



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



In the matter of:)
)
) ISCR Case No. 20-02560
)
Applicant for Security Clearance)

Appearances

For Government: Kelly Folks, Esq., Department Counsel
For Applicant: *Pro se*

04/11/2022

Decision

PRICE, Eric C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 6, 2020. On March 15, 2021, the Defense Counterintelligence and Security Agency issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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 June 8, 2017.

On April 1, 2021, Applicant answered the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM) dated November 30, 2021, including documents identified as Items 1 through 4. Applicant was afforded an opportunity to file

objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant submitted no response. There were no objections by Applicant, and all Items are admitted into evidence. The case was assigned to me on February 28, 2022.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a and 1.b, with explanations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 58 years old. He graduated from high school in 1982. He married in 1989 and has three adult stepchildren. He was employed from October 2005 to June 2016, and has worked for his current employer since April 2017. He was unemployed from June 2016 to April 2017. (Item 3)

The SOR alleges that Applicant failed to file, as required, Federal and state income tax returns for tax year 2018, and that he owes approximately \$10,000 in delinquent Federal income taxes, and approximately \$3,000 in delinquent state income taxes for tax year 2018. (Item 1)

In his March 2020 SCA, Applicant reported that he failed to file Federal and state income tax returns for tax year 2018, and estimated his combined tax debt to be \$13,000. He explained that he did not file the returns or pay the required income taxes because he could not pay the taxes due. He attributed his financial difficulties to his wife's retirement and his failure to withhold sufficient funds to pay taxes incurred when he withdrew funds from a retirement account in order to pay bills. He stated his intent to pay down the debt with anticipated tax refunds and then to negotiate payment plans with Federal and state tax authorities. (Item 3)

During his background interview with a government investigator on April 9, 2020, Applicant confirmed he had not filed or paid his Federal and state income taxes for tax year 2018. He reported commercial software he used to prepare his income tax returns in early 2019 reflected that he owed approximately \$10,000 in Federal income taxes, and \$3,000 in state income taxes. He decided not to file the income tax returns because he could not afford to pay the amounts due. He attributed his financial difficulties to a reduction in income after his wife was injured and unable to work or run her business, and a greater than anticipated tax liability for a \$30,000 withdrawal from a retirement account he used to pay bills. He acknowledged that he had not contacted Federal or state tax authorities regarding his delinquent taxes. He stated his intent to use anticipated tax year 2019 income tax refunds to make payments on the delinquent taxes and to then negotiate payment plans with Federal and state tax authorities. (Item 4)

In his August 2021 answer to the SOR, Applicant admitted the allegations at SOR ¶¶ 1.a, and 1.b. He stated he delayed filing the income tax returns because he was worried he could not afford the payments due. He attributed his financial difficulties to his

failure to withhold sufficient funds to pay taxes due on funds withdrawn from a retirement account to pay off his mortgage and bills associated with his wife's business, and to her injury and subsequent retirement. He stated he was in the process of paying off the IRS debt and provided the first page of a five-page IRS Notice CP521 addressed to him and his wife dated March 17, 2021. The IRS notice references his installment agreement for tax year 2018, reflects the amount owed (\$14,480.39), monthly payments due (\$286.00), that the last payment amount (\$286.00) was made on March 2, 2021, and that the next payment (\$286.00) was due March 28, 2021. (Item 2)

Applicant failed to timely file his Federal income tax return for tax year 2018. A Federal income tax return for tax year 2018 was apparently filed sometime after his April 9, 2020 background interview and on or before March 17, 2021, the date of the IRS Notice CP521, because a "request for an installment agreement will be denied if any required tax returns haven't been filed." <https://www.irs.gov/instructions/i9465> (Instructions for Form 9465 (10/2020)). (Items 2, 3, 4)

Applicant did not claim or provide documentary evidence to show that he filed the state income tax return for tax year 2018 alleged in SOR ¶ 1.a, or that he paid the delinquent state income taxes alleged in SOR ¶ 1.b. He did not provide evidence, documented or otherwise, of his current financial budget, savings or expendable income.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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. Instead, 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 common sense 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be

irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (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 failed to timely file Federal and state income tax returns for tax year 2018 and owed at least \$13,000 in delinquent Federal and state income taxes. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. 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.

AG ¶ 20(a) warrants some consideration because the SOR alleges delinquent Federal and state income taxes for a single tax year. Applicant provided documentary evidence that his tax year 2018 Federal income tax return was filed late, that he enrolled

in an installment agreement with the IRS for that tax year, and that he made a monthly payment due under that agreement in March 2021. There is no evidence of any additional payment to the IRS under that installment agreement, and no evidence that he filed a state income tax return for tax year 2018 or made any payment on his delinquent state income taxes. AG ¶ 20(a) does not fully apply, because Applicant's delinquent Federal and state tax issues are ongoing.

Applicant's wife's medical issues and associated reduced income impacted his ability to pay his Federal and state income taxes for tax year 2018. The first prong of AG ¶ 20(b) therefore applies to his delinquent tax debt. However, those conditions did not impact his ability to timely file Federal and state income tax returns, or to contact or make payment arrangements with Federal and state tax authorities. The evidence is insufficient to demonstrate that he acted responsibly under the circumstances. AG ¶ 20(b) does not fully apply.

AG ¶¶ 20(c) does not apply because there is no evidence Applicant has received, or is receiving financial counseling.

AG ¶ 20(d) and AG ¶ 20(g) partially apply. Applicant's Federal income tax return for tax year 2018 was apparently filed, albeit late. He was also enrolled in an installment agreement with the IRS for the delinquent Federal income taxes as of March 2021, and made a payment under that agreement in March 2021. AG ¶ 20(d) and AG ¶ 20(g) do not fully apply because a single monthly payment on a substantial tax debt does not establish a reliable track record of consistent monthly payments in compliance with the installment agreement. And there is no evidence that he filed a state income tax return for tax year 2018 or that he paid the delinquent state income taxes due.

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 the 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered that Applicant is 58 years old, and that there is no evidence of additional financial concerns. I also considered that his wife's medical issues and associated reduced income impacted his ability to pay his Federal and state income taxes due for tax year 2018. However, he is responsible for ensuring his Federal and state income tax returns are timely filed and paid. The evidence reflects his tax year 2018 Federal income tax return was filed late, that he made one payment under an instalment agreement with the IRS, and that after that payment he still owed the IRS approximately \$14,480.39 for tax year 2018 as of March 2021. There is no evidence that he filed a state income tax return for tax year 2018 or that he paid the delinquent state income taxes due.

The DOHA Appeal Board has held that:

While difficulty in meeting financial obligations may force an applicant to choose the order in which he or she addresses unpaid debts, they do not provide a plausible excuse to failing to meet an important legal requirement, such as filing returns when due. Indeed, the Directive cites failure to file returns as a disqualifying condition in and of itself, irrespective of whether the underlying taxes have actually been paid, as through withholding, etc. ISCR Case No. 15-03019 at 7-8 (App. Bd. Jul. 5, 2017).

Applicant's failure to comply with the fundamental legal obligation to timely file and pay his Federal and state income taxes raise serious security concerns. "A security clearance represents an obligation to the Federal Government for the protection of national secrets [and] failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information." ISCR Case No. 14-03358 at 2 (App. Bd. Oct. 9, 2015). Although there is some evidence in mitigation, Applicant failed to meet his burden of persuasion and the record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations.

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
Subparagraph 1.b:	Against Applicant

Conclusion

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

Eric C. Price
Administrative Judge