \$6,915
2015	Filed May 17, 2021	Owes \$9,090	Filed May 17, 2021	Owes \$2,542
2016	Filed Oct 2018, No proof (Tr. 56, 78, 81, 86-87, 89)	Owes \$12,467 (1.d.)	Filed (Tr. 56,78, 81, 86-87, 89)	Owes \$1,005 (1.e.)
2017	Filed Oct 2020, No proof (Tr. 56, 88)	Owes \$11,178	Filed (Tr. 56, 88)	Owes \$2,413
2018	Filed Oct 2020, No Proof (Tr. 56, 89)	Owes \$14,630	Filed (Tr. 56, 89)	Owes \$2,802
2019	Filed an extension, Remains unfiled (Tr. 89-90; AE E; AE F)		Filed an extension, Remains unfiled (Tr. 89-90; AE E)	
2020	Filed an extension (AE E; AE F)		Filed an extension (AE E; AE G)	

Applicant believes he is entitled to an overall refund from the IRS, due to mortgage interest deductions for his foreclosed properties, as noted above. According to Applicant, he filed for an extension each tax year, extending the deadline to October for each respective tax year, but he did not provide documentation to support these claims. He admitted that he failed to file returns for tax years 2011 through 2018 before the extensions expired, and his return for tax year 2019 remains unfiled. (AE B; AE C; Tr. 33-34, 52-53)

Applicant sent letters to the IRS and State A in October 2018. He provided no documentation from the IRS or State A that they received or responded to either letter. Applicant testified that he would periodically receive notices from the IRS and State A indicating which tax years were still delinquent, additionally, he would occasionally speak to them telephonically. At the hearing, Applicant testified that both the IRS and State A are waiting for Applicant and his wife to submit a formal proposal to repay their delinquent taxes. (GE B; GE C; Tr. 24, 26, 51-57)

After the hearing, Applicant provided the first page of a letter the IRS sent him on September 20, 2020, regarding tax years 2011 through 2018. This letter indicated that the IRS could not consider Applicant's March 20, 2020 installment agreement request:

We can't consider your installment agreement request without reviewing your financial information. Complete and return Form 433-F, Collection Information Statement or Form 433-B, Collection Information Statement for Businesses, within 30 days from this letter. (AE H)

As of May 2021, Applicant had not yet completed the IRS' Form 433-F to enter into an installment agreement with the IRS.

Applicant testified that the IRS started garnishing his wages in 2019, and the 2016 \$67,521 tax lien alleged in SOR 1.c was reduced to \$12,467 as of the hearing date, but he failed to provide documentary proof to substantiate his claims. (GE 4; GE 6 at 3; Tr. 81)

The five consumer debts alleged in SOR ¶¶ 1.f through 1.j became delinquent between 2009 and 2014. Although, only SOR ¶ 1.j appears on his most recent credit bureau report, Applicant admitted that he has not paid or resolved any of the alleged consumer debts. Nor has he made any recent attempts to contact the creditors and establish payments plans. (GE 1; GE 2; GE 5 at 3, 8; GE 6 at 3; GE 7 at 4; Tr. 61-64)

In 2011, Applicant's facility security officer (FSO) reported in the Joint Personnel Adjudication System (JPAS) that there was a \$37,000 court-ordered garnishment against Applicant's wages. This issue was not alleged in the SOR, but Applicant told his FSO that he believed it was credit-card related. At the hearing, he testified that he was unsure if this was for an IRS debt or credit-card related. Applicant testified that starting in 2019, State A had garnished his wages \$400 each month for \$49,329 of taxes. This obligation was not alleged in the SOR, nor did he provide supporting documentary proof of the tax obligation or garnishment. (GE 3; Tr. 75-79)

Applicant has never used a tax professional, he has always prepared his own tax returns along with his wife. He has never received financial counseling. He currently has approximately \$120,000 to \$140,000 in his retirement savings account, and his annual salary is over \$164,000. (AE I; Tr. 41-42, 51, 82-84)

In April 2021, Applicant received a \$21,846 settlement check related to his father's asbestos exposure. According to Applicant, he anticipates that he will receive additional settlement funds, and he intends to use his portion of the settlement to pay his tax debts and other delinquent obligations. (AE D; AE I; Tr. 34, 93)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, 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 Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ 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.

Section 7 of EO 10865 provides that adverse 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 concern under Guideline F (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

Applicant's admissions and the documentary evidence establish the following disqualifying conditions under AG ¶ 19:

- (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.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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 approximately \$40,000 in delinquent consumer debts have been outstanding and delinquent for a number of years. All but one of these debts no longer

appear on his most recent credit report. Although there is evidence that the behavior resulting in the debts is not recent, he has not sufficiently demonstrated that his current judgment, reliability, and trustworthiness are not a concern. Additionally, Applicant experienced several circumstances that were beyond his control, but he failed to provide evidence that he acted responsibly under the circumstances. Finally, he did not demonstrate that he resolved his consumer debts through efforts to repay or otherwise resolve them. He has never received financial counseling AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are not applicable to SOR ¶¶ 1.f through 1.j.

Applicant claims he filed his state and federal income tax returns for tax years 2011 through 2015 on May 17, 2021; he filed his tax return for 2016 in October 2018; and he filed his tax return for 2017 and 2018 in March 2020. However, he provided no documentation to support these claims. He provided copies of letters written in October 2018 and May 2021 addressed to the IRS and State A, but other than the first page of a September 2020 letter from the IRS, he provided no other official letters or documentation from either entity. He also failed to provide proof of payments to the IRS and State A through garnishment. He failed to establish that AG ¶ 20(g) is applicable to SOR ¶¶ 1.a through 1.e.

Applicant's failure to timely file his federal and state income tax returns for tax years 2016, 2018, and 2019 was not alleged in the SOR, and these tax years were not considered in determining if the disqualifying conditions were applicable. However, his failure to file his returns and potentially pay his taxes for tax years 2016, 2018, and 2019 demonstrates that Applicant's tax issue has been an ongoing problem for almost ten years, and this issue is not isolated, raising additional questions concerning the applicability of mitigating condition AG ¶ 20(a) regarding his judgment, reliability, and trustworthiness.

In his SCA, PSI, response to interrogatories, hearing testimony, and documentation Applicant provided inconsistent information regarding when he filed his various income tax returns. He also failed to provide account transcripts from the IRS and State A as requested (but they would not be available this soon because of his late filings). Without these documents, it is difficult to determine if the tax returns were accepted and the IRS agreed that his tax returns were accurate. Moreover, he may owe additional money to the IRS or State A due to penalties and interest due to his failure to file his returns in a timely manner.

Applicant's efforts to resolve his taxes shortly after the hearing do not demonstrate a good-faith effort. His various explanations for his failure to timely file the returns do not establish conditions that were beyond his control, nor did he act responsibly to address his financial issues in a timely manner. Mitigation under AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(g) was 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 relevant 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. I also considered Applicant's favorable character evidence.

Applicant held a clearance for approximately 20 years. However, he failed to file his state and federal income tax returns on time for nearly ten years. Additionally, his clearance was revoked in 2014 for financial issues and this did not affect his financial behavior. Applicant did not demonstrate the actions of a responsible, reliable, and trustworthy person. I conclude Applicant did not meet his burden of proof and persuasion. He failed to mitigate the financial considerations security concerns.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.j:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

CAROLINE E. HEINTZELMAN
Administrative Judge