



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



In the matter of:)
)
) ISCR Case No. 21-00750
)
Applicant for Security Clearance)

Appearances

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

04/27/2022

Decision

RICCIARDELLO, Carol G., 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

On October 13, 2021, the Defense Counterintelligence and Security Agency issued 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.

Applicant answered the SOR on October 23, 2021, 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), and Applicant received it on December 11, 2021. He was afforded an opportunity to file objections and submit material in

refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 6. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. The Government's evidence is admitted. The case was assigned to me on March 2, 2022.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a, 1.d, 1.e, 1.f, 1.g, 1.h, 1.i and 1.j. He partially admits SOR ¶ 1.o and denies ¶¶ 1.b, 1.c, 1.k, 1.l, 1.m, 1.n, 1.p and 1.q. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 54 years old. He was married from 1987 to 1989 and from 1990 to February 2020. He has four adult children. In his government interrogatories he stated he began working for a federal contractor in August 2020. (Items 3, 4)

In Applicant's July 2020 security clearance application (SCA), he disclosed he failed to timely file his 2017 and 2018 federal income tax returns. He attributed this to his ex-wife's failure to timely file the returns when he was working overseas in 2017 and 2018. He estimated he owed \$40 for each tax year and his accountant was making payment arrangements with the IRS. He also attributed his other financial problems to his ex-wife who did not pay the bills while he was overseas and instead was using their money for other purposes. They are now divorced. (Items 2, 3)

The SOR alleges that Applicant is indebted to the federal government for delinquent taxes of approximately \$26,439 for tax years 2015, 2016, 2017, and 2018. In his answer to the SOR, Applicant attributes his tax debts due to malfeasance by his accountant in approximately 2008, and when his wife failed to timely file their federal income tax returns for 2017 and 2018. He stated that he owed federal income taxes in 2008 because his accountant did not take care of his taxes. He believed he owed about \$3,000, but then found out it was \$10,000. He said he made payment arrangements with the IRS, and that he and his wife "would chip away at the taxes but every year I had to roll the amount over." He said he had been working with the IRS since 2009 and when he went overseas his ex-wife skipped making payments and then stopped. (Items 2, 3)

In Applicant's answer to the SOR and interrogatory response, he provided documents from his current accountant stating that as of October 2021, Applicant owes \$26,479 for tax years 2015 through 2018. His accountant was in communication with the IRS to set up a recurring monthly payment. Applicant has been making payments of \$380 to the IRS since January 2021, and his accountant says he has satisfied his 2015 federal income tax debt. Applicant's federal tax transcript from August 2021 shows a balance owed of \$720. Presumably his additional payments would have satisfied the balance for tax year 2015. In September 2021, Applicant submitted a request for an installment agreement to the IRS for monthly payments of \$380 for tax years 2015 through 2018. There is no documentation to show the IRS has agreed to an installment agreement with

the proposed payment amount. Other tax years' transcripts show inconsistent payments toward tax debts owed for tax years that were not alleged in the SOR. (Items 2, 4, 8)

I have not considered any derogatory evidence that was not alleged in the SOR for disqualifying purposes. I may consider this information when making a credibility determination, in the application of mitigating conditions, and in my whole-person analysis.

Applicant provided a document from the creditor in SOR ¶ 1.q verifying that he is not responsible for this debt and it will be removed from his credit report. This debt is resolved. (Item 2)

Applicant provided a receipt to show he made a \$50 payment to a creditor, but it is unclear which creditor on the SOR this payment applies to. (Item 2)

Applicant denies the medical debts alleged in SOR ¶¶ 1.b (\$367), 1.k (\$79), 1.l (\$77), 1.m (\$39), 1.n (\$33) and 1.p (\$250). He stated he was unable to determine their origin. He did not provide any information as to what actions he took to dispute the debts. He indicated they may belong to his son, but did not provide information as to whether he contacted his son to resolve them. The debts are listed on his credit reports. These debts are unresolved.

