



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



In the matter of:)
)
) ISCR Case No. 20-02905
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Driskill, Esq., Department Counsel
For Applicant: *Pro se*

07/06/2021

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On January 8, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on February 22, 2021, and requested a decision on the written record in lieu of a hearing.

The Government’s written case was submitted on March 26, 2021. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on April 13, 2021. As of June 2, 2021, he had not responded. The case was assigned to me on June 22, 2021. The Government exhibits included in the FORM are admitted in evidence.

Findings of Fact

Applicant is 58 years old. He has been employed by a defense contractor since April 2018. He is applying for a security clearance for the first time. He is a high school graduate. The most recent information available indicates that he has never married, and he has no children. (Items 3, 4)

The SOR alleges three delinquent debts totaling about \$8,600 (SOR ¶¶ 1.a-1.c); that Applicant did not file his federal income tax returns as required for tax years 2016, 2017, and 2019; (SOR ¶ 1.d); he did not file his State A income tax return as required for tax year 2016 (SOR ¶ 1.e); and he did not file his State B income tax returns as required for tax years 2017 and 2019 (SOR ¶ 1.f).

Applicant admitted owing the three delinquent debts. He stated that he could not pay his debts because he was living beyond his means. He did not submit any evidence of payments. (Items 1, 3-6)

Applicant denied the tax allegations. When he submitted his Questionnaire for National Security Positions (SF 86) in July 2018, he reported that he did not file his federal and State B income tax returns in “Year: 2017 (Estimated),” because he did not receive all of his W2 forms, and he owed “\$250 (Estimated).” He wrote that he had not taken any action out of fear of penalties, and that he was unsure who to talk to about finding out amounts owed and payment options. He provided similar information during his background interview in January 2019. (Items 1-3)

When he responded to Defense Office of Hearings and Appeals (DOHA) interrogatories in November 2020, Applicant provided a copy of an IRS account transcript for 2016 that showed that a federal tax return was not received for that tax year. He reported that all of his federal and state tax returns for tax years 2016 through 2019 had been filed. He stated that his federal income tax returns for 2016 and 2017 were filed in 2016 and 2017, and that his state tax returns for 2016 through 2018 were filed in 2016, 2017, and 2018. (Item 3)

Applicant apparently made a common error and confused the tax year with the year the returns were filed. Returns cannot be filed until the year following the tax year. I believe he may have made the same error on his SF 86 and during his background investigation. That would explain why the unfiled 2016 returns were reported as “Year: 2017 (Estimated).”

There is no evidence that Applicant was ever required to file State A income tax returns. There is no reliable evidence that Applicant failed to file his 2017 and 2019 state and federal income tax returns. He did not submit any documentary evidence to establish that his 2016 federal income tax return has been filed.

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 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.

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;
- (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 has a history of financial problems, including three delinquent debts. He did not file his 2016 federal income tax return as required. The evidence is sufficient to raise the above disqualifying conditions.

There is no evidence that Applicant was ever required to file State A income tax returns. There is no reliable evidence that Applicant failed to file his 2017 and 2019 state and federal income tax returns. SOR ¶¶ 1.e and 1.f are concluded for Applicant. SOR ¶ 1.c alleges that Applicant did not file his federal income tax returns as required for tax years 2016, 2017, and 2019. The part of the allegation that relates to tax years 2017 and 2019 is also concluded for Applicant.

Conditions that could mitigate the 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, 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 did not submit any documentary evidence of payments toward his delinquent debts or that his 2016 federal income tax return was filed. Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). None of the mitigating conditions are applicable.

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.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations 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.c:	Against Applicant
Subparagraph 1.d:	Against Applicant (except for the language relating to tax years 2017 and 2019)
Subparagraphs 1.e-1.f:	For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge