



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



In the matter of:)	
)	
)	ISCR Case No. 20-03497
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Price, Esq., Department Counsel
For Applicant: *Pro se*

05/27/2022

Decision

HYAMS, Ross D., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 27, 2019. On February 15, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. He responded to the SOR on September 23, 2021 with a narrative statement 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 October 31, 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. He received the FORM on December 8, 2021. He responded on January 3, 2022 (FORM Response) with

documentation, which I have marked as Applicant's Exhibits (AE) A – J. The case was assigned to me on March 17, 2022.

Items 1 and 2 are the SOR and Applicant's Answer, which are the pleadings in the case. Items 3 – 7 are admitted without objection. AE A – J are admitted without objection.

Findings of Fact

In his Answer, Applicant admitted all of the SOR allegations (§§ 1.a – 1.i). In his explanation about his debts and tax issues, he described his financial and personal problems from 2005 to 2021. In this 16-year time period, Applicant cited a variety of reasons, including: the housing and rental market bubbles and fluctuations; job changes; moves for career opportunities; work demands and time obligations; problems with tenants renting his home; medical ailments of Applicant and his wife; elder care and health issues with his mother and mother-in-law; and wildfires in his home state. 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 65 years old. He has been employed as a senior design engineer by a defense contractor since 2019. This is his first application for a security clearance. He graduated high school in 1975, earned an associate's degree in 1985, and a bachelor's degree in 1992. He has been married since 2005, and has two adult step-children. (Item 3)

Applicant has had several periods of unemployment. He was laid off from his job in 2018, and was out of work for approximately five months. After another layoff in 2012, he was again unemployed for about two and a half years. During this time, he looked for work in his field, and oversaw the restoration of his mother's home. He was supported by unemployment compensation and his spouse's social security. Over the last 16 years, Applicant has moved several times for employment within his home state, and he made one move to another state for about ten months in 2015. (Items 2, 3, 7)

Applicant provided several explanations about why he did not file or pay his federal or state taxes. He stated that an out-of-state move, a tight and expensive housing market, his mother's health, and personal expenses in 2016 were reasons he could not hire an accountant to complete his 2015 taxes. He reported that his mother-in-law's declining health, a demanding job, and household moves were reasons he could not hire an accountant to complete his 2016 taxes. He stated that household moves, a demanding job, his mother-in-law's declining health, a health issue in November 2017, his wife's medical issues and appointments, and the complexity of itemized deductions were reasons that he could not complete his 2017 taxes. He reported that taking care of his mother-in-law, his health issues, his wife's health issues, his failure to file or pay taxes for 2015 – 2017, and the complexity of itemized deductions were reasons that he could not complete his 2018 taxes. He asserted that federal and state taxes were withheld from his pay check from 2015 – 2018. (Item 3, 7)

In 2020, Applicant stated that because he gave so much of his time, effort, and expertise to his employer, it had prevented him from filing his taxes on time. He said that unless his employer provided him with an extended paid leave to focus solely on getting his taxes completed, he will only be able to work on them when he has free time, and is not busy with his other personal responsibilities. (Item 4)

Applicant's IRS tax records show that as of March 2020, his 2015, 2016, and 2018 federal income tax returns had not been filed. His 2017 return was filed in November of 2019, which was more than a year late. The records show that he made payments to the IRS from 2016 to 2019 in varying amounts. No documentation was provided to show that these were voluntary payments, not garnishments. Applicant reported that he had previously owed taxes to the IRS, and around 2012 had a plan in place to pay \$100 monthly. He was uncertain about the status of this payment plan or the amount that had been paid. (Item 4, 7)

The record includes a proposed installment agreement with the IRS dated December 8, 2021. Applicant contacted the IRS on November 29, 2021, and the IRS proposed a repayment plan of \$250 monthly payments beginning in January 2022. The IRS had not yet calculated the full amount that he owed. No documentation was provided to show that he has made any payments on this agreement or the amounts owed. (AE B)

Applicant's most recent state tax records show that he had delinquent state tax debt for 2015, 2016, and 2018. Between April 2019 to August 2020, he paid \$200 monthly toward this debt. No documentation was provided to show if these were voluntary payments or garnishments. The records also show that he had a \$227 tax debt for 2020, which was paid in November 2021. (Item 4; AE C – J)

Applicant filed for Chapter 7 bankruptcy in March 2013. He had \$493,281 of debt discharged without payment in June 2013. (SOR ¶ 1.a) In his Answer, he states that he had to file bankruptcy because of financial and personal problems starting in 2005, including: purchasing a home in a speculative housing market; moves for employment; problems with renting his home; a failed start-up business; loss of employment; an expensive home rental market; the cost of health insurance; and medical problems of him and his wife. (Item 2, 5)

In addition to the bankruptcy, the SOR alleged that Applicant had unfiled Federal and state income tax returns for tax years 2015-2018 (SOR ¶¶ 1.b-1.i). He also had an outstanding \$3,334 federal tax debt for 2009 (SOR ¶ 1.a) as well as a state tax debt of \$3,094 for 2015, which was repaid through garnishment in 2020 (SOR ¶ 1.f), and a 2016 state tax debt of \$2,642 (SOR ¶ 1.g).

Applicant admitted all of the SOR allegations. He provided no documentation about his 2009 unpaid tax debt. He failed to provide documentation showing that his outstanding state and Federal tax returns have been filed, even belatedly. His state tax records show that he still owes \$301 for 2016, a debt which remains unpaid. (AE D)

Applicant did not submit any documentation concerning his current financial situation, such as his monthly income and expenses, his assets, or whether he follows a budget. He has not asserted that his tax filings since 2018 have been timely. Applicant received credit counseling as part of his 2013 bankruptcy, but provided no documentation of any subsequent counseling.

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.

Timely filing of income tax returns and paying taxes owed is a basic duty for U.S. citizens, and is required by law. 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)).

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;
- (b) 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.

The SOR allegations are established by Applicant’s admissions and the tax and bankruptcy records in the record. AG ¶¶ 19(a) ,19(c), 19(f) apply.

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; and

(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 did not provide sufficient evidence to establish that AG ¶ 20(a) should apply. While his bankruptcy was nine years ago, he did not provide documentation showing that he resolved the delinquent tax debt from 2009 during that time. He did not provide sufficient documentation showing that all of his taxes are now filed and paid, or that they are being paid. He provided no documentation of his current financial situation, evidence which might establish his ability to address his debts responsibly. His failures to timely file state and Federal income tax returns and pay his tax debts are recent, not isolated, and are ongoing and unresolved. This continues to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant's two instances of loss of employment, his household moves for his employment, he and his wife's medical ailments, and wildfires in his home state, had an impact on his finances. However, these issues are not an excuse for failing to timely file or pay taxes for four consecutive years, and this failure was not due to reasons beyond his control. There is insufficient evidence in the record to show that he undertook responsible action to address them. AG ¶ 20(b) does not fully apply.

Applicant received financial counseling as part of his Chapter 7 Bankruptcy in 2013, so he is given consideration under 20(c). However, since his tax filings and tax debts are not resolved or under control, 20(c) does not apply.

Similarly, Applicant did not provide sufficient evidence showing that he has undertaken good-faith efforts to address his failure to file or pay his taxes. He failed to timely file his state and Federal income tax returns for four years and the record does not show any filings for three of these years. There is insufficient evidence to show that he has resolved all of his tax debt, and has cured his multiple late filed returns. While Applicant may have recently contacted the IRS to set up a payment arrangement, there is insufficient documentation in the record to show that he has made payments on the most recent debts, or has a track record of making consistent payments. AG ¶¶ 20(d) and 20(g) do 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 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.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Applicant did not provide sufficient evidence to mitigate the security concerns arising out of Applicant's failure to timely file Federal and state income tax returns, and pay Federal and state tax debt 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.i:	Against 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