



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



In the matter of:)
)
) ISCR Case No. 21-02084
)
Applicant for Security Clearance)

Appearances

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

05/18/2022

Decision

Dorsey, Benjamin R., Administrative Judge:

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

Statement of the Case

On January 12, 2022, 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 February 22, 2022, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on February 25, 2022. A complete copy of the file of relevant material (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 March 1, 2022. As of April 18, 2022, he had not responded. The case was assigned to me on May 5, 2022. The Government exhibits included in the FORM are admitted in evidence. Applicant did not attach any documents to his response to the SOR.

Findings of Fact

Applicant is a 37-year-old employee of a defense contractor for whom he has worked since April 2018. He has a high school degree and attended college for about two years. He was married in 2010 and divorced in August 2016. He is engaged to be married and has four children. He served on active duty with the U.S. Marines from August 2007 to August 2012 and received an honorable discharge. (Items 2, 3)

In the SOR, the Government alleged Applicant's four delinquent debts totaling about \$8,000 (SOR ¶¶ 1.a-1.d). It also alleged that Applicant failed to timely file his 2018 and 2019 Federal income tax returns (SOR ¶ 1.e.). In his response to the SOR, Applicant admitted the debts in ¶¶ 1.a-1.d, but denied that he failed to timely file his 2018 and 2019 Federal tax returns. In his response to the SOR he claimed that, in early 2020, he mailed his 2018 and 2019 Federal tax returns, but the IRS failed to process them. He stated that he also filed his state income tax returns for State A and has received refunds from State A. He claimed that he has since mailed his 2018 and 2019 Federal tax returns to the IRS two more times without an acknowledgement of receipt. In his response to the SOR, he alleged that the IRS owed him about \$15,000 to \$20,000 in tax refunds. (Items 1-6)

The information Applicant provided regarding these Federal tax returns in the Questionnaire for National Security Positions (SF 86) he submitted in July 2020 is inconsistent with the information he provided in his response to the SOR. In his SF 86, he acknowledged that he failed to timely file his 2018 Federal tax return because of issues with his ex-wife. He further claimed in his SF 86 that he had not and could not file his 2019 Federal tax return until the IRS processed his late 2018 Federal tax return. According to the information he provided in his SF 86, Applicant had not filed his 2019 Federal tax return as of July 2020. He provided no evidence that he requested an extension with the IRS. Therefore, his entries in his SF 86 and lack of proof of an extension request establish the allegations in SOR ¶ 1.e. The SOR allegations are established through Applicant's admissions, his entries in his SF 86, and the other Government exhibits. (Items 1-6)

Applicant attributed his financial problems to his unemployment, his divorce, record inflation, supporting a family as the sole breadwinner, and not receiving Federal income tax refunds from the IRS. He was unemployed for a period from about August 2012 to April 2013, while he attended college, and from August 2016 to April 2018. His August 2016 unemployment began when he quit his job instead of being fired after he lost his commercial driver's license as a result of a driving under the influence (DUI) conviction.¹ Applicant provided a Personal Financial Statement with his July 2021 interrogatory responses that showed he had a net remainder of \$857 per month. (Items 1-4)

The \$6,209 credit-card debt alleged in SOR ¶ 1.a has not been resolved. In his response to the SOR, Applicant admitted this debt, and stated that he will pay it once he

¹ I will not consider adverse information not listed in the SOR under the disqualifying factors, but I may consider it when applying matters of extenuation and mitigation, and for the whole-person analysis.

receives his anticipated Federal tax refund. He provided a document from the creditor from March 2021 offering him a settlement on the account, but provided no evidence of payments. This debt appears on the September 2020 and August 2021 credit reports. (Items 1-6)

The \$1,800 credit-card debt alleged in SOR ¶ 1.b has not been resolved. In his response to the SOR, Applicant admitted this debt, and stated that he will pay it once he receives his anticipated Federal tax refund. He provided a document from the creditor from October 2020 offering him a settlement on the account, but provided no evidence of payments. This debt appears on the September 2020 and August 2021 credit reports. (Items 1-6)

The \$192 insurance debt alleged in SOR ¶ 1.c has not been resolved. In his response to the SOR, Applicant admitted this debt, and stated that he will pay it once he receives his anticipated Federal tax refund. He provided no evidence of payments on this debt. This debt appears on the September 2020 and August 2021 credit reports. (Items 1-6)

The \$190 debt to a Federal agency alleged in SOR ¶ 1.d has not been resolved. In his response to the SOR, Applicant admitted this debt, and stated that he will pay it once he receives his anticipated Federal tax refund. He has provided no evidence of payments on this debt. This debt appears on the September 2020 and August 2021 credit reports. (Items 1-6)

The late filing of Applicant's 2018 and 2019 Federal tax returns remains unresolved. While Applicant claimed he mailed these tax returns three separate times, he provided no documentary proof to corroborate this assertion, such as copies of these tax returns or proof of mailing. Instead, he provided Wage and Income Transcripts from the IRS for the 2018 and 2019 tax years. These documents are filed with the IRS by his employer and show how much money Applicant earned from his employer in the given tax year, but do not provide proof of tax return filing. (Items 1-6)

Applicant did not respond to the FORM, so more recent information about his finances is not available.

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 pay delinquent debts. He did not timely file his 2018 and 2019 Federal tax returns. The evidence is sufficient to raise the above disqualifying conditions.

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 divorce and record inflation were beyond his control. His failure to timely file his 2018 and 2019 Federal tax returns was arguably beyond his control as he alleged that the delay was caused because of difficulties with his ex-wife. Therefore,

these late filings could have resulted from his divorce. Applicant's August 2016 to April 2018 unemployment as a result of quitting his job after a DUI was within his control.

With respect to the SOR debts, there is no documentary evidence of payments to or payment arrangements with creditors. It is reasonable to expect Applicant to present documentation about the resolution of specific debts. See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016). Applicant stated that he intends to pay the SOR debts once he receives his Federal tax refunds from 2018 and 2019. However, intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

As evidenced by his Personal Financial Statement, Applicant has funds to contribute toward his delinquent debts while he awaits his aforementioned Federal tax refunds. Given his failure to provide evidence that he has made payments on his delinquent SOR debts despite having the means to do so, I cannot find that he has acted responsibly under the circumstances. His failure to provide proof that he has made payment arrangements also shows that he has not made a good-faith effort to repay overdue creditors or otherwise resolve his debts.

With respect to his unfiled Federal tax returns, I cannot find that he acted responsibly under the circumstances, or that he made arrangements with the IRS to file the tax returns. He has provided no documentary evidence to show that he has completed the relevant tax returns, nor has he provided documentary evidence of mailing his returns to the IRS. Moreover, even if we are to assume that his tax returns were not being processed by the IRS after he mailed them three times, he did not take the reasonable step of filing them electronically or consulting a tax professional for assistance. Applicant's financial issues are ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. Financial considerations security concerns 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.

