



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



In the matter of:)
)
) ISCR Case No. 20-03760
)
)
Applicant for Security Clearance)

Appearances

For Government: Raashid Williams, Esq., Department Counsel
For Applicant: *Pro se*

05/11/2022

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 3, 2021, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

On October 27, 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) on January 19, 2022. The evidence

included in the FORM is identified as Items 3-7 (Items 1-2 include pleadings and transmittal information). The FORM was received by Applicant on January 26, 2022. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted a one-page response to the FORM, which I have marked as Applicant exhibit (AE) A. In AE A, he objected to two references made in the FORM, not to any specific piece of evidence, but to certain characterizations Department Counsel (DC) made in the body of the FORM. He objected to DC pointing out that he had not served in the military and that he had a gambling problem. Since, DC's comments in the FORM are not evidence, and will not be considered as such, Applicant's objections are overruled. Items 3-7 are admitted into evidence, as is AE A.

The case was assigned to me on April 12, 2022. After receiving the case and reviewing the record, I gave Applicant an opportunity to submit additional documentation because he made reference in AE A that he had tax documents that he was not able to submit at that time. Applicant took advantage of this opportunity and submitted his IRS account transcripts for tax years 2015-2019. Those documents were admitted as AE B-F. The email correspondence reflecting the re-opening of the record was marked as administrative exhibit (ADE) I.

Findings of Fact

Applicant admitted some of the SOR allegations (§§ 1.d-1k) and denied others (§§ 1.a-1.c, 1.l-1.m). His admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 50 years old. He has worked for his current employer, a defense contractor, since October 2015, as a weapons technician. Since 1995 he has worked for defense contractors as a weapons technician. He is a high school graduate and has taken some college courses. He has never married and he has no children. He has held a security clearance since approximately 1995. (Item 3; AE A).

The SOR alleged Applicant failed to timely file his 2015 through 2017 federal income tax returns, as required, and that he owed \$2,500 for delinquent taxes for tax years 2013 and 2014. (§§ 1.a-1.c). Applicant admitted in his January 2018 security clearance application (SCA) that he failed to file his 2015 and 2016 federal income tax returns. He also admitted owing \$2,500 in delinquent federal taxes for years 2013 and 2014, and he claimed he had a payment plan with the IRS for these years, but he failed to document any plan. In his May 2019 personal subject interview (PSI) with an investigator, he admitted not timely filing his 2015-2017 federal tax returns and owing delinquent taxes of \$2,500 for tax years 2013 and 2014. In his April 2021 answers to interrogatories, he admitted not filing his 2015-2017 federal tax returns until April 2021. His IRS tax account transcripts for tax years 2017 (filed in May 2021) and 2019 (filed in July 2020) showed that his tax refunds for those years were applied to his delinquent 2013 federal tax debt (2017 refund amount applied: \$2,022; 2020 refund amount applied: \$1,210). Other than this information, he failed to document payment for his delinquent federal tax debts for 2013-2014. (Items 3-4; AE A, D, F)

The SOR also alleged that Applicant filed a Chapter 7 bankruptcy in November 2001 that was discharged in February 2002. He also filed a Chapter 13 bankruptcy in July 2015 that was dismissed in February 2016. Applicant admitted these allegations in his SCA, his PSI, and in his SOR answer. He explained that his Chapter 13 was dismissed because his plan payments were set too high and he could not make the payments. (Items 3-4, 7; SOR answer)

The SOR alleged Applicant owed six delinquent accounts totaling approximately \$21,000. (¶¶ 1.f-1.k) Applicant admitted owing these debts in his SOR answer. The debts are also supported by listings as delinquent debts in credit reports from January 2018 and June 2020. Applicant claimed that he established payment plans for all these debts. He failed to provide documentation showing such plans. He further explained that he was unable to address his debts because of several personal setbacks for a period of time including, medical issues (e.g. multiple shoulder surgeries, eye surgery, and skin cancer removal), dealing with family deaths, and having to leave his home due to drought conditions. All of the debts remain unresolved. (Items 3-6; AE A, SOR answer)

The SOR also alleged that Applicant's home foreclosure and some credit card debt resulted from his gambling losses in the amount of approximately \$50,000. It further alleged that Applicant continues to gamble. (¶¶ 1.l-1.m) In his SOR answer, Applicant denied both of these allegations. In his January 2018 SCA, Applicant admitted that he had gambling losses of \$50,000, which left him unable to pay his bills on time, or at all. He claimed he has stopped gambling and sought professional help to do so. He failed to provide any documentation concerning his medical assistance in this area. (Items 3-4; AE A; SOR answer)

Applicant did not provide information about his current budget. Other than what might have been required by his bankruptcy filings, there is no documented evidence showing that he sought any financial counseling. (Items 3-7)

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 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(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, 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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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

AG ¶ 18 expresses the security concerns for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations;
- (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;
- (h) borrowing money or engaging in significant financial transactions to fund gambling or pay gambling debts; and
- (i) concealing gambling losses, family conflict, or other problems caused by gambling.

Applicant failed to timely file his 2015-2017 federal income tax returns and he owes delinquent taxes for tax years 2013 and 2014. He filed a Chapter 7 bankruptcy petition in 2001, resulting in the discharge of his debts and he filed a 2015 Chapter 13 bankruptcy petition, which was dismissed for failure to make his required payments. He also has delinquent consumer debts that remain unpaid or unresolved. Because of his gambling losses he could not pay his debts, including making his mortgage payments. I find all the above disqualifying conditions are raised, except for AG ¶ 19(i) because the evidence supports that Applicant was open about reporting his gambling losses.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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.

Applicant's debts are recent and remain unresolved. He did not provide sufficient evidence to show that his financial problems are unlikely to recur. AG ¶ 20(a) does not apply. He had several problems, such as medical issues, relatives passing away, and drought conditions affecting his residence that were circumstances beyond his control. However, the evidence does not support that he has taken responsible actions to address his debts or timely file his federal tax returns and pay the delinquent taxes he owes. He failed to document any efforts he made to resolve or pay his delinquent debts. He finally filed his 2015-2017 federal tax returns in May 2021, only after receiving the DOHA interrogatories requesting his tax information. AG ¶ 20(b) does fully apply. Other than what might have been required by his bankruptcy filings, there is no evidence of financial counseling and no evidence that his financial conditions are under control. He has not shown a good-faith effort to address his debts or his federal tax issues. While he filed his 2015-2017 tax returns several years late, there is no documentary evidence showing he made arrangements with the IRS to resolve his tax debt. AG ¶¶ 20(c) and 20(d), and do not apply. AG ¶ 20(g) applies to SOR ¶ 1.a, but not to SOR ¶¶ 1.b and 1.c. I find for Applicant on SOR ¶ 1.m based upon his assertion that he no longer gambles and that there is no evidence in the record to the contrary.

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 guideline 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 considered his medical and family issues, but I also considered his lack of progress in resolving his debts, his failure to timely file his 2015-2017 federal income tax returns, and his failure to document any voluntary payment towards his delinquent federal tax debt from 2013 and 2014. Applicant has not established a track record of financial responsibility.

Overall, 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.l:	Against Applicant
Subparagraphs 1.m:	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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge