



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



In the matter of:)	
)	
)	ISCR Case No. 20-02666
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
 For Applicant: *Pro se*
02/22/2022

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations security concerns about failing to timely file Federal income tax returns and pay Federal tax debt. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 7, 2019. On January 27, 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 March 3, 2021, and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record in lieu of a hearing.

On November 5, 2021, Department Counsel submitted the Government's file of relevant material (FORM) including Items 1-7. A complete copy of the 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 November 23, 2021. As of January 4, 2022, he had not responded. The case was assigned to me on February 1, 2022. Items 1 and 2, the SOR and the answer, are the pleadings in the case. Items 3-7 are admitted into evidence without objection. Applicant submitted a March 2, 2021 Experian credit report with his SOR Answer. It is admitted as Applicant's Exhibit (AE) A.

Findings of Fact

In his Answer, Applicant admitted SOR ¶¶ 1.b and 1.c, he partially admitted and partially denied SOR ¶ 1.a, and he denied SOR ¶ 1.d, each with brief narrative explanations. Applicant's admissions and explanations are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 44 years old. He has been employed by a defense contractor since 2013. He served on active duty in the U.S. military from 1996 until he was honorably discharged in 2005. He is applying for a security clearance for the first time since he was in the military. He earned a bachelor's degree in 2015, and a master's degree in 2017. He was married in 1998 and divorced in 2008. He has no children. (Items 3, 7)

The SOR concerns several years of unfiled Federal income tax returns, a delinquent tax debt, and one unpaid medical debt. The allegations are established by Applicant's admissions and the record evidence.

Applicant disclosed in his SCA, that he failed to file his 2016 – 2018 Federal income tax returns. In addressing his unfiled tax returns, Applicant stated that he had a balance due with the IRS, and that the IRS had kept his refunds to address it. He stated that he intended to file his past-due tax returns after the resolution of the debt. Applicant also stated that he sought pro-bono representation to resolve this debt, but was unsuccessful. (Item 3)

Applicant submitted tax account records in response to an interrogatory. Those tax account transcripts show that as of November 2020, his 2016 return was unfiled and his 2017 and 2018 returns were filed late. In his answer to SOR ¶¶ 1.a & 1.b, Applicant stated that he filed all of his overdue tax returns in May and August of 2020, and was due a refund for each year. Notwithstanding his admission to SOR ¶ 1.b, Applicant's 2019 return was filed on time. (Items 2, 3, 4, 7)

SOR ¶ 1.c concerns \$12,607 in past-due Federal income taxes from tax year 2011. This is established by Applicant's IRS account balance, submitted with his interrogatory response, and by his admission. He stated that he incurred this debt because of a 401K withdrawal due to unemployment, and that he used the funds to provide for his family. He stated that the IRS had told him this debt was in a "do not collect" status in 2012. He stated that he did not make any payments on this debt to prevent "taking funds from my family," and that he had relied on the fact that the IRS kept his subsequent tax refunds to reduce his tax debt. However, Applicant reported in his SCA that he was divorced in 2008, and has no children. (Items 2, 3, 4, 7)

Further, Applicant did not indicate any periods of unemployment since 1996 on his SCA. While he changed jobs in 2011, he provided no information to show that his financial situation dramatically changed. The record also indicates that he has been gainfully employed, with his current employer, since 2013. Despite this, Applicant provided no evidence of any payments towards his past-due Federal tax debt from tax

year 2011. Applicant provided no information more recent than his interrogatory response regarding the status of this debt. (Items 2, 3, 4, 7)

Applicant's tax account transcripts also show a history of delinquent Federal income tax debts for other, earlier tax years, going back to 2006. Those debts were resolved through involuntary refund offsets from tax years 2015, 2017, and 2018, and not through Applicant's own active efforts. Having been resolved previously, they are not alleged in the SOR. Since Applicant did not respond to the FORM, he did not provide any updated information about the current status of his Federal tax debt and the unfiled 2016 tax return. (Item 4)

SOR ¶ 1.d, which Applicant denied, is an unpaid \$146 medical debt. It is listed on Applicant's 2019 and 2020 credit reports as being unpaid since at least 2015. While he claims it was paid in 2019, he did not provide any corroborating documentation. (Items 2, 5, 6, 7)

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 failing to timely file his Federal income tax returns, a history of unpaid tax debt, and one past-due medical debt. The evidence is sufficient to raise the above disqualifying conditions. Applicant's 2019 income tax return was filed on time, and no disqualifying condition applies to that return.

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;
- (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 medical debt is minor and is not part of the larger pattern of delinquent tax issues. I conclude that SOR ¶ 1.d has been resolved, and in any event is not a security concern.

Applicant failed to file his 2016, 2017, and 2018 Federal tax returns on time, as required. While his 2017 and 2018 returns have been filed, they were filed in mid-2020, several years late. Applicant did not provide any evidence that his 2016 Federal tax return has been filed. His \$12,607 past-due tax debt from tax year 2011 is also unresolved and ongoing. Applicant has a history of noncompliance with tax filing requirements, and has had unpaid tax debt for many years. His issues with timely tax filings and payments are frequent, not isolated, and they are ongoing. He did not provide sufficient evidence to establish that AG ¶ 20(a) should apply.

AG ¶ 20(b) has some application to Applicant's 2011 tax debt, since he appears to have incurred the debt during a period of employment instability. However, that debt is now many years old, and Applicant did not establish that he ever undertook responsible action in the years since to address it, despite gainful employment in his current job since 2013. He did not provide sufficient evidence to establish that AG ¶ 20(b) should apply.

There is also no record evidence to establish that Applicant made any voluntary payments on his 2011 tax debt. The record indicates that Applicant's pattern is to wait for the IRS to address his tax debts by keeping his subsequent refunds. This does not constitute either reasonable action or good-faith efforts. AGs ¶ 20(d) does not apply.

The fact that Applicant belatedly filed his 2017 and 2018 tax returns is not sufficient to apply AG ¶ 20(g). He has significant, and quite dated Federal income tax debt, and has not established that he has filed his 2016 tax return. AG ¶ 20(g) does not apply.

Timely filing of Federal income tax returns and paying taxes owed is a basic duty for U.S. citizens, and is required by law. While Applicant is requesting that the Government entrust him with access to national security information, he has failed to meet his basic tax filing and payment obligations. The Appeal Board has held that "a security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly, failure to honor other obligations to the Government has a direct bearing on an Applicant's reliability, trustworthiness, and ability to protect classified information as reflected in the Guideline F concerns that were alleged." (ISCR Case No. 14-03358 at 2 (App. Bd. Oct. 9, 2015)).

There is insufficient evidence to find that Applicant's failure to comply with his tax filing and payment obligations are now resolved. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his taxes. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that the security concerns related to his taxes are not mitigated.

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.

Applicant did not provide any tax documents with his SOR response, and also did not respond to the FORM, so he did not provide more recent evidence to mitigate his late-filed tax returns or past-due tax debt. In addition, since Applicant did not request a hearing, I did not have the opportunity to question him about his financial issues, or to assess his credibility by observing his demeanor.

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 provide sufficient evidence to mitigate the security concerns under Guideline F.

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:	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.

Ross D. Hyams
Administrative Judge