In Applicant's SOR answer he states the debt in SOR ¶ 1.c (\$2,251) originated from a rental agreement and a dispute he has with the landlord. He said he is trying to resolve it. He did not provide any documents or information regarding efforts he has made. It is unresolved.

Applicant admits owing the debts in SOR ¶¶ 1.d (\$1608), 1.e (\$947), 1.f (\$3,202), 1.h (\$807), 1.i (\$1,275), 1.j \$5,571), and 1.o (\$1,100). He stated in his SOR answer that he was making \$100 payments toward the debt in SOR ¶ 1.e. He did not provide evidence to substantiate his payments or actions he may be taking to resolve any of these alleged debts. (Item 2)

Applicant partially admitted the debt in SOR ¶ 1.g (\$39,516). He stated in his SOR answer that this debt is for two car loans. He said he is paying a portion of the debt based on the vehicle he has, and that his ex-wife had the other vehicle that was financed and it was repossessed. Applicant did not provide any documentation to substantiate that he is not responsible for the whole amount or that he is making payments on the amount he believes he owes. He did not provide a copy of a divorce settlement which reflects his ex-wife would be responsible for this portion of the loan. (Items 5, 6, 7)

Credit reports from July 2020, March 2021, and September 2021 substantiate the delinquent debts alleged in the SOR are individual accounts or joint accounts belonging to Applicant. (Items 5, 6, 7)

Applicant stated in his SOR answer that he is taking care of his finances as he is financially able. He said he has a payment agreement with the IRS and for his medical bills. He is paying down his delinquent debts. He stated that prior to being employed overseas he was an active participant in community activities with the Rotary Club, fire department and high school, and was considered a person in good standing. (Item 2)

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 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." 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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 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 pay his 2015 through 2018 federal income taxes and owed approximately \$26,439. He also accumulated numerous delinquent consumer and

medical debts totaling approximately \$57,022. 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;

(e) the individual had a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of action to resolve the issue; 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 failed to timely pay his 2015 through 2018 federal income taxes. Although he attributes his tax issues to his wife who failed to timely file his 2017 and 2018 tax returns, it is clear from the evidence that his tax issues were a problem before then. He said he and his wife would "chip away" at their tax debt, but subsequently rolled the balance over to the next year. In January 2021, he began making monthly payments to the IRS and in September 2021, he requested an installment agreement with them. No evidence was provided to show an agreement was accepted and he is in compliance with it. AG ¶ 20(g) does not apply.

Some of Applicant's financial problems can be attributed to his ex-wife, but Applicant's tax issues were apparent before he went overseas. Applicant trusted his wife to take care of the bills while he was gone. He claimed she did not and their debts became

delinquent. This circumstance was beyond his control. Applicant has had sufficient time to address the delinquent debts he accumulated, but has not provided documentation to show he is acting responsibly by making regular payments on debts, attempting settlements, or disputing debts he believes do not belong to him. AG ¶ 20(b) partially applies.

Applicant did not provide evidence he has participated in financial counseling, or initiated a good-faith effort to resolve his debts. He is given credit for making consistent payments since January 2021 toward his tax debt, but he did not provide proof of payments towards other debts. AG ¶¶ 20(c) and 20(d) do not apply. He disputed the debt in SOR ¶ 1.q and the creditor acknowledged it did not belong to him. It is resolved. He also disputes other debts, but failed to provide evidence to substantiate his actions regarding his disputes or to resolve the debts. AG ¶ 20(e) does not apply.

Applicant did not provide evidence he maintains a current budget or of his financial resources and ability to resolve his delinquent debts. His delinquent debts and tax issues are ongoing and remain unresolved. The evidence is insufficient to conclude future issues are unlikely to recur. AG ¶ 20(a) does not apply.

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.

Applicant has not established a reliable financial track record at this time and has not met his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these

reasons, I conclude Applicant failed to mitigate the security concerns arising 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
Subparagraphs 1.a-1.o:	Against Applicant
Subparagraph 1.q:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge