



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



In the matter of:)	
)	
)	ISCR Case No. 20-00341
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan Olmos, Esquire, Department Counsel
For Applicant: *Pro se*

08/31/2021

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On September 11, 2020, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 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 or after June 8, 2017.

In an undated response, Applicant admitted all allegations raised in the SOR and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on February 19, 2021. On March 19, 2021, a notice of hearing was issued setting the matter for April 8, 2021. The hearing was convened as scheduled. The Government presented eight exhibits (Exs.), which were accepted without objection as Es. 1-8. Applicant offered eight exhibits, which were accepted without objection as Exs. A-H. Applicant was given to April 23, 2021, to provide any additional documents.

On April 19, 2021, Applicant emailed six additional documents. These items were accepted as Exs. I-N without objection. The record was closed on April 23, 2021. Based on the record as a whole, I find Applicant failed to mitigate financial considerations security concerns.

Findings of Fact

Applicant is a 68-year-old operations research analyst who has worked in the same position since January 2019. For a previous employer, he gained about a decade of experience in that same area. Applicant has earned a bachelor's degree in mathematics and a master's degree in operations research. Applicant has maintained a security clearance since 1974. He was honorably discharged from the United States military in the 1990s after 21 years of service. Divorced, he has one grown child.

In 2007, Applicant's then-current wife opened a restaurant. (Tr. 18) She had previously gained experience in the catering business and was active in the hospitality ministry at her church, but she had no prior experience as a restaurateur. Applicant often helped with the restaurant after his regular work day. An accountant was hired to file the business' tax returns, as well as the wife's personal taxes. (Tr. 20) From the beginning, the restaurant operated at a loss for various reasons. (Tr. 20-21) This continued until at least 2013. Meanwhile, Applicant tapped into his savings and retirement account to help the business. (Tr. 23) He now estimates that he lost about \$200,000 of personal funds on the venture.

In 2014, the restaurant was closed, following the marital separation of Applicant and his now-former spouse. As a result, Applicant was paying for both his home and a separate residence for his estranged wife. Around that time, the accountant informed the couple that there were insufficient receipts and documents to permit the filing of tax returns related to the business. This started a "snowball effect" in the late filing of tax returns for both the business and the couple. (Tr. 24) Ultimately, the restaurant's and Applicant's 2013 federal tax return would not be filed until 2020, after more documents were discovered in 2014 and thereafter. (Tr. 27)

The couple got the help of another tax preparer in late 2018 or early 2019 to complete their individual tax returns. Applicant testified that the new preparer filed their individual tax returns for tax years 2013 through 2019. (Tr. 28, 34-36; Exs. B, I-K) In addition, Applicant's tax year 2020 tax returns were filed. In the end, Applicant owed approximately \$20,000 for tax years 2019 and 2020, including interest and penalties. (Tr. 33) He attributes some of this sum to the fact he cannot take an exemption for either his ex-wife or his grandchild, although he provides them with financial support. He has filed to satisfy this sum through instalment payments over a 60-month period. (Tr. 29-30, 41, 45; Ex. B) To date, one payment has been made. (Tr. 41) His state taxes have also been filed. (Tr. 37, 41-42, 46-47; Exs. D, F, N) He has been in repayment with the state regarding past-due sums since 2020. (Tr. 48) He has tried his best to respond to all

queries he has received regarding his taxes despite having moved at least twice in recent years. (Tr. 43)

In the interim, in 2017, Applicant's daughter passed away, leaving a grandchild who was ultimately cared for by Applicant's estranged spouse. Soon thereafter, an amicable divorce was executed. Applicant continues to support his ex-wife financially. (Tr. 25) This amounts to about \$2,000 a month to help pay for her car, rent, and support of their grandchild. (Tr. 26, 60) He is not subject to court-ordered alimony. During the recent pandemic, he has occasionally helped his son compensate for reduced wages by giving him \$500-\$600 a month. (Tr. 61-62) At the end of each month, Applicant has a net remainder of about \$1,000 to \$2,000. He also has a retirement account with a balance of approximately \$60,000. (Tr. 63) He recently increased his tax withholding through payroll. (Tr. 65-65)

In sum, Applicant earns a salary from his employer of approximately \$170,000 a year, has a military retirement package of about \$50,000 a year, and receives about \$30,000 a year from Social Security. (Tr. 29; Ex. B) He rents his home. Other than the tax issues noted above, the following delinquent debts are reflected in the SOR:

1.a – Charged-off account (\$72,549) – *Status unknown* - This account is related to a secondary mortgage. It was for an equity line of credit from Applicant's primary residence, which was initially purchased in 2003. (Tr. 49) The line of credit was created before Applicant's wife opened her restaurant. The line of credit was used in about 2005 or 2006 to pay off credit cards. (Tr. 50) The home was ultimately subject to a refinance, then later sold through short sale in 2016 after failing to sell after two years. (Tr. 51) It was Applicant's understanding that the short sale satisfied his outstanding loans related to the property. (Tr. 52-53) He has not heard from any of the entities financially tethered to the property since the short sale. (Tr. 54) There is no documentation showing any attempts to ascertain the account's current balance or status. Consequently, the account's current status remains unclear.

1.b – Charged-off credit card (\$14,328) – *Settled* - This obligation became delinquent due to the failing restaurant. The debt was settled by the creditor, which offered to end the matter for a lesser amount. (Tr. 56) That offer was accepted and satisfied by Applicant. (Tr. 55; Ex. D-E) Applicant received an IRS 1099 form for this settlement, which was submitted with Applicant's 2020 federal tax return. (Tr. 55)

1.c – Charged-off account (\$3,219) – *One repayment payment made* - Applicant initiated contact with this creditor in the past year. He has made a \$500 payment toward the balance. The creditor said "they will take payments as [he makes] them." (Tr. 57; Ex. F) He is planning on paying off the remaining balance in the next few months. (Tr. 57) He was unable to initiate a structured repayment plan because the account was so old. (Tr. 58) Applicant provided documentation reflecting a payment in 2015. (Ex. L) The last known date of activity on the account was in 2016. (Tr. 58; Ex. 6 at 2) There is no documentary evidence showing that a pattern of regular repayment on this balance has been established. (Ex. E)

1.d – Failure to timely file Federal income tax returns and state tax returns for tax years 2013-2018 – *All filed but 2017* - Many of Applicant’s tax issues arise from his former wife’s restaurant, which opened in 2007 and “almost immediately suffered] fairly substantial losses.” (Tr. 20). Applicant testified that after locating some missing Internal Revenue Service (IRS) W2 forms, tax returns for 2013-2019 were filed in 2020. (see, e.g., Tr. 34-36, 39) He provided evidence reflecting that filings for tax years 2014, 2015, 2016, and 2018 were accepted. (Exs. I-K) He provided no such documentation for tax year 2017.

1.e – Federal tax debt in the amount of approximately \$22,630 for tax years 2014, 2015, 2017, and 2018 – *Initial repayment made* - See above. In addition, Applicant testified that he is in repayment through an instalment plan with the IRS on amounts owed. (Tr. 41; Ex. B) The first payment toward this balance was paid the same week as the hearing. (Tr. 41, 45) It is his intent to complete payments on any outstanding balance.

1.f – State tax debt in the amount of approximately \$8,292 for tax years 2013 – 2018 – *In repayment* - Applicant has been in repayment on this debt. (Tr. 42; Ex. D) He provided documentation showing his 2020 filing was received. He submitted paperwork reflecting \$1,645 was due to the state. Applicant’s exhibit D shows past payments to the state

Policies

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 used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. 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 variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

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 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, and transcends duty hours. The Government reposes a high degree of trust and confidence in those granted such access. Decisions necessarily include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that failure or inability 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.

Here, the Government offered documentary evidence reflecting that Applicant has delinquent debts and that he failed to file federal and state tax returns for multiple years. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;

AG ¶ 19(c): a history of not meeting financial obligations, and

AG ¶ 19(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.

Under these facts, four conditions could mitigate related security concerns:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(c) the individual has received or is receiving financial counseling for the problems 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 under control, and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's tax years 2013-2018 federal and state tax returns were not filed until late 2018 or early 2019, after hiring a new accountant. It is unclear why the recruitment of this new accountant took so long. It should, however, help assure that future tax returns are properly and timely filed, raising AG ¶ 20(a) in part.

While Applicant also attributed the delay in the filing of these tax returns to an inability to timely gather all relevant documents, he failed to fully explain why or how these documents became so scattered. As for the tax filings and debts related to the restaurant and to any personal financial repercussions related to that venture, it cannot be said that his now-former wife's undertaking a potentially risky business venture was a circumstance beyond his control, obviating application of AG ¶ 20(b)

There is no documentary evidence reflecting that Applicant has received financial counseling. Therefore, AG ¶ 20(c) does not apply. As for resolving the tax and financial issues raised in the SOR, Applicant's documentation is incomplete. It is unclear whether the IRS has accepted his tax return for tax year 2017. The status of the line of credit noted in SOR allegation 1.a is unclear and there is no documentation showing a pattern of regular and timely payment on the debt at 1.c. Only the debt at SOR allegation 1.b appears to be fully addressed, albeit through the creditor's offer to settle the obligation. Meanwhile, status of the federal tax return for 2017 remains unclear and the sole payment made toward the approximately \$22,000 debt was made the same week as the hearing, bringing into question whether the motivation behind this singular gesture was to start satisfying the obligation or to initiate a last minute gesture of attention to an issue in the SOR. He only started paying his state tax burden sometime last year, in 2020. At best, AG ¶ 20(d) only applies in part.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 68-year-old operations research analyst who has worked in the same position since January 2019 and has worked in the same field for at least a decade before that. He has attained a master's degree in his field. Applicant honorably served in the military for 21 years. He has maintained a security clearance for an impressive period, nearly 47 years. Presently single with a grown, relatively independent child, he has a net monthly remainder of somewhere between \$1,000 and \$2,000.

Despite the many whole person factors that speak in Applicant's favor as a reliable, dutiful, and earnest man, the fallout from his ex-wife's restaurant failure still reverberates in relation to his finances and taxes. Moreover, his documentation is less than complete and much of his action exerted to address the factors at issue were not commenced until this past year, with one delinquent debt neglected until the week of the hearing. More work is needed to fully address the allegations raised and the related financial issues. Because of these deficiencies, it cannot be concluded that financial considerations security concerns are mitigated.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge