



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



In the matter of:)
)
) ISCR Case No. 20-02451
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *pro se*

12/14/2021
Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant did not submit sufficient evidence to mitigate the security concerns raised by his failure to file and pay federal and state income taxes between 2015 and 2019. Clearance is denied.

Statement of the Case

On December 16, 2020, the DOD issued an SOR detailing security concerns under the financial considerations guideline. This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

DOD adjudicators were unable to find that it is clearly consistent with the national interest to continue Applicant’s security clearance and recommended that the case be submitted to a Defense Office of Hearings and Appeals (DOHA) administrative judge for a determination whether to revoke his security clearance. Applicant timely answered the SOR and requested hearing.

At the hearing, convened August 30, 2021, I appended to the record as Hearing Exhibits (HE) I and II, respectively, the Case Management Order (CMO) issued in this case on August 3, 2021, and the Government's disclosure letter, dated March 3, 2021. I admitted Government's Exhibits (GE) 1 and 2, without objection. Applicant did not offer any documentation at the hearing. The record remained open after the hearing to allow Applicant to submit documentation. He timely submitted the following exhibits:

Applicant's Exhibits (AE) A: Submission Email, dated September 23, 2021 (1 page)

AE B: Tax Preparer Letter, dated August 25, 2021 (1 page);

AE C: IRS Tax Transcript, Tax Period 2017 (5 pages);

AE D: IRS Tax Transcript, Tax Period 2018 (5 pages);

AE E: IRS Tax Transcript, Tax Period 2019 (5 pages);

AE F: IRS Tax Transcript, Tax Period 2020 (5 pages); and

AE G: State Tax Billing Notice, Tax Periods 2016 – 2020 (3 pages).

The seven documents were admitted without objection from Department Counsel. (HE III, Department Counsel's email indicating no objection to Applicant's post-hearing submission, dated September 24, 2021) DOHA received the transcript (Tr.) on September 8, 2021.

Findings of Fact

Applicant, 51, has worked as a video-teleconference technician on the same federal contract since 2004. Since then, the contract has been awarded to several different federal contracting companies. He has worked for his current employer since 2010. Applicant was initially granted access to classified information in 2007. He completed his most recent security clearance application in June 2017, disclosing his failure to file federal and state income tax returns for the 2015 and 2016 tax years. Information developed during the investigation revealed that he failed to file and pay federal and state income taxes from 2015 to 2019. This information is alleged in the SOR and Applicant admitted the allegations. (Tr. 15-16; GE 1-2)

When he completed his security clearance application, Applicant explained that he did not file his federal and state income tax returns because he did not think he owed any taxes. He believed that the income tax withheld from his pay was enough to satisfy his federal and state income tax obligations. When calculating his income tax obligations, Applicant failed to account for the money he won gambling at a local casino between 2016 and 2019. When he realized in 2017 that he owed federal and state income taxes, he became depressed, overwhelmed, and felt paralyzed by the task of filing his income tax returns. In his post-hearing submission, Applicant also offered that

he suffered a health scare in 2018 that contributed to his depression and exacerbated his financial paralysis. (Tr. 16-20; AE A)

In November 2020, Applicant hired a tax preparation company to prepare and file his outstanding income tax returns and negotiate a payment plan with the IRS. According to the filed returns, Applicant owes \$ 14,830 in federal taxes and \$8,537 in state income taxes for the 2015 to 2019 tax years. Under the terms of the installment agreement negotiated with the IRS, Applicant will pay \$198 each month. In his post-hearing submission, Applicant indicated that he would begin making payments soon. At the hearing, Applicant testified that he received a loan from his parents to satisfy his outstanding state tax obligation and pay off his outstanding credit card debts. By the time he submitted his post-hearing documentation, he had not received a receipt of payment from the state tax authority. (Tr. 20-23, 25; AE A –G)

Applicant timely filed his 2020 federal and state income tax returns. He earns approximately \$65,000 annually, and does not have any other source of income. He has not gambled at the casino since 2019. Applicant plans to redirect the money he spent each month on credit card payments toward the repayment of his federal tax debt and the loan from his parents. (Tr. 24, 26; AE A, G)

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 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(a), 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.

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

Failure to meet one’s 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. (AG ¶ 18). Applicant admits that he failed to file federal and state income tax returns and pay his tax liabilities between 2015 and 2019. He owes \$14,830 in federal taxes and \$8,537 in state taxes. The record establishes the Government’s *prima facie* case. The record supports the application of the following financial considerations disqualifying conditions:

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.

The record contains some mitigating evidence, warranting partial application of the following mitigating condition:

AG ¶ 20(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.

Before the issuance of the SOR, Applicant obtained professional assistance to prepare and file his outstanding federal and state income tax returns, as well as, negotiate an installment agreement with the IRS on his behalf. All of the outstanding

returns have been filed and he has made plans to pay the outstanding liabilities. As of September 2021, he had not started making payments on the IRS installment agreement. He failed to provide the evidence necessary to corroborate his statements that he has paid off his state tax liability. An applicant is expected to provide documentation to support his statements about his financial activities. (See ISCR Case No. 98-0419 (App. Bd. April 30, 1999)). Furthermore, the tax issues are too recent for a finding that Applicant's tax problems are under control, or that he is unlikely to engage in similar behavior in the future. Accordingly, the record contains insufficient information to mitigate the financial considerations concern alleged in the SOR.

Based on the record, doubts remain about Applicant's suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Applicant has held a security clearance without incident for over 20 years. While Applicant has demonstrated his willingness to resolve his outstanding federal and state income tax liabilities, the record does not contain a sufficient history of tax compliance or repayment to fully mitigate the alleged financial 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, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 1.a – 1.d:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Applicant's continued eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge