



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



In the matter of:)
)
) ISCR Case No. 20-02728
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

12/02/2021

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's evidence is insufficient to demonstrate financial responsibility. He failed to timely file his federal income tax returns for tax years 2017 and 2018. His evidence is insufficient to mitigate the financial considerations security concerns. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 3, 2019, and was interviewed by a government investigator on October 30, 2019. After reviewing the information gathered during the background investigation, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) on December 3, 2020. Applicant answered the SOR on February 25, 2021, and requested a decision based on the written record in lieu of a hearing.

A copy of the Government's file of relevant material (FORM), containing the evidence supporting the security concerns, was provided to Applicant by letter dated

July 23, 2021. Applicant received the FORM on August 2, 2021. He was granted a period of 30 days after receipt of the FORM to submit any objections to the FORM and to provide material to refute, extenuate, and mitigate the concerns. Applicant responded to the FORM with a one-paragraph statement on September 13, 2021. He submitted no documentary evidence. The case was assigned to me on October 6, 2021.

Procedural Issue

In the FORM, Department Counsel advised Applicant that the FORM included an unauthenticated summary of his interview with a government background investigator on October 30, 2019. (FORM, Item 4) Applicant was informed he could object to the summary of his interview, and it would not be admitted or considered, or that he could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that his failure to respond to the FORM or to raise any objections could be construed as a waiver and the proposed FORM evidence would be considered.

Applicant responded to the FORM and submitted a statement, which I made part of the record, but raised no objections to the FORM or to me considering the unauthenticated summary of his October 2019 interview. Without objections, I admitted and considered all of the FORM's proffered evidence.

Findings of Fact

In his answer to the SOR, Applicant admitted the five SOR allegations, with comments in mitigation and extenuation, which include: his failure to timely file federal income tax returns for tax years (TY) 2017 and 2018 (§ 1.a); a \$9,000 account in collection for a delinquent car loan (§ 1.b); a \$1,284 collection for a delinquent credit account (§ 1.c); a \$12,000 delinquent child support debt to a state (§ 1.d); and a mortgage foreclosed in 2014 (§ 1.e). His SOR admissions, and those in his answer to the FORM, are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is 33 years old. He graduated from high school in May 2007, and enlisted in the U.S. Army in June 2007. He served honorably until his discharge as a specialist (E-4) in April 2015. He then enlisted in the National Guard-Active Reserve where he honorably served between April 2015 and April 2018. He possessed a secret clearance during most of his time in the service. He attended college for a short period in 2016, but did not earn a degree.

Between February 2014 and July 2016, Applicant worked for a company as an information technology (IT) technician. He was unemployed between July 2016 and February 2017. He was hired as a security guard by a casino between February 2017 and April 2018. He was unemployed between April 2018 and January 2019. He has been employed with his current employer and clearance sponsor, a federal contractor, since January 2019.

Applicant married his first wife in 2008 and divorced in April 2016. He married his second wife in February 2017, and they have been separated since October 2018. He has two children, ages 12 and 14, and a step-child age 17.

In response to questions in Section 26 (Financial Record) of his 2019 SCA, Applicant stated that he had failed to file federal and state income tax returns and to pay taxes for TYs 2017 and 2018. For TY 2017, he explained that he was homeless and unemployed by April 2018, and had difficulty filing his taxes without a residential address. He stated he is inexperienced on what to do and plans to hire a professional to help him file his late income tax returns. He stated his intention to file as soon as he gets back on his feet, and noted he had just bought the software to file his late income tax returns. Regarding TY 2018, he indicated that he only worked four months of the year and he believes he did not earn sufficient income to be required to file income tax returns. He also averred he requested his W2 Form from his then employers, and he had not received it.

Under the IRS rules, for TY 2018, a single person under the age of 65 has to file income tax returns if the person had more than \$1,050 of unearned income (typically from investments), or had more than \$12,000 of earned income (a job or self-employment activity) during the TY. A married person, filing jointly, would have to file if the couple's gross income doubled the above earnings, about \$24,000.

Applicant presented no documentary evidence to establish what was his gross earned income for 2018. He stated in his 2019 SCA, he was unemployed between July 2016 and February 2017. He was a part-time drilling-reservist with the National Guard between April 2015 and April 2018. And, he worked full-time as a security officer for a hotel-casino between February 2017 and April 2018. He stated that he was homeless between April 2018 and January 2019, and lived in a shelter or out of his car. I note that he married his second wife in February 2017, and they separated in October 2018. He presented no evidence as to whether they lived together while married. However, he stated in his 2019 SCA that he moved to a different state after his discharge and implied he resided there with her during an unknown period.

SOR ¶ 1.b alleged a \$9,000 collection for a delinquent car loan. Applicant admitted the allegation and stated that he was paying his child support obligation and other debts before his debt for his car loan. He implied that his income was insufficient to pay this debt until after other debts were paid. He promised to pay the debt sometime in the near future.

SOR ¶ 1.c alleged a \$1,284 collection for a delinquent credit account. In his SOR response, Applicant stated that he had been working hard for the past few years to pay his debts and he paid off this debt last year. A July 2021 credit report shows that the debt was paid and the account was closed. (FORM, Item 6)

SOR ¶ 1.d alleged a \$12,000 collection by a state for delinquent child support. In his SOR response, Applicant stated he had been working hard for the past few years to

pay this debt. An October 2019 credit report shows that at some point in the past, Applicant was 180 days past due, but as of the report date, he had “0” past due. The July 2021 credit report indicates Applicant “pays as agreed,” has “0” past due, and has a scheduled payment for \$638. (FORM, Item 6)

SOR ¶ 1.e alleged Applicant had a mortgage foreclosed in 2014. He explained that he bought a home between 2010 and 2011. In early-2012, he was deployed overseas and let a friend stay in the house. The friend damaged the house and moved out without letting him know. By the time he found out about it, he was several months behind on the mortgage payments and could not afford the repairs of the house. He believed that his only option was to let the home go into foreclosure. The July 2021 credit report indicates the mortgage was foreclosed, the collateral was sold, and “the balance and past due are 0”.

In his September 13, 2021, response to the FORM, Applicant stated he mailed his TY 2017 federal income tax return “a few weeks ago”. He indicated that he only made \$865.50 in TY 2018, and believes he does not have to file an income tax return because his income was below the minimum required to file. He further stated that in August 2021, he settled the account alleged in SOR ¶ 1.b, a \$9,000 collection for a delinquent car loan. He also reiterated that he paid off the accounts alleged in SOR ¶¶ 1.c and 1.d last year.

Applicant submitted no documentary evidence to corroborate the above claims, except for the payment of SOR ¶¶ 1.c and 1.d last year, which is corroborated by the credit reports in evidence. (FORM, Items 5 and 6). He presented no evidence to show he has participated in financial counseling or has a working budget. Applicant did not present evidence of his current financial situation (gross monthly income, deductions, monthly expenses, and monthly net remainder).

Applicant told the government investigator that his financial situation was getting better now that he was working. He stated he was able and willing to pay off his delinquent debts and promised to be financially responsible in the future. To ensure his financial problems do not occur again, he intends to maintain his employment and obtain housing. Applicant was honest and upfront during the security clearance process and disclosed his tax deficiencies and financial problems in his 2019 SCA and with government investigators.

Policies

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AGs list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AGs should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in Security Executive Agent Directive (SEAD) 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered. [First time SEAD used]

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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. 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 Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

Applicant's financial problems are documented in the record. As alleged in the SOR, he failed to timely file federal income tax returns for TYs 2017 and 2018. Additionally, he had three delinquent accounts in collection (a defaulted car loan, a delinquent credit account, and a delinquent child support obligation), and a mortgage foreclosed.

AG ¶ 19 provides disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts;" "(c) a history of not meeting financial obligations;" and "(f) failure to file . . . annual Federal, state, or local income tax returns . . . or failure to pay annual Federal, state, or local income tax as required." The record established these disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

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; 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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant claimed that the filing of his 2017 income tax return was delayed because he was jobless and homeless, and could not file the taxes without having a residential address. For TY 2018, he claimed he did not meet the minimum required to file and was not required to do so.

According to his work history, between February 2014 and July 2016, Applicant was employed as an IT technician. He was unemployed between July 2016 and February 2017. He was hired as a security guard between February 2017 and April 2018. He was unemployed between April 2018 and January 2019. He has been employed with his current employer and clearance sponsor, a federal contractor, since January 2019. However, I note that Applicant was a drilling reservist, and as such a part-time employee of the National Guard between April 2015 and April 2018. It is not clear whether he was in fact drilling during weekends and the income he earned, if any.

Applicant divorced his first wife in April 2016, and married his second wife in February 2017. He stated in the 2019 SCA that he moved to another state with his new wife and resided there between February 2015 and April 2018. Applicant's scant information leaves many questions and contradictions unexplained, such as his income during the years in question and whether he was in fact homeless.

Some of above circumstances could be considered beyond Applicant's control and could have adversely affected his ability to timely file his 2017 income tax returns. However, these circumstances when considered in light of the insufficient information provided in his answer to the SOR, the FORM, and the lack of evidence of communications with the IRS before he received the SOR, are insufficient to prove he acted responsibly under the circumstances. He claimed he filed his TY 2017 income tax return in 2020; however, he failed to present documentary evidence to corroborate his claim. He also failed to provide corroborating documentation such as his W2 from the Defense Finance and Accounting Service for his Army Reserve duties and his W2 from working at the casino. He did not provide the IRS income account statement for TY 2018. He failed to establish that he did not meet the minimum required to file an income tax return for TY 2018.

In regard to the failure to timely file federal and state income tax returns, the DOHA Appeal Board has commented:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. Id.* A person 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. Aug. 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).

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis in original). See ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

In ISCR Case No. 15-01031 at 2 (App. Bd. June 15, 2016), the Appeal Board reversed the grant of a security clearance, and noted the following primary relevant disqualifying facts:

Applicant filed his 2011 Federal income tax return in December 2013 and received a \$2,074 tax refund. He filed his 2012 Federal tax return in September 2014 and his 2013 Federal tax return in October 2015. He received Federal tax refunds of \$3,664 for 2012 and \$1,013 for 2013.

Notwithstanding the lack of any tax debt owed when he filed his tax returns, the Appeal Board provided the following principal rationale for reversing the grant of a security clearance:

Failure to comply with Federal and/or state tax laws suggests that an applicant has a problem with abiding by well-established Government rules and regulations. Voluntary compliance with rules and regulations is essential for protecting classified information By failing to file his 2011, 2012, and 2013 Federal income tax returns in a timely manner, [that applicant] did not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information.

ISCR Case No. 15-01031 at 4 (App. Bd. June 15, 2016) (citations omitted).

Applicant's scant evidence is insufficient to mitigate SOR ¶ 1.a. However, the record evidence is sufficient to show that he paid off or brought to current the accounts alleged in SOR ¶¶ 1.b through 1.d, and I find them mitigated. I also find SOR ¶ 1.e mitigated by the passage of time.

Applicant failed to establish full mitigation of the financial considerations security concerns. I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to timely file his income tax returns prior to December 2020, when he received the SOR. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. SEAD 4, App. A, ¶¶ 2(a) and 2(d). Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant, 33, receives favorable credit for his honorable service in the U.S. military between 2007 and 2018. He held a secret clearance while in the service. He has worked for a federal contractor since January 2019. The evidence against grant of

Applicant's security clearance is substantial. As alleged in the SOR, he failed to timely file federal income tax returns for TYs 2017 and 2018.

When a tax issue is involved, an administrative judge is required to consider how long an applicant waits to file his or her tax returns, whether the IRS generates the tax returns, and how long the applicant waits after a tax debt arises to begin and complete making payments. The Appeal Board's emphasis on security concerns arising from tax cases is instructive. See ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016) (reversing grant of security clearance and stating, "His delay in taking action to resolve his tax deficiency for years and then taking action only after his security clearance was in jeopardy undercuts a determination that Applicant has rehabilitated himself and does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation's secrets."); ISCR Case No. 14-01894 at 2-6 (App. Bd. Aug. 18, 2015) (reversing grant of a security clearance, discussing lack of detailed corroboration of circumstances beyond applicant's control adversely affecting finances, noting two tax liens totaling \$175,000 and garnishment of Applicant's wages, and emphasizing the applicant's failure to timely file and pay taxes); ISCR Case No. 12-05053 at 4 (App. Bd. Oct. 30, 2014) (reversing grant of a security clearance, noting not all tax returns filed, and insufficient discussion of Applicant's efforts to resolve tax liens).

The primary problem here is that Applicant knew that he needed to file his federal income tax returns. Whether he knew he was going to receive refunds or had sufficient or insufficient funds to pay any taxes owed, he had a requirement to timely file his tax returns. He did not fully understand or appreciate the importance of timely filing of tax returns in security clearance determinations. His recent actions in 2021 are a good start for Applicant to establish his future financial responsibility, but at this time they are insufficient to fully mitigate the security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. Financial considerations security concerns are not mitigated at this time.

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:	Against Applicant
Subparagraphs 1.b - 1.e:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to grant or continue Applicant's eligibility for a security clearance. Clearance is denied.

JUAN J. RIVERA
Administrative Judge